

HOUSE OF REPRESENTATIVES*Friday, February 15, 2019*

The House met at 1.30 p.m.

PRAYERS[MADAM SPEAKER *in the Chair*]**PAPERS LAID**

1. Annual Report and Audited Financial Statements of the First Citizens Investment Services Limited and its Subsidiaries for the year 2018. [*The Minister of Finance (Hon. Colm Imbert)*]
To be referred to the Public Accounts (Enterprises) Committee.
2. Ministerial Response of the Ministry of Finance to the Fifteenth Report of the Public Accounts (Enterprises) Committee on the Examination of the Audited Financial Statements of the Youth Training and Employment Partnership Programme for the financial years 2008 to 2014. [*The Minister of Planning and Development (Hon. Camille Robinson-Regis)*]
3. Ministerial Response of the Ministry of Community Development, Culture and the Arts to the Fourteenth Report of the Public Accounts (Enterprises) Committee on the Examination of the Audited Financial Statements of the National Commission for Self Help Limited for the financial years 2008 to 2015. [*Hon. C. Robinson-Regis*]

JOINT SELECT COMMITTEE**(Presentation)****Human Rights, Equality and Diversity****Treatment of Detainees at the Immigration Detention Centre**

The Minister of Community Development, Culture and the Arts (Hon. Dr. Nyan Gadsby-Dolly): Thank you, Madam Speaker. Madam Speaker, I have the honour to present:

UNREVISED

Tenth Report of the Joint Select Committee on Human Rights, Equality and Diversity on the Treatment of Detainees at the Immigration Detention Centre.

**PUBLIC ACCOUNTS COMMITTEE
(Presentation)**

Public Accounts of Trinidad and Tobago

Dr. Bhoendradatt Tewarie (*Caroni Central*): Thank you very much, Madam Speaker. I have the honour to present:

Twentieth Report of the Public Accounts Committee on the Examination of the Report of the Auditor General on the Public Accounts of the Republic of Trinidad and Tobago for the financial year 2017.

**PUBLIC ACCOUNTS (ENTERPRISES) COMMITTEE
(Presentation)**

National Petroleum Marketing Company Limited

Dr. Tim Gopeesingh (*Caroni Central*): Madam Speaker, I have the honour to present:

Sixteenth Report of the Public Accounts (Enterprises) Committee on the Examination of the Audited Financial Statements of the Trinidad and Tobago National Petroleum Marketing Company Limited for the financial years ended March 31, 2008 to 2017.

URGENT QUESTIONS

**Local Government Establishment
(Measures to Address Deficiency of Financial Officers)**

Mr. Rudranath Indarsingh (*Couva South*): [*Desk thumping*] Thank you, Madam Speaker. To the Minister of Rural Development and Local Government: Given the revelations which were made at the Joint Select Committee Meeting held on Wednesday February 12, 2019 concerning the unavailability of financial

officers on the local government establishment on several local government bodies, could the Minister inform this House what urgent measures are being employed to address this deficiency?

The Minister of Planning and Development (Hon. Camille Robinson-Regis):

Thank you very kindly, Madam Speaker. Madam Speaker, on behalf of the Minister of Rural Development and Local Government, the position of financial officer on contract was advertised in the *Guardian* and *Express* newspapers on February 13, 2019 and will reappear on February 17, 2019. The closing date for applications is February 24, 2019. Immediately thereafter the shortlisting of suitable candidates will be undertaken and interviews conducted.

In addition, in order to facilitate a more appropriate package in order to attract and retain suitable candidates, Ministry officials met with the Chief Personnel Officer on February 14, 2019 in order to bring additional understanding of the role and responsibilities of the position and the challenges faced in the recruiting efforts in the past. Thank you, Madam Speaker.

Madam Speaker: Supplemental, Member for Couva South.

Mr. Indarsingh: Thank you very much, Madam Speaker, and to the Minister or the Leader of Government Business who is part of a Cabinet which is committed to transparency and accountability—

Hon. Member: Question.

Mr. Indarsingh:—as it relates to how taxpayers' moneys are spent—

Hon. Member: Question.

Mr. Indarsingh:—could the Minister—[*Crosstalk*]

Madam Speaker: Order. [*Crosstalk*] Order! Continue, the Member for Couva South.

Mr. Indarsingh: Could the Minister inform this House if she is aware of how 300

labourers were employed at the Diego Martin Regional Corporation via blank forms which gave employment—[*Desk thumping*]

Madam Speaker: Member.

Mr. Indarsingh:—up to October 2016 until further notice.

Madam Speaker: Out of order.

**Inferior Imported Chicken
(Prevention of Importation)**

Mrs. Vidia Gayadeen-Gopeesingh (*Oropouche West*): Thank you, Madam Speaker. To the Minister of Agriculture, Land and Fisheries: In light of the Minister's statements on Sunday February 10, 2019 that inferior imported chicken is being sold within the local market, could the Minister indicate what quality control measures are in place to prevent the importation of inferior chicken into our markets?

