

HOUSE OF REPRESENTATIVES*Friday, January 20, 2017*

The House met at 1.30 p.m.

PRAYERS[MADAM SPEAKER *in the Chair*]**LEAVE OF ABSENCE**

Madam Speaker: Hon. Members, Dr. Fuad Khan, MP, Member for Barataria/San Juan and Mr. Prakash Ramadhar, MP, Member for St. Augustine have requested leave of absence from today's sitting of the House. The leave which the Members seek is granted.

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

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

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

Question put and agreed to.

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

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

Madam Speaker, we are here pursuant to the Standing Orders which permit an Extraordinary sitting of the House of Representatives to a date sooner than that which it was fixed to, to facilitate a request which comes from His Excellency the President of the Republic of Trinidad and Tobago directly. Now, Madam Speaker, the convention is that the Office of the President ought not to be referred to in debate, but in this particular instance the cause of the moving of the Parliament is

as a result of correspondence emanating from His Excellency the President, through his Secretary, to the Attorney General's Office specifically and, therefore, I crave your indulgence to proceed as I must to explain the rationale behind this Bill.

Madam Speaker, last night—[*Interruption*]

Mrs. Persad-Bissessar SC: Hon. Attorney General, would you be kind enough to share that correspondence with us—[*Interruption*]

Hon. F. Al-Rawi: Sure, sure, I was coming to that.

Mrs. Persad-Bissessar SC:—before you terminate your contribution please?

Hon. F. Al-Rawi: Sure. Madam Speaker, I was about to say that I have instructed for the correspondence to be disclosed to everyone. The appropriate time to do so is now by way of statement, and I intend to read the correspondence into the record as well, so it would be circulated immediately together with all and extras referred to the letter.

At approximately 7.30 last night, the 19th of January, 2017, I received by way of email, a letter from the Secretary to the Office of the President, Mr. Gregory Serrete which reads as follows:

“19 January, 2017”—addressed to me:

“The Honourable Attorney General & Minister of Legal Affairs”

It is headed:

“Primary Election of the Tobago House of Assembly 2017”

And I read as follows with your permission:

“I am directed by His Excellency Anthony Thomas Aquinas Carmona ORTT, SC, President of the Republic of Trinidad and Tobago, to inform your goodself of a missive dated 19 January 2017, received from the Chief Elections Officer, Elections & Boundaries Commission, surrounding the

fixing of the date for the primary election of the Tobago House of Assembly (THA), scheduled for 23 January 2017.

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

- (i) By letter dated 14 November 2016, the Chief Secretary of the Tobago House of Assembly, The Honourable Orville D. London, advised His Excellence the President that in accordance with section 22(1) of the Tobago House of Assembly Act, Chap. 25:03 (THA Act), the 2013-2017 session of the Tobago House of Assembly had been dissolved with effect from 11 November, 2016. In accordance with section 22(2) of the THA Act, the Honourable Chief Secretary further recommended that the primary election for the Tobago House of Assembly be held on Monday, 23 January, 2017.
- (ii) On 12 December 2016, His Excellency the President wrote to Dr. The Honourable Keith Christopher Rowley, Prime Minister of the Republic of Trinidad and Tobago, informing him that the 23 January 2017 was suggested by Chief Secretary Orville D. London as the date for the primary election of the Tobago House of Assembly. In said letter, His Excellency the President enquired whether the Honourable Prime Minister had any objection to the proposed date for the primary election of the Tobago House of Assembly, that is, 23 January 2017. This procedure is in accordance with the letter and spirit of section 22(2) of the Tobago House of Assembly Act.

- (iii) By letter dated 14 December 2016, the Honourable Prime Minister informed His Excellency the President that he had no objection to Monday, 23 January 2017, being set for the primary election of the Tobago House of Assembly.
- (iv) The Office of the President had been consulting with the Elections & Boundaries Commission on the suitability and propriety of 3 January 2017 being nomination day and 23 January 2017 as the date for the primary election. The EBC confirmed that same was in proper order.
- (v) Thereafter, by letter dated 14 December, 2016, His Excellency the President, informed the Honourable Prime Minister that he was fixing 23 January 2017 as the date for the primary election of the Tobago House of Assembly, with the nomination date being 3 January 2017.
- (vi) On the said 14 December 2016, the Chief Secretary was also informed in similar terms.
- (vii) Writs of Election are prepared by the Elections & Boundary Commission. On the said 14 December 2016, the Writs of Election, in respect of the THA Election, to be held 23 January 2017 in the twelve (12) Electoral Districts in Tobago, were sent by the Elections & Boundaries Commission for the signature of His Excellency the President.
- (viii) In accordance with section 33 of the Representation of the People Act, Chap. 2:01, the said Writs of Election were signed by His Excellence the President, sealed and returned forthwith to the EBC on the said 14 December 2016.

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

The Elections & Boundaries Commission has kindly forwarded to the Office of the President its confidential legal advice on the matter, which is hereto attached, having received the necessary authorisation from the said Commission. Respectfully, kindly note that 2 January 2017 was not a ‘declared’ holiday, but was a public holiday by virtue of operation of the Public Holidays and Festivals Act, Chap. 19:05.

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

Yours respectfully,

Gregory Serrete

Secretary”

Attached to this letter is a letter dated the 19th of January 2017—that is the same day as His Excellency’s letter to me—from the Elections and Boundaries Commission to His Excellency Mr. Justice Anthony Thomas Carmona, the President, and in that letter, the Elections and Boundaries Commission informs that they are to bring to the attention of His Excellency, the circumstances surrounding the fixing of nomination day in respect of January 23, 2017 for the THA Assembly elections.

They have informed in this letter:

“By memorandum dated December 14, 2016, the Secretary to Cabinet advised the Chief Election Officer as follows:

‘The Prime Minister has agreed that polling day be Monday January 23, 2017 for elections in each of the 12 electoral districts...’

He also continues in quoting.

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

The letter goes further to indicate that:

“Writs of election were issued by His Excellency on December 14...Section 33(3)(a) of the Representation of the People Act...provides that the writs of election shall specify ‘the day of the nomination of candidates, being not less than fourteen days after the day of issue of the writ.’

Fourteen days after the day of issue of the writs calculated in accordance with section 159(1) of the”—Representation of the People—“Act (...excluding Christmas Day and any public holiday) ended on January 1, 2017, a public holiday. By section 159(2)...”

He goes on:

“...where anything required...to be done...on a public holiday”—it must—
 “be done on the next day not being a Saturday, Sunday or a public holiday.”

And by operation of the public holiday which followed, he then said:

“January 2...was a public holiday, the next day...not a public holiday was January 3...

Section 33 (3)(b) of the”—Representation of the People—“Act provides that the day upon which the poll shall be taken should not be less than twenty-one days after nomination day.

Having regard to the date of...the writs of election and the intervening

public holidays, there was insufficient time between the...writs and the date of the election to comply with...33(3)(a)...of the Act.

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

It is in fact 20 days.

"Senior Counsel suggested that 'the only practicable recourse appears to be for Parliament to pass a Validation Act to validate the election being held on the 23 January...instead of 24 January, 2017.' This would also ensure compliance with section 22(2) of the Tobago House of Assembly Act, which requires the President, after consultation with the Prime Minister and the Chief Secretary, to fix the date for the election not earlier than 2 months after the dissolution...nor later than...3 months after the dissolution.

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

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

Attached to this is an opinion delivered by Mrs. Deborah Peake SC, and in that opinion Mrs. Peake goes on to recount the history and chronology starting with the THA communication to His Excellency the President suggesting—and

these are the words lifted from the letter itself—that the polling date should be the 23rd of January, and asking His Excellency to consider same.

1.45 p.m.

Madam Speaker, on December 12th, two days shy of a month after receiving the letter, His Excellency the President, as the chronology shows, wrote to the Prime Minister asking if he had any objection to that date. The Prime Minister said that he had no objection to the polling date. The law which intersects all of this includes the Constitution, the Representation of the People Act, the legislation to deal with—I just want to get them clear—the Tobago House of Assembly Act, Chap. 25:03, the Interpretation Act, Chap. 3:01 and, of course, the case law as it relates to those laws and in particular election petitions.

In accordance with the law, the fact is His Excellency the President, under the Representation of the People Act, fixes a date for the election and then the calculation backwards to a nomination day is done, as the chronology I have just read out from the EBC demonstrates. The application then is that once that date is fixed—that is the election date—nomination day is suggested and His Excellency the President writes directly to the EBC, and he commands the EBC that polling date shall be on a certain date and the nomination date shall be on a certain date. In fact, that is the very language which comes from the 12 election petitions which His Excellency would have done for the Assemblymen Election for the Tobago House of Assembly.

That being the case, it is now in the public domain that on January 17th, Mr. Hochoy Charles raised the issue of the potential that the election set for January 23rd could be deemed to be not in compliance with the Representation of the People Act insofar as it fell one day short. I wish to address the point of responsibility for the conduct of this.

I have taken time to set out that the law is crystal clear: the Representation of the People Act, the Tobago House of Assembly Act, those two pieces of law in particular articulate with the Constitution and the Constitution is built upon the separation of powers, such that the Executive, the Judiciary, the Tobago House of Assembly—which also features in the Constitution—the Elections and Boundaries, which features in the Constitution, all operate with certain parameters of restriction.

This is underscored by the fact that the People's National Movement as a political party, which is currently the Government of Trinidad and Tobago, has to walk a very careful line, because political interference in the operationality of the selection of a date for an election by His Excellency the President, is one which has to be very carefully managed. That is why our Constitution is built, such that His Excellency the President has sole jurisdiction in terms of the appointment of the members of the Elections and Boundaries Commission. [*Desk thumping*] The Executive, as a political entity, is bound within strictures set by the Constitution. This is further underscored by the operationality of section 22 of the THA Act which requires the Chief Secretary to suggest a date, and that can only be a suggestion. The Chief Secretary communicates that to the President; the President considers it.

Now, pause for a moment to inform that this particular Cabinet specifically provided, for the first time in the history of Trinidad and Tobago, a special legal advisor to His Excellency the President, at the request of His Excellency the President. This position was filled and occupied at His Excellency's request, prior to the onset of the dissolution of the THA assembly.

We now come to the fact that in dealing with this issue, there were several options available, none of which a political party which happens to be the

Government installed, has the option of selecting, and that is strictly because the Constitution and the rule of law and the breach of separation of powers principles, well articulated in the case law, prohibit the direction of a government to His Excellency the President in this matter, and also prohibit a direction to the EBC, because a government has no locus or linkage or authority to give communication instructions to the Elections and Boundaries Commission. That is how our Constitution is built and safeguarded.

In these circumstances, His Excellency the President received advice, as we are now aware from his own letter. The EBC took advice—as we are aware from their letter as well—and the EBC, in proper line of communication yesterday to His Excellency the President, caused His Excellency the President to be informed of their position. His Excellency the President at 7.30 last night informed me, the Attorney General, of the request for a validation Act, which is why we are now in Parliament today.

Madam Speaker, we have in particular to address the issue of what were the options. Why are we here? Why should we engage in this debate? The options include obviously, number one, it was open to allow the election to continue. When you have an election continue, it can be met with challenge by way of an election petition. Option two is that one could seek to analyze whether the Writ of Elections could be amended. Option three, one could have sought to adjourn the election. Option four, one could seek to amend the substantive laws, which is the Representation of the People Act and the THA Act, or option five is to come for a validation Act. All of those options can only be triggered when the proper line of authority in our Constitution is followed, when His Excellency the President says what he wishes to be done in relation to the writs which he commanded to be executed and delivered, as the EBC has done.

Let us look at having the election. Certainly when I was asked what the position of the Government was, when the Hochoy Charles issue came up on the 17th, it was open for us to continue with the date as set, because a date has been set by His Excellency the President. The writs have been issued, nominations have been had, campaigning has been afoot, there have been no allegation of electoral impropriety and special voting has happened. All of these have happened already. We could have sat by, as we were duty bound to, and dealt with the issue, if His Excellency did not command as he had today, last night. We would have sat and we would had to have awaited a challenge, if there was to be one by way of an election petition.

We know, as a result of the law on election petitions—most recently confirmed by the Court of Appeal in the election petition cases which failed, as brought by the United National Congress in challenging the general election—that the election is going to be viewed as whether it is in substantial compliance with elections, and that a mere irregularity, in and of itself, even though it is in fact a breach of the primary legislation—as happened, as the court determined in the 2015 General Election with the extension of one hour in genuine circumstances. Even if that happens, the substantive effect of a free and fair election would be looked at.

In fact, Madam Speaker, there was a very interesting case in New Zealand by the label *Simpson v the Attorney General*, a 1955 case, New Zealand Law Reports 217, which dealt with a very similar issue of an election, where the timetable for issuing writs were not in accordance. It was a calculation similar to this one. The Court of Appeal there in New Zealand specifically said, when an election is dealing with timetabling issues in a writ of election, that these are directory and not mandatory, and that the result of a failure to strictly comply with

timelines does not invalidate an election.

In those circumstances, when asked by the media, I said that the Government considers that there is a valid election afoot and we would meet it. It is open to challenge, but any challenge is destined to fail, similar to when I was asked in 2015 about the UNC challenge on election petitions, I said, “It is due process. You are free to go to court. It is challenge which can be made, but it is destined to fail”, and it so failed.

Option two—one could have looked at the ability to amend the writ. When one looks to the powers of the President under the Representation of the People Act, the Interpretation Act in Trinidad and Tobago in section 45(1) allows statutory instruments, including powers exercisable, to be amended, rescinded or revoked. So the question became whether the writ is in fact a statutory instrument, and a proclamation of this writ is pursuant to section 75(1) of the Interpretation Act, a subsidiary instrument which is open to that. But the effect of amending the date in the writ, that is, from the 23rd to the 24th, could have been viewed to be an adjournment of the election.

Had it been that we were dealing with an amendment to the writ prior to nomination date, it would probably have survived. But if one sought to use section 45 and section 75 of the Interpretation Act to amend the writ, what would have happened is you would have equally been opened to challenge in the courts, and then persons who are had prepared themselves to vote on the 23rd would have alleged that there was confusion, they had to fly away, there was interference in the election, and so they would have been challenged as to the bona fides of the preparedness for election. In those circumstances, an amendment of the writ obviously does not seem to be a sensible approach for this Parliament to consider.

Madam Speaker, one could also look to the issue, as I mentioned, of the

adjournment—the adjournment of the election. Now, the Representation of the People Act is quite clear. It says that adjournment is possible, but it is only for certain limited circumstances as set out clearly in section 34 of the Representation of the People Act. It includes war, pestilence, earthquakes; it includes the fact that electoral machinery did not arrive; there was a revised list of electors that could not be done. But there are very narrow circumstances in section 34 of the Representation of the People Act. And, by virtue of case law emanating in Jamaica where an adjournment of an election was sought, the Jamaican Court of Appeal considered that issue and said that it would not be appropriate to have a power of deferral or adjournment read into the law, for circumstances not specifically stated in the primary legislation. In other words, their Act, much like our Act, does not provide for an adjournment on the basis that the President and the Elections and Boundaries Commission made an error in the calculation of time. That being the case, the adjournment of the election is not possible at law.

Madam Speaker, as you heard me reflect, the Jamaican Court of Appeal said that unless the primary law had a specific statement that the adjournment was possible, that now flows into the option of whether one should seek to amend the primary laws—the THA Act and the Elections and Boundaries Act—but that in and of itself would be a very wide and general debate, which could be viewed to be taken to attack the bona fides of an election. That therefore brings us down to a validation Act, which is the Bill before us—four clauses long only.

In the validation Act the Parliament is being asked to do a legitimate thing, to conduct a legitimate aim. The legitimate aim, of course, is to allow persons who have prepared for an election to actually conduct a full and fair election. It is to take care of an error in the timetabling by the EBC and by His Excellency the President, as stated pellucidly clearly in the letter of His Excellency the President

to me at paragraph (iv) on page 2. I remind you that the President said:

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

So we do not need to look to guess where this error came from. His Excellency the President has told us in written correspondence, now circulated to all Members of the Parliament.

When we look to this validation concept, one has two options: validate before the election or validate after the election. A validation after the election is certainly permissible. It is one, however, which finds itself open to an argument for a breach of the separation of powers principle and also a breach of the rule of law argument entrenched in our Constitution, because a victor or a loser’s rights would have been established after the election. It therefore finds itself in the case where the legislation may be deemed to be *ad hominem*, that is, targeted to the outcome of the election being reversed by legislation. The famous case of **Leénage** comes to mind, and the Northern Construction section 34 case is leading principle in this jurisdiction, where the Privy Council stated that the separation of powers and rule of law argument comes alive where the legislation is deemed to be *ad hominem*.

So after the election, if validation was done, we would certainly require a two-thirds majority of the Parliament, we would certainly have the risk of *ad hominem* legislation being argued to have been passed, as was the case in the section 34 case, the Northern Construction case. So that now takes us to the EBC’s written request to His Excellency the President, and the President of us the Parliament, to do a validation before the election. And why should one consider

that?

The validation before the election, Madam Speaker, is one where an election has not been had. All preparations for the election have been undertaken. We are two days away from an election in Tobago. Special voters have voted; ballot paper has been printed; everything is set and ready; schools have been organized and polling stations. There has been a proper electoral campaign.

The first time this issue arose was on January 17th, as reported in the newspaper. Today we are on January 20th—as I told you last night we got correspondence. But the validation in this sense here ensures that nobody can say that their rights are being infringed or that a separation of powers argument comes alive, or a rule of law concept comes alive, because there is no winner or loser.

The fact is certainly no one in this country has the ability to complain that one should validate a writ to allow themselves to win an election, which is probably going to be contested because of a date, and therefore they want to have recourse to the courts. In other words then, you cannot argue a nonsense; keep it as it is so that I can actually have a second bite afterwards by way of an election petition.

So a validation Act as comes before us now in these mere short four clauses, is really quite simple. It simply says validate the twelve Election Writs before us issued only by the command of His Excellency the President to the EBC.

Secondly, validate the dates as if they were held properly. But I want to just underscore that point. The Writs of Elections issued under the hand of His Excellency on December 14th read as follows—it is under the Representation of the People Act. It is to the Returning Officer from the President and it says:

Whereas I think it expedient that Writs should be issued for the election of members to serve in the Tobago House of Assembly, I command you that

notice of the time and place of election being first given you do on the Third of January 2017, this shall be nomination day and then the Twenty-third shall be the election.

That is what the wording of the writ itself says. So there is no confusion at all. The fact is His Excellency has suggested this, has identified the error between the EBC and the President.

But more particularly, there is one other issue as to why we must do this now. The THA Act specifically requires, as I mentioned a little while ago, at section 22(2):

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

Now I read His Excellency’s letter which said that the dissolution was the 11th. When I read the correspondence from THA Secretary London, it said the 17th. So let us assume there is a transcription error somewhere, the fact is the THA has been dissolved, either on the 11th or the 17th.

When you apply section 159 of the Representation of the People Act to compute time, together with section 33(3) of the Representation of the People Act, which says not less than 14 days and not more than 21 days, and that specifically says you shall not include therefore the first day or the last day, the timeframe looks as follows: today is the 20th. The Senate sits tomorrow, the 21st—assuming that we get there—it means that the 22nd is the first day that you can actually have a new writ issued by the President commanding the EBC to do something. You have to skip that day, skip the 14th day, add 14 days in between. You then skip the 14th day, put 21 days in between the 14th day and the outside date, to allow for the

21 days, and that convincingly takes us to Monday or Tuesday, the 27th or 28th of February, 2017, which is in any way you look at it, beyond either the 11th of February or the 17th of February.

So if we do not do this, the consequence is that the THA election is outside the law. Ballot papers to be printed again, election campaign to run through again. So the easiest option, according to the advice received by His Excellency the President, now disclosed in written form to all of Trinidad and Tobago, is that a validation Act is the sole cure to the error on the part of the Elections and Boundaries Commission and the Office of His Excellency the President.

Now, Madam Speaker, I want to just underscore, in anticipation of an argument coming from my learned friends, because I heard reporting in the press on radio where Sen. Mark was on about how the Government should be blamed, et cetera, et cetera. I want to underscore a point I touched on. The Government of the Republic of Trinidad and Tobago, and by that I mean any government, cannot at law by the Constitution, involve itself in the Elections and Boundaries Commission and in the Office of the President. There is a strict rule of prohibition and there is a separation of powers in that regard.

Secondly, the letters flowing from the Chief Secretary to the Office of the President are very, very clear. The Chief Secretary's letter simply says:

I wish you to consider the date of the 23rd for the election.

The letter coming from the Office of the Prime Minister under the Prime Minister's Hand to His Excellency the President is a very short letter. I will read it, the content:

I refer to your letter of the 12th of December, 2016. In this regard, I wish to inform you I have no objection to the date of Monday, January 23rd, being set for the primary election.

Now, the 14 days and the 21 days are minimum periods. The THA wrote to the Office of the President on November 14th. The THA had its information by way of confirmation, come back on December 14th. It was open to have nomination day in December. It was open to keep the 23rd because minimum periods are what we are talking about. The fact is the only role and responsibility of the Cabinet of Trinidad and Tobago in an election is limited specifically to the concept of making sure that there is publication of the electoral registration of the Tobago House of Assembly.

I am able to tell you by way of Cabinet Minute 1903 of December 15, 2016, the Cabinet agreed in accordance with section 30 of the Representation of the People Act that an electoral registration be conducted in the 12 seats in Tobago. The Cabinet/Government/Executive's role is confined only to that.

Madam Speaker, may I ask how much time I have left?

Madam Speaker: Your time expires at 2.17.

Hon. F. Al-Rawi: Thank you. So, Madam Speaker, the role of the Government is outside communication with the Office of the President, beyond suggestion of a date and confirmation of no objection. The Cabinet and Executive of Trinidad and Tobago only gets involved in the process of elections by way of instructing the conduct of electoral registration, from time to time. In this case, the THA electoral registration Cabinet Minute is December 15, 2016. The exercise of fixing a date for the election and for the nomination date, as the EBC has said in writing, as the President has said in writing, was conducted by the Office of the President and by the Elections and Boundaries Commission, in circumstances as the President tells us where they had been receiving legal advice of their own.

The EBC confirmed the date. The Office of the President has special legal advisor. The Cabinet ensured that appointment. The EBC has its in-house

counsel; the EBC takes advice from external counsel. So all that is left for us to do now as a Parliament is to consider the simple request of the President and the Elections and Boundaries Commission, to do the validation exercise and more particularly, to simply confirm that the proportionality of this piece of law is secure. [*Interruption*] I am sure that the Leader of the Opposition does not understand this concept, because it would require a little bit more, but I notice she finds it a little bit humorous, so let me focus on it.

The proportionality of law is a significant argument, because laws which are passed, whether by a three-fifths majority, two-thirds majority or three-quarters majority or simple majority, can be challenged as not being relevant by virtue of proportionality.

Mr. Charles: Standing Order 48(1).

Madam Speaker: Please proceed, Attorney General.

Hon. F. Al-Rawi: Madam Speaker, the proportionality argument, if my friends do not understand it, is the bedrock argument of every piece of law passed in the Parliament and considered by the courts. [*Desk thumping*] If my learned friends do not understand that, then God help them, and God help us for having had them in charge for five years. [*Desk thumping*] Madam Speaker, this law is proportionate because there is certainly a legitimate aim as described, as I have done. Secondly, the Act—[*Crosstalk*] Madam Speaker, the Member for Naparima is wailing again.

Madam Speaker: Let us continue please, Attorney General.

Hon. F. Al-Rawi: I mean, I could understand so much. There is a legitimate aim to this Bill, as I have explained in detail. The aim of this Bill and the stretch of this law only goes so far as it should. We are seeking to carry out the request of the President that we actually have a validation for these writs—only these writs. We are not seeking to amend the THA Act or the Representation of the People Act.

We are not seeking to overreach on this occasion. The fact is that the electorate is ready. The special electors have been had; they have voted. The ballot papers are within check. If the validation does not happen, then the election would be deemed to be in breach of a rule and a law, albeit that there is genuine reason for it, because it is what you call a slip on the part of the Office of the President and the EBC. Certainly, we would run into the argument of breaching the time frame within which an election must be had at outer limit, which is three months, as I have said to you, Madam Speaker. In all those circumstances, this law stands as proportionate.

Madam Speaker, I only need to say one more sentence which is: I beg to move.

Question proposed.

Mrs. Kamla Persad-Bissessar SC (Siparia): Thank you very much, Madam Speaker.

Late yesterday evening, together with other Members on this side, we received a notice, a summons in fact, to attend an extraordinary sitting, Friday, January 20, 2017. We were informed that the business to be transacted would be the Tobago House of Assembly Election (Validation) Bill, 2017 and we are here today.

At that same time we were sent on our email an Order Paper. The Order Paper says Friday, January 20, 2017, 1.30 p.m. Extraordinary Sitting. On that Order Paper under Introduction of Bills, there is No. 1, the Tobago House of Assembly Election (Validation) Bill, 2017 by the Minister of Rural Development and Local Government, who will move that the next stage of the Bill be taken forthwith.

2.15 p.m.

So here we are in response to the summons and with respect to this Order Paper. However, when we arrived here I received another Order Paper which says:

“Extraordinary Sitting, Friday, January 20, 2017”

So in that regard they are both the same. But, do I have your permission to hold these up, Madam? Well, we all have them.

Madam Speaker: No. Leave should have been sought before. We all have this and I do not think it aids. It does not aid.

Mrs. K. Persad-Bissessar SC: So, I will put them down.

Madam Speaker: Yes. Thank you.

Mrs. K. Persad-Bissessar SC: That is okay. I am guided, Madam. I am guided. Well, I have to hold it to read it, Madam.

Mrs. Robinson-Regis: The both of them?

Mrs. K. Persad-Bissessar SC: Yes. Extraordinary Sitting, given yesterday. I come here today and I find the Order Paper for today and I will need to hold it, Madam, to read it. I will try to keep it way down.

Madam Speaker: You do not have to hold it to read it at the same time.

Mrs. K. Persad-Bissessar SC: Thank you, Madam. And this one says:

“Introduction of Bills,

The Tobago House of Assembly Election (Validation) Bill, 2017.

(By the Attorney General who will move that the next stage be taken forthwith)”

So, we were brought on one Order Paper; today we are welcomed by piloting of the hon. Attorney General. And, Madam Speaker, when I listened to him I am

reminded of when we were growing up. As way back as I can remember, I was told “Repeat after me: one, two, three, four” and after four would come five and thereafter to 20 and then to 21, and that was even before I went to school. And then when we went to school, primary school or preschool, “Repeat after me” in those days, now you had a plastic something they would call it an abacus. I see you are smiling, you remember the abacus. And it will be one, two, three, four, five, and down the road.

And up to today, Madam, I am sure you come into contact with young children and their parents or grandparents, the first thing they tell you, “Aye, he really bright, you know. He could count from one to 20.” [*Desk thumping*] He could count from to—“more bright” than that, because he can now count one to 100.

Madam Speaker, we are here today for an Extraordinary Sitting because of extraordinary incompetence because they cannot count. [*Desk thumping*] Cannot count. Somebody just could not count. And here we are then to validate and we are being told all of this is happening because of the missive from His Excellency the President.

Madam Speaker, I have had the honour and the privilege with respect to election dates. I have had the honour and the privilege to determine elections dates, not for one election, but for five elections. And I remember the late hon. Prime Minister Patrick Manning would stand in the Parliament and tell us what?—“I have the date for the election in my back pocket”. I remember that. And I would remember further and I will say, well, thereafter I had no back pocket, but the date for an election, regardless of what the hon. Attorney General wants us to believe, is a date that is determined by the hon. Prime

Minister [*Desk thumping*] of the Republic of Trinidad and Tobago. And, of course, it will be done in accordance with the law. I mean, it would be totally unrealistic and out of this world to have us believe that the President could tell anybody in Government, “You must hold the election on the 23rd”; that the EBC will you, “You must hold an election on the 23rd.” That is nonsense. [*Desk thumping*] It is total nonsense.

So in the piloting of the Bill the hon. Attorney General wants to remove the egg from his face. I heard somebody say, you know, if you go down to the supermarkets right now you “cyar find no egg because all the egg on the faces of some other people”. [*Desk thumping*] So, okay. You made a mistake, you made a mistake, do not come to this Parliament, we are big people in this Parliament and do not come to say, it is all because of the President. Not at all, Madam Speaker. I remember you have to count backwards, yes. “But, oh God, yuh cyar even count one to 20”? So to count backwards might be more difficult. But having said it was the 23rd and then we have a notice coming from the Office of the Prime Minister which told us that the date for the election would be—here it is, Office of the Prime Minister, 15 December, 2016, media release.

Tobago House of Assembly election date:

“The Public is...notified that the President...has fixed Monday, January 23rd...as the date for the election of members to serve in the Tobago House of Assembly.”—and then—“Consequently, nomination day shall be January 3rd, 2017.”

Madam Speaker, did it take this letter, the “missive” as the hon. Attorney General has put it, did it take this missive at 7.30 p.m. last night, only then he

realized, listen, we have to go to the Parliament, we have to validate this thing. Are you telling me that you did not see that error before? It is only when the President said, go forth, go to Parliament, validate, that it came to you? And it is therefore, frightening to know that this is the legal advisor to the Cabinet. This is the person taking legal decisions that will impact, whether it is the lawmaker becomes the lawbreaker in the country. [*Desk thumping*] It is frightening. It is frightening.

You know, when I received this summons I thought, hon. Madam Speaker, we are summoned, you know, what is more extraordinary than today in the last how many hours it is six or seven murders, what is more extraordinary for an extraordinary sitting than the state of crime in this country? [*Desk thumping*] And what may have been even more extraordinary may have been, okay, you have promised Tobago self-government and so on. Okay. I thought maybe those Bills would come for us before this stage, but it was not to be. It was to validate. The Bill before us is to validate.

Now, I think issues arise about validation per se and what we are being asked to do is to validate retroactively, that is to say, matters that have already taken place, writs issued, dates fixed, so we are validating ex post facto, after the fact.

Issues of validation arise and issues of extraordinary sittings. I asked for a little search to be done. Again, our time was very short between yesterday and today—last night in fact—and coming here today. And we would have seen in terms of validation, extraordinary sittings. This is the second extraordinary sitting we have held since this Eleventh Parliament, in this Eleventh Parliament. Eleventh Parliament. Yes. Eleventh Parliament. The first had to do with,

strangely enough, a Motion moved by the hon. Member for Tabaquite, a Motion to negative a VAT order that had been made. And in that case, again, the Government came for an Extraordinary Sitting because the Order would have expired at midnight on that day so we were brought in very quickly to do it.

But I asked to look again—so that is in this Eleventh Parliament—previous Parliaments, and when we looked at validations I could only find about three. Now, some of those validations required special majorities and some did not. So does this Bill that is before us which asks us to validate acts that have already taken place, does it require a simple majority or does it require a special majority? And that is the Bill we are here—on its face it does not recite any requirement for a special majority. But I would like the hon. Attorney General to address that in his winding-up or any Government Member because, you see, I am a little concerned. Because I saw a most extraordinary thing happen, where a Bill which had required a special majority, that it was removed. [Interruption] I am not anticipating anything, Madam.

Mr. Al-Rawi: You are offending the Standing Orders.

Mrs. K. Persad-Bissessar SC: You are too jumpy, AG.

Hon. Member: The Standing Order, if you have a problem.

Madam Speaker: Members, please observe the decorum. Member for Siparia, please proceed.

Mrs. K. Persad-Bissessar SC: I thank you, Madam Speaker. I am saying I have seen where a Bill that required a special majority could be—that provision be removed and turned into a simple majority Bill.

And so I am asking, through you, Madam, if the hon. Attorney General could tell us, does this validation require a special majority or does it not?

[*Desk thumping*] I talked about previous validations that have taken place and some of them have required special majorities, some have not. So, for example, there was the Sugar Industry Control Board (Repeal) (Validation) Bill, 2013. That one required a special majority, a three-fifths. We had the Purchase of Certain Rights and Validation Bill, 2011. Again, validation, but that one required a special majority. So, I have located about 13 in the little time that I had for searching on the website together with the staff at the office. We have located about 13 validating Bills.

You know, Madam Speaker, and yes, I am sure the AG would be very anxious to tell us it does not require a special majority and I await his winding-up or any other Member to deal with that issue. But, you know, there is something in the law that the law really frowns upon—retroactivity, retroactivity. But I do understand the conundrum that the Government has found itself in, because to validate before—now, before the election or to validate post-election—really places a difficulty.

And the third option that the AG mentioned—he said that there were about five options, if I am not mistaken. There were several options, about five. Option one was to allow the election to continue, but then that would have probably brought an election petition thereafter. And the AG was very eloquent in his normal way in pointing out election petitions that came and that were lost, but he did not make this point. It was that very election petition that the hon. Attorney General went to lengths to say, failed. It was in that very election petition that the whole issue for coming here for validation becomes even more important. And I say that because in the short time I was able to peruse the letter from His Excellency the President which contains the opinion, the legal

opinion from a very distinguished Senior Counsel, Deborah Peake. And in that opinion, Deborah Peake points out very clearly, that in the Court of Appeal of our jurisdiction—and I am reading from the opinion, Madam, if I may?

“The Court of Appeal of this jurisdiction has adopted the same restrictive interpretation of the provisions of the Act and the Election Rules made thereunder as relates to the conduct of elections.”

So what learned Senior Counsel is saying is that the courts adopt a very restrictive approach when it comes to timelines and time-bound legislation. And this whole Representation of the People Act, the entire Act is one in which there are timelines and schedules and deadlines. That is what it is about. Everything is timetabled. Every single event is timetabled. In fact, if you check with the EBC website you will see that they put out a tabling of events from the day of the issue of the writ right down until the taking of the poll and thereafter. And all of that, Madam Speaker, is timetabled in the ROPA, in the Representation of the People Act.

There have been amendments and I will come to the opinion of learned Senior Counsel Deborah Peake. But there have been to this Representation of the People Act, there have been many amendments stretching from 1967, that is when the Act first came in effect, Act 41 of 1967, and there have been about 13 or 14 amendments to it. But the one that is relevant to the Bill that we are at present discussing is the amendment made by Act 51 of 2000. That was the time when the hon. Mr. Basdeo Panday, MP he then was, Prime Minister, and we came then in 2000 to amend the Representation of the People Act and in particular, inter alia, of the sections to amend the section 33 which dealt with the timelines for issue of writ, nomination day and polling day.

And Act 51 of 2000, Madam Speaker, with your leave if I may say, moved, in section 33, amended to then section 33 to remove word “seven” and to insert thereof the words “fourteen days” in the first instance. And that was, that the issue of the writ there must be instead of seven days from the issue of writ to nomination day, you must have at least a minimum of 14 days. That was the change to be made. It was previously seven days.

In Act 51 of 2000 we also amended the further timeline that was set. That from nomination day to poll day it was—would you believe it—only seven days? And by Act 51 of 2000 we changed it, this Parliament did, to read 21 days and that is the 21 days that we are at. And I think it is very instructive to read, just very briefly, the then hon. Patrick Manning when he contributed in that debate on Monday, June 05, 2000, and this is what he had to say.

“Mr. Speaker, how do we know that lengthening the term, giving more time between the declaration of an election, dissolving of Parliament, the identification on nomination day and all that—I think the time frame now moves from 21 to 35 days...”

And that is the fact of it, because the first 14 days plus the 21 days will give you a span from writ being issued, election writ to poll day, 35 days. And he says:

“...I think the time frame now moves from 21 to 35 days—is in the best interest of the democracy of Trinidad and Tobago as we understand it? It might well be, but we are saying that we are in no position to say it is, especially in circumstances where we have not had a chance to discuss with the”—EBC.

This was Patrick Manning.

And in that same debate the then hon. Attorney General had this to say

about that change—why did we move it from seven days, plus another seven, which an entire election period—can you believe it?—before Act 51 of 2000 would have been only 14 days for nominations, for campaign and poll day. That was changed by Act 51 to the 35 days that we now have and which the THA now should have the 35 days.

And the then AG in piloting the Bill said that the section was amended to increase the number of days for the poll from not less than seven to not less than 21 days after the nomination. And this was the reason given at that time why the change was made. That would have some effect because it would mean that the EBC would have a longer period of time in which to prepare for elections as from the date when the election has to be called. So this was expanded in time. So here we are, we are really looking at a one day outside of time.

But coming back to Senior Counsel Deborah Peake, one day, but in the last election petition, following upon the 2015 general elections, it was one hour, one-hour extension by the EBC that was found to be illegal. It was illegal. And in that judgment, contrary to the view that the hon. Attorney General is giving us—you know, everything lost and gone—a very important principal of law was enunciated. And that is to say, that if you are to change anything in the Representation of the People Act, with respect to the conduct of the elections, with respect to the timetabling of the elections, then you must do it according to law, and you cannot do it by “vaps”, you cannot do it arbitrarily and so on. And Deborah Peake SC at paragraph 15 of her opinion attached to the “missive”, as the AG has called it, the missive, the President’s letter, says this:

“The Court of Appeal of this jurisdiction has adopted the same restrictive interpretation of the provisions of the Act and the Election Rules made

thereunder as relates to the conduct of elections.”

And the case is cited in a recent election petition mitigation and cites the names of the various persons. The Court of Appeal made it clear, in its brief, reasons delivered on the 19th October, 2016:

That one cannot read into the Act any powers which are not expressly provided for in the legislation and it is for Parliament to amend the law if amendment is necessary.

Chief Justice Archie in delivering the unanimous decision of court said and I quote:

“ the mandate of the EBC is to direct and supervise the conduct of (the) process as specified by Parliament and the rules and the writ of election issued by the President.”

So a very important principle of law was established by that election petition.

Of course, it went on, I think it was a rule 33, or section 33 of the ROPA to talk about substantive matters taking place that would impact on the numbers, in terms of numbers. So it was on that limb that those election petitions failed, but they did allow us a very important principle of law, and Deborah Peake SC quotes that now in advising—look, you need to go and validate. You cannot adjourn it because the law would not allow you to adjourn it to one more day.

In the same way that the EBC could not have extended one hour, not even one hour, far less a day, could not have done it legally. That is what the principle there is telling us why it allows the hon. Attorney General to stand up here today to say, look, out of all these options that I have listed, I am going to validate. I will choose option for validation.

And, you know, Madam Speaker, we will support this, you know. We

will support the validation, but I think it is very important for us to take note of this continuing incompetence where the Government cannot even count, [*Desk thumping*] cannot count to 21, summons out of wherever we were, which we are on standby. I was at home at my house and I was cooking by the way, I was making dinner when I received the phone call last night. [*Crosstalk*] So, since you are so curious, I will not tell you what I actually had on the stove. Some of our Members took decisions to travel out as you gave leave today because of this. So, we are summoned here.

And we see the hon. Attorney General, again, you know, it is better you come honestly and say, look, this is what went wrong rather than, you know, [*Desk thumping*] washing your hands and shouting across to us, as if we will not support it. I understand that we have validated many things and for the people of Tobago, this is their election, UNC is totally—by the way, totally out of that election, [*Desk thumping*] contrary to all the mouthings wherever. I allow the people of Tobago to make their decisions. But I find it offensive that, here you are, you do not need our support—that is why anytime you do not need the support of the Opposition, that is the time when they are most not nice, to put it very mildly, to put it very mildly—not nice.

And therefore, I am asking the hon. Attorney General: one, to please let us know whether this can be done without the special majority? I am saying, we are prepared to support this validation because the Government will find itself and the country in a very difficult position, given the date of dissolving of the THA. It was dissolved on—two dates we were given, the 11th November or the 17th and then the three-month window that you have within it, that should you have to start the process all over again, then you will have to get another 35

days which may take you outside of the period. So then you will have to come back and not only validate, you will have to come and amend the substantive law to say, you could have more than three months, 90 days, to hold a THA election.

So, Madam Speaker, I will not detain the Parliament much further except to say that, you know, I think the country deserves honesty. I think the country deserves integrity [*Desk thumping*] and I do believe that there is nothing to be gained, hon. Madam Speaker, from attempting to cast blame on the President. [*Desk thumping*] The President did not choose the date.

And then, you know, the hon. Attorney General shifted a little when he then said, well you know, since before the THA was dissolved, some legal officer is now hired in the Office of the President. So either it is the President or the legal officer. I do not even know who that person may be, but somebody, anybody take blame, take blame, except the legal advisor to the Cabinet, [*Desk thumping*] the legal advisor to the Government. They cannot count one, two, three, four, five, down to 20. Pass it on, you know.

And you know, Madam Speaker, if I may make this last further point. When I look about the Attorney General I do not want that we are held for opening up this debate. The Attorney General said, everything is in place for free and fair elections in Tobago. But I am hearing the people of Tobago now, some process there where they are saying they have issues with the poll cards and so on. So free and fair elections. Yes. I wish them good luck. I wish everyone success and so on, but if I had any say in the matter, I will say vote anybody except the PNM. [*Desk thumping*] Anybody.

So out of these options, out of these options, allow the elections to

continue, which the AG said, but then we may have an election petition. We can amend the writ. Well, it is very clear that is totally out of the question in terms of amending the writ. [*Crosstalk*] I am guided by my good friend who is not an attorney-at-law, but does have a Masters in law, if I am not mistaken, two Masters in law. The Member for Diego Martin North/East, we used to say he was the two-by-four lawyer because he did not actually have the law, but he is a very brilliant man, I do admit. You know, I believe that entire Government is running on the brain of the Member for Diego Martin North/East. [*Desk thumping*]

Hon. Member: Yes! Yes!

Mrs. K. Persad-Bissessar SC: And not just the brain, but on the feet and the actions [*Laughter and crosstalk*] I really believe that. [*Crosstalk*] He told me, Madam Speaker, if I may, last day we were here—how much more time do I have?

Madam Speaker: Member for Siparia, please continue.

Mrs. K. Persad-Bissessar SC: Thank you, Madam Speaker.

Madam Speaker: Your time expires at 2.43.

Mrs. K. Persad-Bissessar SC: Two forty-two. Is this for original time or? At 2.43. Yes. I was just saying, the hon. Member for Diego Martin North/East told us on the last occasion, he said, “I am large and I am in charge”. And I said to him, you may be in charge, but I will not agree with the other part of the statement. Anyway, that is just by the way.

So allow the election to continue, but then it could be subject to an election petition. Amend, and I said that would be out of the way, and that is where the Member for Diego Martin North/East said the ultra vires. Adjourn,

and again, adjourn the election to another date, and I agree with Senior Counsel Deborah Peake that so to do would not fall within the powers in the Act, in the statute, the ROPA because the provisions for adjourning a poll do not arise—the concerns, sorry, do not arise. If there is a hurricane or war, these are the provisions to adjourn a poll.

Then the hon. Attorney General told us another option was to amend the substantive laws. Amend the substantive law. Well, I am not sure he, if the hon. Attorney General gave us reasons why he did not choose that option, and then came to validation. And again, I would respectfully disagree with the hon. Attorney General when he talked about the rules and the timelines contain within the statute as being merely directory and not mandatory. He gives us that view, but again, he still comes to us to ask to validate the very timelines to take to validate which should have been a breach of the timeline. So, I do not think that is the position really, that there will be instances when the timelines set in here would be, you must stick to them or you go ultra vires, you go illegal.

And I recall in the same election petition matters, when service was to be executed on one of the hon. Members in the House and in the court, because it fell outside of the time period for service, the court held, you were outside of the timeline and, in fact, throughout that particular petition, against the Member La Horquetta/Talparo. Why?—because of time, time frames and timelines. So the law takes, in my respectful view, a very, very, very strict interpretation of timelines and schedules.

And let me get back to the opinion that the hon. Attorney General has provided us. And you know, again, all the hon. Attorney General would have to do is to really, he should have really provided—he has provided us with the

copy, but you know, what Deborah Peake SC has said in here really is the crux of the matter as to why we need to validate, and I think, if I may respectfully say, the hon. Attorney General should apologize to the country [*Desk thumping*] of Trinidad and Tobago. I thank you very much, Madam Speaker.

The Minister in the Office of the Attorney General and Legal Affairs and Minister in the Office of the Prime Minister (Hon. Stuart Young): Thank you very much, Madam Speaker. Madam Speaker, I have risen here today to correct the record, once again having heard the contribution of Senior Counsel from Siparia who is also a former Prime Minister, and to the public of Trinidad and Tobago—[*Interruption*—and a former Attorney General, I am reminded by the bright one from Diego Martin North/East.

Madam Speaker, what the public of Trinidad and Tobago needs to know and what the citizens of Trinidad and Tobago need to know, let us put it into context. First of all, there is absolutely no assertion of blame by this side for anything whatsoever. [*Desk thumping*]

We have come here today and I am glad to hear the Member for Siparia say they are going to support the validation Bill. We have come here today to correct an error that was made. We have come here today at the request of His Excellency the President to correct an error that was made. And as I am about to inform the public of Trinidad and Tobago, through you, Madam Speaker, in this House, the error had absolutely nothing to do with those on this side. In fact, I was quite disappointed in hearing the last contribution, because it appears as though there was no reading of the genesis in law of this procedure. And I would like to start by a reference to section 22 subsection (2) of the Tobago House of Assembly Act.

2.45 p.m.

The Tobago House of Assembly Act as it says by definition deals with the governance issues of Tobago. We are here today to do a validation of certain actions carried out with the calling of a Tobago House of Assembly election. Section 22(2) of the Tobago House of Assembly Act, Chap. 25:03 states as follows:

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

If I had to advise a Prime Minister going into office as to one piece of law that he or she as Prime Minister of the Republic of Trinidad and Tobago should familiarize themselves with, it would be the Constitution of Trinidad and Tobago. [*Desk thumping*] The supreme law of Trinidad and Tobago, the Constitution. And if I had to advise a prime minister going into office as to one of the most important aspects of the Constitution, it would be his or her relationship with His Excellency the President, and an understanding of exactly what powers the Constitution has granted to His Excellency the President

I would have expected that a former Prime Minister, and someone who actually carries the title of Senior Counsel, which those in the legal profession understand to be an acceptance of a rank, an understanding of the law, and to sit at the inner bar, as we call it, would have an appreciation of the law. So, I have heard it said by the Member for Siparia, the hon. Member, that it is the Prime Minister in this instance who decides the date.

Mrs. Persad-Bissessar SC: Decides the date.

Hon. S. Young: And she is still repeating it—who chooses the date. I have just read section 22 subsection (2) of the THA Act, which says, and I will repeat it:

“The President, after consultation with the Prime Minister and the Chief Secretary”—and I will stop there—“shall fix the date...”

So, one then goes—being a former Prime Minister—to section 80 of the Constitution. Section 80—Trinidad and Tobago—of the Constitution sets out exactly what an exercise of the President’s functions. There are certain instances in law, and in the Constitution which sets it out, that give the President a discretion to act without the approval of the Executive. The majority of the President’s actions are on the advice of the Executive, and he or she must carry it out. However, any first year law student studying constitutional law—a first year law student studying constitutional law—would pick up immediately on the phraseology, “after consultation with...”. So, we go to section 80 of Constitution, if I may, Madam Speaker:

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

- (a) in his discretion;
- (b) after consultation with any person or authority other than the Cabinet...”

Madam Speaker, I am not senior counsel, I am not a Prime Minister or aspire to be, but I would have thought that senior counsel who has been a prime

minister would understand exactly what that means. It means that in this particular instance it is only the President of the Republic of Trinidad and Tobago who can decide the date for the THA election. [*Desk thumping*] All he has to do is consult with the Chief Secretary and the Prime Minister as to the date that he wants to set; he, being His Excellency the President.

Madam Speaker: I just want to say I understand the nature of the debate and the difficulty we might find ourselves in, but I would want people to be guided by Standing Order 48(7) and (8), and maybe Member you could find a different way, the holder of the office or something like that. Okay, please.

Hon. S. Young: Much obliged. Madam Speaker, the point is a simple point, that in this instance the law is extremely clear in the calling of a THA date. The date for the calling of a THA election resides solely within ambit of the President, and the Prime Minister is only consulted. Even if the Prime Minister objects to the date, the law is clear that all the President has to do is listen to the objection, and His Excellency will then decide the date.

The hon. Attorney General, Madam Speaker, has painstakingly gone through the chronology of how we have ended up here, and it is simple. I agree with the Member for Siparia, that it is an arithmetic problem, an error that has landed us up here today, but the point is, again, when one looks at the law, the law is very clear. The law in this instance sets out very, very clearly, it was actually stated in the legal opinion of Ms. Deborah Peake who is Senior Counsel, that there are certain dates, there are certain numbers that have to be calculated in the calculation of this date, and what happened is that they were one day off. And I say they, because, again, Madam Speaker, anybody reading the law, and it has become clear to me as a citizen of Trinidad and Tobago that those on the other side did not read the law, or are incapable of properly interpreting the law. The law says, very, very clearly

that the President, His Excellency, relies on the Elections and Boundaries Commission providing the writs. So, once the date is given, the Elections and Boundaries Commission is then charged with the statutory duty of then working out the dates backwards, filling out the forms, preparing the writs and sending them to His Excellency for execution.

So, on this occasion we, being a responsible Government, have seen it fit that at the request of an office holder, a high office holder in the land, at 7.30 last night as we were told, to immediately ask that the Parliament be summoned, because, again, it cannot be a demand. We are a mere facilitator, understanding very clearly the concept of separation of powers, that two independent bodies, that is the Elections and Boundaries Commission and the Office of the President, have requested that we, all 41 of us in here, come to the House today and that the Senate sits tomorrow to provide validation for an error, a simple error that was made, and not an error that was made whatsoever by those on this side.

Madam Speaker, respectfully, the people in Tobago are prepared, and we would like to send a signal now to the people of Tobago that we are glad that the Opposition through none other than its leader have indicated that they will support this legislation here today. The election will take place on Monday. It is a legal election, it is a valid election, and it is an election that everybody is prepared for, including the body that is statutorily charged with the responsibility and the duty for carrying out free and fair elections, that is, the Elections and Boundaries Commission. So, let nobody be misled into thinking that what will take place on Monday is in fact valid. We have come here as a matter of pure caution, and at the request of others.

Hon. Member:—invalid. You said valid.

Hon. S. Young: No, no, no, what will happen on Monday will be valid.

Mrs. Persad-Bissessar SC: Would you kindly give way, hon. Minister. It can only be valid if you get the support of the Senate tomorrow, so I think you are anticipating or taking for granted the support of the Senate. [*Desk thumping*]

Hon. S. Young: Thank you very much, hon. Member for Siparia. So, just briefly to let the people of Trinidad and Tobago, and more importantly those in Tobago who are looking on, know that this simple validation Bill is to correct an error that was made with respect to the calculation of a day, because it fell on a public holiday, and they then lost a day. And the Bill itself sets out in the preamble—which is what confused me as to why the Opposition would make the contribution that they just did—it starts off in the preamble by referring to the first piece of law that I referred to:

“*Whereas* section 22(2) of the Tobago House of Assembly Act...provided that the President, after consultation with the Prime Minister and the Chief Secretary, shall fix the date of a primary election...”

So, at the outset in the preamble it indicates very, very clearly in law, this very peculiar piece of legislation, and I have been told about the history of why the Tobago House of Assembly Act has this very, very peculiar provision that allows the President, His Excellency, to set the date. Now, the hon. Member for Siparia, who is a former Prime Minister, would have set a number of dates herself for local government elections, twice in her term, and a general election. However, she also set a THA election. However, and she would have been the Prime Minister when a THA election date was set, quite correctly, by whoever was the President at the time in what? —2013.

So, the former Prime Minister should have known if the law was followed on that occasion that she merely had to be consulted, but was not the one who set the date. So, it draws a question in my mind as to what may have happened on that

occasion. Who really set the date? But that is in the past. We are following the law. The law is clear. We have come to this House, [*Desk thumping*] as always, to do what is right.

There was a talk about the requirement for a special majority. Again, one goes to the Constitution to determine what requires a special majority, and apart from specific sections of the Constitution that I identified, this not being one of them, it would have to be a breach of sections 4 and 5 of the Constitution, entrenched enshrined rights, none of which, Madam Speaker, on this occasion are being entrenched, so there is absolutely no need for a special majority. There was conversation about the EBC in recent court decisions up to the Court of Appeal not having the power to extend by an hour. Again, the analogy is not one that finds merit or fertile ground in the present circumstances. As we have said very clearly, how this date was set, it has nothing to do with any power being exercised by the EBC. It was a power that was being exercised by His Excellency the President.

Madam Speaker, just for the record, as I wind up, because I do not want to detain us for very long here this afternoon. I was hoping we would have been out of here by now. The validation Acts that have taken place since the year 2000 to 2013 being the last one. There were 17 of them, and interestingly there were five validation Acts carried out under the former Government headed by the UNC, the Sugar Industry Control Board (Repeal) (Validation) Act, dated 2013; Purchase of Certain Rights and Validation Act, 2011; the Census (2011) (Extension and Validation) Act, 2011; Senior Citizens' Grant (Amendment and Validation) Act, 2010; Elections and Boundaries Commission Validation of a Report in 2010. Interestingly on all of those occasions, it would have resided with the Government having made an error and coming to Parliament to have whatever error it is they made, validated.

So, Madam Speaker, the simple point that I would close on, and by talking about 17 such validation Acts existing since the year 2000, is that there is nothing, absolutely nothing unusual or peculiar about the current validation Bill before us. We are happy to hear that there would be support for it in this House. I hope that I have been able to make it very, very clear where the genesis of the date in this instance comes from, and that it has nothing to do with an error being made on our side, but rather we are facilitating the correction of a simple error that was made so a free and fair election can take place. We hope—and a peaceful one on Monday coming.

Thank you very much, Madam Speaker. [*Desk thumping*]

Mr. Rodney Charles (*Naparima*): Thank you very much, Madam Speaker. As my political leader indicated, last night I was surprised when I checked my email to find out that I was summonsed to discuss, by Order Paper, Extraordinary Sitting, and we are here today with respect to that.

I listened to the Member for Port of Spain North/St. Ann's West, and he made a couple of points, which he could have done in two minutes. And one of the things he said was that there is no assertion of blame, but yet he went on to say that the decision for that date resides solely in the remit of His Excellency the President. If we are here on an extraordinary sitting, therefore his assertion that there is no blame to be ascribed requires some review. He said we are here simply to correct an error that was made, and it has absolutely nothing to do with any decision made by Members on that side. Madam Speaker, I want to make it absolutely clear, we are here today because of the incompetence of that side [*Desk thumping*] and their inability to pass law that is consistent with facts, reality, and ability to do simple arithmetic. [*Interruption*]

Madam Speaker: Member?

Mr. R. Charles: Yes.

Madam Speaker: I would allow you some leeway, but I think that the point about the arithmetic has been very clearly made. So that I am going to allow you a little leeway, but I am not going to allow us to go down that road again. And again I guide everybody who is going to participate in this debate with respect to the provisions of Standing Order 48(7) and (8). Thank you.

Mr. R. Charles: Thank you for the clarification. I have read—I am not a lawyer—under the Tobago House of Assembly Act, the date of the election is set by the President following consultation with the Chief Secretary and the Prime Minister. I have read that and that is a fact.

In using English to discuss the question of consultation, and the *Cambridge Dictionary* says that consultation involves discussion, it involves analysis and advice, so that when I have consultation with someone, I think everybody in Trinidad knows that when you consult and you agree it means that you abide with the decision that was made. I refer to the letter by the Chief Election Officer to His Excellency the President, dated 19th January, 2017, and in that letter, I quote:

“By memorandum dated December 14, 2016, the Secretary to Cabinet advised the Chief Election Officer as follows:”—quote

“The Prime Minister has agreed that polling day be Monday January 23, 2017 for elections in each of the 12 electoral districts of Tobago as defined in the Schedule of the Elections and Boundaries Commission...Order, 2016...”

So it is that the Prime Minister agreed. The founding fathers of our Constitution created mechanisms to ensure that we would end up with the best possible legislation, and part of that mechanism was the concept of consultations between, sometimes the Leader of the Opposition, and most times the Prime

Minister and His Excellency the President. The President in his letter said that:

“The Office...”

—and I am quoting here. It is a letter dated 19th January, a letter to the hon. Faris Al-Rawi, MP, and it is signed by Gregory Serrete, Secretary to His Excellency. It says:

“The Office of the President depends on the integrity and surety of information and timelines it receives from the relevant bodies and this process informed the fixing of the dates on the Writs of Election.” [*Desk thumping*]

The Constitution, as I understand it, has one of the agencies to provide information, a Prime Minister of the Republic of Trinidad and Tobago. So, the Prime Minister cannot absolve himself from the arithmetical problem we have that forces us to be here today. [*Desk thumping*] He cannot write the President and say, I agree, and then say, but I did not check the date because I assume that the date that I got was correct. So that we have a situation where there is wilful reckless neglect of the statutory functions. And the Prime Minister, in the carrying out of his function, and the Cabinet, is advised by no less a person than the Attorney General. [*Desk thumping*] In fact, section 75 of our Constitution states that:

“The Cabinet shall consist of the Prime Minister and such number of other Ministers (of whom one shall be the Attorney General)...”

The Attorney General is critical to the governance system in this country. He advises or misadvises the Prime Minister and the Cabinet [*Desk thumping*] in the carrying out of its functions. And it says in section 76(2):

“The Attorney General shall, subject to section 79, be responsible for the administration of legal affairs in Trinidad and Tobago and legal proceedings

for and against the State...”

So, it is passing strange that we had a situation where the Prime Minister advised that the date was okay, and that he agreed with the date, and it took a non-lawyer by the name of Charles, Hochoy Charles, to tell them, to tell this lawyer—sorry, the hon. Member for San Fernando West, who is the advisor to the Government of Trinidad and Tobago, my Government, because they operate on my behalf. As the advisor, he was not in a position to advise about the appropriateness of the date? And it is only when he was told by Mr. Hochoy Charles, it is then they kick the ball rolling. But, it is worse than that. It is a “lil” worse than that. He went on to say that the process is legal, and Hochoy Charles did not know what he was talking about. He was saying here—

Mr. Al-Rawi: From where?

Mr. R. Charles: It is Ria Taitt, and it is the *Express*.

Mr. Al-Rawi: What date?

Mr. R. Charles: I do not have the date, but I will get it. I will get it and supply it to you. I quote, Madam Speaker:

“Stressing that the Government had no role in this exercise...”

Is that my Attorney General telling me that he had no role in this exercise?

“...the Attorney General said he had taken the opportunity to take advice from senior counsel on this issue.

‘I am quite confident’—he says—‘that it is a proper election afoot. The law is available for anyone to challenge it,...but I feel confident that if this thing went to court the propriety of the election would be established’...”

So, if he is so confident of the date, why are we here today? [*Desk thumping*] Why has he summonsed me? [*Desk thumping*]

Mrs. Persad-Bissessar SC: The date of the article.

Mr. R. Charles: Oh, the article was published on January 18th 2017, Ria Taitt, *Express*, you can check it.

Madam Speaker, I had a meeting with my executive and my constituents and we were going to discuss today to come up with a Naparima crime plan, in light of the problems that we have with crime in our situation. But I was summonsed last night to deal with an issue over which I had no control, but which is indicative of the incompetence of this Government on this side. [*Desk thumping*] They could dance how they want. They could dance how they wish, but it was the Cabinet of Trinidad and Tobago. There is a proclamation which said that the date of the election shall be the 23rd of January.

Hon. Member: The Cabinet?

Mr. R. Charles: The Cabinet secretariat indicated that. So, if the Cabinet secretariat, it must have been discussed by Cabinet. It must have been discussed by Cabinet. And if it was discussed by Cabinet, we would assume that if we had people who were mathematically developed, somebody would have been able to point it out. [*Desk thumping*] It reminds me of *Animal Farm*. *Animal Farm* by George Orwell, and there was an individual called Boxer, and he could only say a, b, c, d, e, and if he went on to e, f, g, h, i, he forgot a, b, c, d, e. So he stopped counting and he stopped thinking, and he allowed others to do the thinking. I suggest on that side, Madam Speaker, that we have people incapable of counting from one to 23 [*Desk thumping*] and therefore there is extreme dereliction of duty, to advise the Government.

So, here we are today, Madam Speaker, to validate incompetence, and I am told under section 3(1) of the validation Bill:

“The date specified in the writs for the taking of the polls at the election shall be deemed to have been as lawful and valid as if the date so

specified had been fixed in accordance with the requirements of...33(3)(b) of the Act.”

Why they did not think about this before? If I am in Government and something comes to my desk, I scrutinize it to make sure that I do not make mistakes on the assumption that I could come to Parliament, waste our time, and to revalidate their incompetence.

I have come here today because the writs they say, according to the Bill, shall be deemed to have been as lawfully and validly issued as they would have been had the date been fixed for the taking of the polls had the election been fixed in accordance with the requirements of section 33(3)(b) of the Act. So, I am called here to deal with—and there is an issue with revalidation. Particularly, Madam Speaker, I am not a lawyer, but if the UNC in a previous incarnation sought, as my political leader said, to extend the date between when the election could be held and when nomination days, and when the writ is filed, if we did that we did that to enhance democracy, to ensure that people had enough time. A greater time to discuss, [*Desk thumping*] to analyse, and this all redound to better governance. We did that. So our approach has always been acting—and that is why the Joint Select Committee and other things—we always act in the area—[*Madam Speaker stands*]

I understand, Madam Speaker. We always act in the area of extending democracy. And we are here today to revalidate, to correct errors before, in effect to reduce the time at which the people of Tobago, the noble people of Tobago will have to discuss, analyse, flesh out issues on the platforms in that country that would redound to the better legislation of that country.

So, we are here today—

Mr. Young: That country?

Mr. R. Charles: We are here today, Madam Speaker—

Mr. Young: That country?

Mr. R. Charles: Tobago. We are here today to validate, and we are here today to put everything on hold that we had planned in order to correct the errors of the group opposite [*Desk thumping*] who do not want to accept blame for the reason why we are here today.

We are here today precisely and very briefly because you made an error, and you have made an error and I have to come here and drop everything to deal with you. [*Desk thumping*] This is recklessness, this is rank incompetence, this is lack of rigour in legislation that they bring here. This is because we have on that side too much quacks, as a calypsonian said, and invalids. [*Desk thumping*]

Madam Speaker: Member! Member, please, just withdraw that and say it in another way. You are a man of words, I am sure you can.

Mr. R. Charles: They are people who do not do their homework. [*Desk thumping*]

In all this, Madam Speaker, we would like to know the specific role of the Chief Secretary, what was his role in all of this? We would like to know the role of the Prime Minister in all of this, so that at the end of the day we could have a better understanding of how legislation is made.

Notwithstanding the fact that the law states, that it is the Tobago House of Assembly, in the first instance it was the Chief Secretary who triggered the date. We all know, and every child in Trinidad and Tobago knows that there are conventions that support and complement the legislation, and the convention in Trinidad and Tobago, whether they like it or not, is that the Prime Minister sets the date for election in Trinidad and Tobago. [*Desk thumping*] That is a convention that if you were to ask any child in primary school they would accept. So that to come and say today that they are not responsible, and to seek by innuendo to place

the blame elsewhere is—

Madam Speaker: Move on Member, please. That point has been made repeatedly. Please move on.

Mr. R. Charles: So, Madam Speaker, I will not detain any more. I would like to say that the problem I find myself, is that I had less than 12 hours. We had less than 12 hours. I like to do detailed, comprehensive research, and I have now fallen into the trap of that Government where they do things that allow you limited time. In other words, their incompetence is reflected in the difficulty we have with fleshing out and looking at legislation that they have. So, Madam Speaker, for those on that side I would ask them on behalf of the 15,000 persons who voted in the last election from Naparima, that they work hard, they do the necessary diligence, that they check their dates. [*Interruption*]

Madam Speaker: Member, just direct your conversation, your contribution here and ignore. Continue!

Mrs. Persad-Bissessar SC: Please, he is looking at you only.

Mr. R. Charles: I am looking at you.

Mrs. Persad-Bissessar SC: They are distracting him.

Mr. R. Charles: They do the necessary work so they do not waste our time and the time of the citizenry of Trinidad and Tobago. I thank you very much. [*Desk thumping*]

3. 15 p.m.

Dr. Bhoendradatt Tewarie (*Caroni Central*): Madam Speaker, I just want to make a short contribution on this Bill before us today. In this Act it says, on page 2 and it defines the Act, “Election”, et cetera. It says in:

“3.(1) The date specified in the writs for the taking of the poll at
the election shall be deemed to have been as lawful and valid as if

the date so specified had been fixed in accordance with the requirements of section 33(3)(b) of the Act.

- (2) The writs shall be deemed to have been as lawfully and validly issued as they would have been had the date specified for the taking of the poll at the election been fixed in accordance with the requirements of section 33(3)(b) of the Act.
4. All statutory instruments purported to be issued and all acts and things purported to be done pursuant to the writs, before and after the coming into force of this Act, are deemed to be lawfully and validly issued and done to the extent that they would have been lawfully and validly issued and done had the writs complied with the requirements of section 33(3)(b) of the Act.”

Now, what this means, Madam Speaker, to the citizens looking on and listening, is that a law had been violated because the number of days required by the law was not strictly observed. It was not a huge error; it was a mistake by one day, but in order to make sure that the elections are in fact valid when it takes place in Tobago, for the seats in the Tobago House of Assembly this law has to be passed to make all the things that have been done so far up to this point lawful and valid under the laws of Trinidad and Tobago.

And errors happen. Mistakes happen. And mistakes can be explained and they can be forgiven. But I think the real problem here, which is why I am taking the opportunity to say a few words, and following on the contribution of the Leader of the Opposition and my colleague, the Member for Naparima, the real problem here is the manner in which the error has been presented.

Now, the Speaker drew attention in the Standing Orders, more particularly 48(7) and 48(8), and I simply want for the benefit of citizens who are listening to

read what those Standing Orders say.

“48 (7) The President’s name shall not be used to influence the House.

(8) The conduct of the President or any other person performing the function of President, Members of the Senate, the House or Judges of the Supreme Court of Judicature or other persons performing judicial functions shall not be raised except upon a substantive motion moved for the purpose.”

And what we heard today, both from the Attorney General and from the Member for Port of Spain North/St. Ann’s West was really a rationale and an explanation which basically put the error at the feet or the hands, if you want to call it that, of the President and the Presidency. And the reason why these Standing Orders are so in relation to the President is because you know the President is elected by both Houses of Parliament. And in many instances the attempt to elect a President is better achieved by a consensus vote. And even—

Dr. Rowley: Madam Speaker, I crave your indulgence. Would other Members of the House be allowed to entertain a debate on the President and his actions?

Madam Speaker: Member, on the issue of relevance, I would ask you come back to the point of the debate and also with respect to, while the facts so far were set out for one to understand the context, I really do not want us to continue along the lines that you are going.

Dr. B. Tewarie: Madam Speaker, I read from the Standing Orders to indicate why is it the President and the Presidency is treated in a certain manner in this House. And I am trying to explain the reasons behind the Standing Orders being this way because of the manner in which the Presidency—*[Interruption]*

Madam Speaker: Yes, Member, but—*[Interruption]*

Dr. B. Tewarie:—is addressed.

Madam Speaker: Member, please. You can continue. Move on from that point. We understood the context by reading the Standing Orders, please continue, move on from that point. Thank you.

Dr. B. Tewarie: You see, Madam Speaker, the Members on the other side like to have the freedom to make their case as they want. But they do not wish to have others respond to the things that they say. [*Crosstalk and desk thumping*]

Madam Speaker: Member, there is a certain implication in what you are saying that I really do not think you intend. An objection was made according to the Standing Orders which any Member on any side is entitled to. When the Chair rules, the Chair has determined, so that there is an inflection that really speaks to the Chair from what you are saying and I am certain you do not intend that. So I would ask you to leave that point and move on please.

Dr. B. Tewarie: Well, I do not understand, Madam Speaker, why the Prime Minister would be concerned about something like this and would rise to speak, to object to what I was saying.

Madam Speaker: Member, I really would like you to use your opportunity to contribute to the substance of the debate. And when I rule on something, I would really like that we respect that and continue. I am sure you have a great contribution to make to this debate, please.

Dr. B. Tewarie: I will proceed. The documents circulated by the Attorney General at the request of the Leader of the Opposition states, on the first page.

“(I) By letter dated 14 November 2016, the Chief Secretary of the Tobago House of Assembly, The Honourable Orville D. London, advised His Excellency the President that in accordance with section 22(1) of the Tobago House of Assembly Act”—to which the Member for Port of Spain North/St. Ann’s West referred—“Chap. 25:03 (THA Act), the

2013-2017 session of the Tobago House of Assembly had been dissolved with effect from 11 November 2016. In accordance with section 22(2) of the THA Act, the Honourable Chief Secretary further recommended that the primary election for the Tobago House of Assembly be held on Monday, 23 January 2017.”

Mrs. Robinson-Regis: Madam Speaker, Standing Order 55(1)(b), please. Tedious repetition. [*Crosstalk*]

Madam Speaker: Members, please. I think section 55 is really the prerogative of the Chair. But in any event Member, I believe the whole content of the letter has been read into the record. So that you are entitled to make whatever point you wish, but you can just truncate it rather than reading. The entire text of the letter has been read into the record.

Dr. B. Tewarie: Madam Speaker, with all due respect to you, it is because it has been read into the record that I have the right to respond to it.

Madam Speaker: Member. Member, no one is denying you the right to respond. The point that was made was that it was already, the text is already into the record and therefore in terms of repetition, there is no need for you to quote the entire text. If you wish to respond no one is denying you that. Please proceed.

Dr. B. Tewarie: I read it, Madam Speaker, because the other side is in denial and because it says here very clearly that the recommendation was made by the Secretary of the Tobago House of Assembly. [*Desk thumping*] And I suspect if in the normal order of things, the Chief Secretary was going to do this, that there would have been at least an informal consultation with the Prime Minister. [*Desk thumping*] Because no Chief Secretary would want his Prime Minister to get a letter from the President which advises him of a date from the Chief Secretary that the Prime Minister would not have known.

And what bothers me is the attempt to be smart to be foolish. [*Desk thumping*] If the hon. Attorney General had come here and say look, there has been an error, all right, there is no need to ascribe blame to anyone. The point is we have missed this by law, by a day and we would like the support of the Opposition to allow these elections to continue, all the preparations have been made and everything is in order, there would have been no problem at all. [*Desk thumping*]

But he spent one hour making a convoluted argument that defies all logic. [*Desk thumping*] And this was compounded by the attempt by the Port of Spain North/St. Ann's West representative, to correct what he said was an error and in which he insisted had nothing to do with anything that they did or anyone on that side. [*Desk thumping*] And they spend the entire time blaming His Excellency the President for their mistake.

So Madam Speaker—[*Interruption*]

Mr. Young: Standing Order 48(6).

Madam Speaker: Member, I will permit you to continue.

Dr. B. Tewarie: Thank you very much, Madam Speaker. But you know, Tobago is a curious situation in terms of the Members on the other side. I do not know if they claim proprietary rights to Tobago. I do not know if they do not like Tobago. I do not know if they do not like the people of Tobago, because when they created the conditions for the extension of elections in Trinidad, in 2015, there was no extension, Madam Speaker, in Tobago. And now they want to deny the people of Tobago a day short in their preparations and campaign for the elections. And they come with this attitude, of course, as if you know, you cannot say anything about the Assembly. The Members of the Opposition are not supposed to have anything to do with Tobago. They are not supposed to have any involvement in anything in

Tobago including the elections and when they are involved—[*Crosstalk*]

Mrs. Robinson-Regis: Madam Speaker—[*Interruption*]

Mr. Karim: “All yuh” disturbing the meeting.

Madam Speaker: Members, if we can please observe—[*Crosstalk*] So Members, can we please observe the rule with respect to those who are not speaking, listening in silence. Please continue, Member for Caroni Central.

Dr. B. Tewarie: But I want to say that we are as concerned about what happens to Tobago as what happens to Trinidad and in Trinidad and in Tobago. We recognize the State that we are of two major islands with five other islands and anything that happens in this country, in any part of the country, concerns the Opposition. And we watch with great interest, the elections that we are about to validate here today and to see what is going to happen in those elections. Because whatever happens in Tobago has implications for Trinidad and whatever happens in Trinidad has implications for Tobago. We are two islands but we are one people, we are one nation. And I want to say that it is because of that fact that what has happened here, explained as it has been by the Government in the most ingenious way and casting blame where really it was not necessary to cast blame, is something of great interest to us.

I listened to the Attorney General outlining the five options that he had in this case and I do agree with him that this is the reasonable option in the circumstances. And I do also want to say to him had he come and given a short explanation, maybe 10 minutes of what had truly happened and simply indicated, look, we would like the Parliament to correct this because it is the right thing to do. The Opposition would have had no difficulty at all as the Leader of the Opposition has already committed to supporting this Bill and doing the right thing for the country. And the problem here has really been the manner in which the

information has been presented and the casting of blame. And I hope on another occasion when the Government makes an error, because I am sure it will, that it comes here and it tells us exactly what has transpired and why it has transpired and take full responsibility [*Desk thumping*] so that they would earn the respect, not just of this Parliament but of the people of Trinidad and Tobago. Thank you.

The Attorney General (Hon. Faris Al-Rawi): Thank you, Madam Speaker. [*Desk thumping*] Madam Speaker, it gives me great pleasure to wind up this debate but I am compelled to answer a few astounding contributions made by Members opposite.

Dr. Rowley: By one who thought he had to speak.

Hon. F. Al-Rawi: There was, first of all, the contribution of the Leader of the Opposition. In the Leader of the Opposition's submission, if I just extract some of her positions, the first big and massive argument was, the email last night sent out as a courtesy by the Parliament stated that the Minister of Rural Development and Local Government would have moved the Motion and that the Order Paper today says that the Attorney General will move.

I would remind the hon. Members to read the Standing Orders of the Parliament as to how the Order Paper operates and the fact is that the Member in charge can be assigned from time to time, notwithstanding inconsistencies, is perfectly fine for any Member of Government to stand up and deliver a debate once in charge. I cannot understand how that could be the opening huge remark, both of the Leader of the Opposition, SC and the Member for Naparima himself. That is what you call the wow factor.

Second one, was the exercise in counting. Counting one to 20, back to fourth, big grins on faces. I wanted to stand to actually raise and invoke the Standing Order against bringing the Office of the President into disrepute, but I did

not think it possible then because I was trying to really figure out if the hon. Members were being serious. You see, the Member for Naparima in a state of hysteria almost, collar up, stuttering, beating the desk, leaning down, hard breathing, his contribution as it was, I was worried. I was worried to go and get some oxygen for him to make sure he could survive.

The fact is in the contribution of the hon. Member for Naparima, that exasperation expressed, he kept talking about the Government bringing Bills and the Government drafting laws, and but, but, but, and I had to say, what on earth is the Member for Naparima talking about, drafting laws and incompetence. There is no law before the Parliament being addressed in terms of the writ of elections produced by the EBC. The law before us now which the hon. Members say they are willing to support has been drafted because they say they are willing to support it. So what incompetent law are they talking about? You see, the Member for Naparima cannot even get it straight that we are here to talk about the writs of election produced by the EBC under the provisions of the Representation of the People Act and he keeps going on about badly drafted law. Well, if we believe what he is saying, how does the Member for Siparia say she is willing to support the same law? Are they on the same bench talking the same language?

Madam Speaker, this is the genuine trouble to answer the make up as you go logic that the Opposition puts forward for consumption.

We next heard that the Leader of the Opposition kept referring to the fact that I had said, “missive”, in some derogatory reference to the letter of, in what I assumed by the expressions of the—

Hon. Member: Madam Speaker 48(4).

Hon. F. Al-Rawi:—of the use of the word “missive” because she kept saying that the Attorney General had used the word “missive”, the hon. Member—[*Crosstalk*]

“doh get jumpy, nah, doh get jumpy, nah.”

Madam Speaker: Members, Members. Please continue.

Hon. F. Al-Rawi: The point about the “missive” and the “missive”, the letter from the Office of the President specifically says:

“I am directed by His Excellency”—to forward to you the—“missive...”

The language comes from the letter of the Office of the President. I am just quoting it. Which now takes me to the other point, Madam Speaker.

The hon. Members, several of them, all three who spoke are on to the point about the Prime Minister has called the date for an election. The hon. Member for Siparia, Senior Counsel as she is, stood up in this Parliament to tell us, you remember that Patrick Manning used to say all the time “I have the election date in my back pocket.” Every Prime Minister has the election date known to him in the back pocket. Madam Speaker, what I find astounding about a Senior Counsel, self-given an all, the hon. Member for Siparia, past Prime Minister, past Attorney General, past Minister of Education in the Government of Trinidad and Tobago, past Attorney General, I repeat again.

Madam Speaker, the Constitution of the Republic of Trinidad and Tobago at section 68 is pellucidly clear that the Prime Minister has the prerogative to dissolve the Parliament at any point in time and therefore the Prime Minister in a general election has the date in his or her back pocket or purse as the case may be. But, Madam Speaker, the position on the general election is totally different from the position in the THA Act. [*Desk thumping*]

In the THA Act, section 22 of the THA Act, the prerogative is—[*Crosstalk*]
You know, Madam Speaker, in the THA Act the prerogative is and the law describes that the process is that the Chief Secretary consults with the President, His Excellency, the Office of the President and only then does the President

consider a view and then the President invites the EBC by way of command in a writ to actually have the election. We are comparing general election with THA where the law is completely different.

My learned colleague, Minister Young, the Member for Port of Spain North/St. Ann's West, set out all ready and I would not repeat it again other than by way of mention, that section 80 of the Constitution describes what consultation means. [*Crosstalk*] The hon. Member for Naparima, stick to Naparima. This is a legal concept which has to be interpreted at law, it is set out in the Constitution. So let me make it absolutely clear. The Prime Minister of the Republic of Trinidad and Tobago has no role and no function in this and let me prove it, let me prove it by way of historical reference, if the hon. Members can even keep quiet. [*Crosstalk*]

Madam Speaker, if one were to accept the nonsensical argument offered by the Member for Siparia and parroted in part by the Member for Naparima then I need only ask the Member for Siparia, did the Member for Siparia as the Prime Minister of Trinidad and Tobago in 2013 gave the election date to Orville London? I will give way.

Mrs. Persad-Bissessar SC: Hon. Attorney General, what difference does it make?

Hon. Member: "Awww."

Dr. Rowley: Oh yeah. Oh yeah. You were the Prime Minister then. You called it. [*Desk thumping and crosstalk*]

Hon. F. Al-Rawi: Madam Speaker, Madam Speaker—

Dr. Rowley: So you called it. So you called it.

Mrs. Persad-Bissessar SC: What difference does it make?

Madam Speaker: Members!

Dr. Rowley: Did she call the election in 2013?

Hon. F. Al-Rawi: Madam Speaker, that was enjoyable, the response of the Member for Siparia. You know what it reminded me of, I was looking at the news last night and I saw replayed an interview by Fazeer Mohammed and Watson Duke. When Fazeer Mohammed asked Watson Duke, “Are you on a rape charge?” [*Crosstalk*]

Hon. Member: Relevance, Madam Speaker.

Dr. Gopeesingh: Standing Order 48(1).

Hon. F. Al-Rawi: And, Madam Speaker—

Dr. Gopeesingh: I leaving now. I gone.

Madam Speaker: A Standing Order has been raised?

Hon. Member: Yes, 48(1).

Madam Speaker: Please continue.

Hon. F. Al-Rawi: Thank you. And the response given was, “I was accused.” Next question is, “Are you on bail?” The next answer is, “I am accused.” That was the response from the Member of Siparia, a simple question to prove her point that the Prime Minister must be the person to give the election date to His Excellency. She says in makes no difference. Because if that was the law then the Member for Siparia as Prime Minister in 2013 was participant in setting the date for the 2013 THA election. [*Desk thumping*] And when faced with a simple yes or no question, the hon. Member says, “What difference does that make”. It makes no difference. [*Crosstalk*] “My Lord, what ah tangled web we weave when at first we practice to deceive.”

Madam Speaker: Would we please give the House—[*Crosstalk*] Member for Naparima, I know you are quite familiar with the Standing Orders. You may not agree or like but there is a certain way in which we do things. Interruptions are

done in a particular kind of way. And that applies to everybody. Please continue, the Member for San Fernando West.

Hon. F. Al-Rawi: Thank you, Madam Speaker. Madam Speaker, we also heard the Member for Naparima say that the Prime Minister had a direct part and that the Cabinet he said had a direct part in setting the dates. I wish to read into the record, the Cabinet Secretariat, Office of the Prime Minister; it is a letter from the Secretary to Cabinet to the Chief Elections Officer, Elections and Boundaries Commission; it is dated November 14, 2016; Subject: Polling day in Respect of the THA Election.

3.45 p.m.

And it reads:

The Prime Minister has agreed that polling day be Monday, January 23, 2017 for elections in each of 12 electoral districts of Tobago as defined in the Schedule to the Elections and Boundaries Commission (Local Government and Tobago House of Assembly) (Tobago) Order, 2016. Legal Notice No. 191 of December 09, 2016, refers.

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

Secretary to Cabinet

Now, it is already a matter of the record that I have put out in setting the chronology that on the 14th of November the Chief Secretary indicated that on the 12th of December the President wrote to the Prime Minister—and this is the 14th of December response of the Prime Minister, but, Madam Speaker, it relates to simply the polling day. You see, the argument that is not being heard by the

hon. Members is that the minimum period of 21 days between nomination day and polling day and the minimum period of the writ of election and the nomination day of 14 days, those are minimum dates.

When the letter says “put in train the necessary path”, what it means is, you are entitled to work your way back from the 23rd of January because it was entirely open, with the THA having been dissolved on the 11th of November, 2016, for the nomination day to be set on the 30th of December, the 28th of December, the 27th of December, and that is a matter for His Excellency the President and the EBC to sort out. So the hon. Member for Naparima, exasperated as he was, bungling in his submissions as they came across, just missed the point entirely.

Now, Madam Speaker—

Hon. Member: “Seukeranizing.”

Hon. F. Al-Rawi: I am very proud to have to well-known grandfather, Member for Naparima—very proud. [*Desk thumping*]

Hon. Member: Why “yuh” change it?

Hon. F. Al-Rawi: “Ah doh know who yours is. Ah honestly doh know who yours is.” You see, the Members opposite somehow think that reference to good parentage is an insult. “Ah car understand dah logic, either, you know.”

Madam Speaker, here we are now, looking specifically at the process. I wish to put on record, in answer to the submissions from those opposite that the one validation Bill that I will single out, the validation Bill which witnessed the passage of the Elections and Boundaries Commission (Local Government and Tobago House of Assembly) (Validation of Ninth Report of the Elections and Boundaries Commission) Act, 2010 passed under the Prime Ministership of the

Member for Siparia, as the name says—self-explanatory—it cites an exact example of a validation for a delayed submission for the Ninth Report. In other words then, the missing of a deadline by the Member for Siparia’s government. But there was no song and dance in relation to this.

And the Members say, “take blame”, “learn to count”, et cetera, but, Madam Speaker, the fact is, what the Members want us to do if we accept their argument, most respectfully, is, firstly, to change the facts on the record. We have put forward the facts on the record as stated by the Office of the President in their letter to me of last night, dated 19th of January, 2017. But more importantly, they wish us to enter into the realm of constitutional crisis if we accept the argument that is being proffered by them.

What do I mean by that? Could you imagine the gravity of accusations that would result if a government, who is running in an election in Tobago, enters into the domain of the Parliament of its own volition, sidestepping the EBC set out in the Constitution, sidestepping the line of authority for His Excellency the President in section 22 of the THA Act? Could you imagine the constitutional crisis that the Opposition wishes to bring upon this country if a government acted capriciously and of its own volition without the line of authority being followed? [*Desk thumping*]

You see, Madam Speaker, that is to invite Trinidad and Tobago into civil chaos. And what I find incredible, Madam Speaker—

Hon. Member: “Seukeranizing.”

Hon. F. Al-Rawi: If you mention my grandfather one more time, I will ask you why. Do you have a crush on him? He is deceased.

Madam Speaker, crushes aside, the fact is that in Trinidad and Tobago

there is a process of law set out in our Constitution. There are constitutional boundaries; there are requirements to be followed. One cannot change the facts. The admission inside of the letter of the Office of the President is that an error was made. The error was made by the EBC; the error was made somewhere in the Office of the President. The THA Act says how it is to be calculated and the simple fact is—an Opposition asks whether we have some disdain for Tobago, the Government; an Opposition who does not even have a single known, expressed candidate or interest in Tobago, according to them; an Opposition who has made no observations on the law until Hochoy Charles, a non-lawyer, raises an issue on the 17th of January 2017; an Opposition comes now to say, forget constitutional boundaries, forget the law, reinvent the facts, restate it and just get involved in the dance.

I will tell you this. We were not born yesterday and I know if the UNC says to turn left, you had better turn right. [*Desk thumping*] I know if they say go up, you better go down. I know if they say, throw “yuh outta” Parliament, you should have been staying in Parliament. You see, this is an Opposition who, to this date, cannot explain or come clean with the country—

Mr. Charles: Madam Speaker, 48(1).

Madam Speaker: This is reply, there is latitude. Please continue, Member for San Fernando East. [*Desk thumping*]

Hon. F. Al-Rawi: Madam Speaker, I am saying that this is an Opposition who says, “Come clean”, “Take blame”. The country saw tens of millions of dollars spent in litigation from here to the Privy Council and back, saw tens of thousands of people enter the streets of Trinidad and Tobago asking for an explanation as to how section 34 could have been proclaimed in this country by

a Cabinet, [*Desk thumping*] and they say: “Come clean and accept blame”.

Hon. Member: Standing Order 48(1).

Mr. Hinds: Imagine that.

Madam Speaker: Attorney General, please continue.

Hon. F. Al-Rawi: Thank you. You see, there is something called Jack-in-the box syndrome. When it gets a little hot, “yuh car siddong in yuh seat”, feeling uncomfortable. You might want to run out and spin a wheel; you might want to go and take two “drink”; you might need to enter rehab. All of these things come upon you like a flush when you are in a spot of bother, Madam Speaker.

Hon. Member: Yes, well said. [*Desk thumping*]

Hon. F. Al-Rawi: So we understand what is going on. So, Madam Speaker—

Mr. Charles: Madam Speaker, 48(6), the Member is imputing improper motives. [*Crosstalk*]

Madam Speaker: Please continue.

Hon. F. Al-Rawi: Madam Speaker, “ah car” understand who I am imputing improper motives to in talking “bout” rehab and drinking and telling the truth. “Ah doh understand.” Maybe the Member might want to clarify. But the fact is, there is a legitimate aim in this Bill. There are facts that are on the table. We are acting with propriety in the course of communication from His Excellency the President. We have moved with alacrity to come to the Parliament in an extraordinary sitting because that was the request of the Office of the President and the EBC in keeping with the Constitution and in keeping with the law of the land of Trinidad and Tobago.

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

Question put and agreed to.

Bill accordingly read a second time.

Bill committed to a committee of the whole House.

House in committee.

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

Preamble approved.

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

House resumed.

Bill reported, without amendment.

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

Hon. Members: Division.

The House voted: Ayes 37

AYES

Robinson-Regis, Hon. C.

Rowley, Hon. Dr. K.

Al-Rawi, Hon. F.

Imbert, Hon. C.

Young, Hon. S.

Deyalsingh, Hon. T.

Hinds, Hon. F.

Mitchell, Hon. R.

Cudjoe, Hon. C.

Garcia, Hon. A.

Crichlow-Cockburn, Hon. C.

Forde, E.

Dillon, Hon. Maj. Gen. E.

Webster-Roy, Hon. A.

Gadsby-Dolly, Hon. Dr. N.

Cuffie, Hon. M.

Smith, Hon. D.

Francis, Hon. Dr. L.

Jennings-Smith, Mrs. G.

Leonce, A.

Antoine, Hon. Brig. Gen. A.

Olivierre, Miss N.

Mc Donald, Miss M.

Lee, D.

Persad-Bissessar SC, Mrs. K.

Charles, R.

Rambachan, Dr. S.

Karim, F.

Tewarie, Dr. B.

Newallo-Hosein, Mrs. C.

Gayadeen-Gopeesingh, Mrs. V.

Indarsingh, R.

Singh, G.

Padarath, B.

Bodoe, Dr. L.

Paray, R.

Ramdial, Miss R.

Question agreed to. [Desk thumping]

Bill accordingly read the third time and passed.

ADJOURNMENT

Madam Speaker: Hon. Members, this House now stands adjourned to Friday, January 27, 2017 at 1.30 p.m.

House adjourned accordingly.

Adjourned at 4.05 p.m.