The Minister of Health and Acting Minister of Education (Hon. Terrence Deyalsingh): Thank you very much, Madam Speaker. On behalf of the Minister of Agriculture, Land and Fisheries, the answer is: the Ministry of Agriculture, Land and Fisheries, and the Ministry of Trade and Industry are very vigilant regarding the importation of poultry into Trinidad and Tobago. Recognizing the problems created by the absence of a restriction on the shelf life of processed chicken, Cabinet in 2018, that is last year, approved a new policy under which chicken sold in Trinidad and Tobago must be no more than 180 days from date of slaughter. At this time, the Ministry of Agriculture, Land and Fisheries and the Ministry of Trade and Industry are working with the USDA, US Department of Agriculture and other exporters to implement this change to conditions to which chickens will be allowed in Trinidad and Tobago. So those were the actions we were taking since last year, Madam Speaker.

Madam Speaker: Supplemental, Member for Oropouche West.

Mrs. Gayadeen-Gopeesingh: Hon. Minister, how was it then that this container of chicken was able to be cleared and sold if it was not of the standard?

Hon. T. Deyalsingh: As I said in the body of my answer, we are now working with the USDA for the first time to implement new rules. I may add, Madam Speaker, and I am glad that the Member asked a supplemental. It was left to this Government to approach the USDA, and may I put on record, between the years 2011 to 2015, no action, may I repeat, may I repeat, there was no action [*Desk thumping*] taken on the issue of imported legs and thighs especially, and the importers [*Crosstalk*] got 20 per cent of the local market thus negatively affecting local poultry producers. And we, we, this Government took action in 2018. Thank you very much, Madam Speaker. [*Desk thumping*]

**Santa Flora Government Primary
(Details of)**

Dr. Tim Gopeesingh (Caroni East): Thank you, Madam Speaker, to the Minister of Education: With reference to the recent electrical problem at the Beach Camp Facility in Palo Seco where 242 pupils of the Santa Flora Government Primary were being temporarily housed, could the Minister state when will it be repaired and at what cost?

The Acting Minister of Education and Minister of Health (Hon. Terrence Deyalsingh): Thank you very much, Madam Speaker. As Acting Minister of Education, I put the following facts onto the table. A contract to fix the electrical system was awarded to MTS to the tune of \$543,000. Work started on February 01st, which is two weeks ago. Works are due to be completed by February 20th, all things being equal, and the school will be reopened on February 21st. Those are the facts, we have dealt proactively with the situation and the children's education will recommence on February 21, 2019. Thank you very much, Madam Speaker.

Madam Speaker: Supplemental, Member for Caroni East.

Dr. Gopeesingh: Minister, you probably might or might not be able to answer this, [*Laughter*] but since, this is a temporary—no offence meant, sorry. Since this is a temporary housing accommodation from the Santa Flora Government, when will the Santa Flora Government School be completed to bring back the students from Beach Camp to Santa Flora with a 35 per cent completion in 2015?

Hon. T. Deyalsingh: Madam Speaker, that is an entirely different question and if it is posed in the correct format, [*Crosstalk*] the appropriate answer will be forthcoming.

**Marabella Residents
(Refusal of Medical Care)**

Mr. David Lee (*Pointe-a-Pierre*): Thank you, Madam Speaker. To the Minister of Health: Given the newspaper report of Sunday February 10, 2019 that two (2) Marabella residents, one being a child, were refused medical care by the doctor(s) at the Marabella Health Facility, could the Minister confirm the veracity of the report?

The Minister of Health and Acting Minister of Education (Hon. Terrence Deyalsingh): Thank you very much again, Madam Speaker. Madam Speaker, I normally give facts when it comes to the reporting of health matters in the newspaper and very often I have to correct. But in this particular case I will not and cannot defend the indefensible. I will not. The standard of care provided at the Marabella Health Facility in this instant case left a lot to be desired. A clerk took it upon him or herself to not refer the patient to a nurse or a doctor for triage. That is unacceptable and I personally condemn that action. The full report in that incident, after all the interviews of all the staff at the facility, has gone to the CEO as of today and I have communicated to the Board and the CEO that this is unacceptable and they are to take whatever action they deem possible but following proper industrial relation practices and due process. Thank you very

much, Madam Speaker.

Madam Speaker: Supplemental, Member for Fyzabad.

Dr. Bodoë: Thank you very much for your answer, Minister. Minister, can you say pending the definite outcome of that report whether any steps have been taken to ensure that a clerk doing the triaging will no longer apply in that instance.

Hon. T. Deyalsingh: Thank you very much. As I said, the clerk did not do the triage. The clerk simply decided upon him or herself not to refer the patient to a nurse or doctor for triage. Based on the information that we have so far, this is not acceptable and as I have said, the Board will take whatever action it deems necessary following proper IR practices. Thank you very much.

**North Central Regional Health Authority
(Treatment of Khemraj Ramgohan's)**

Dr. Fuad Khan (*Barataria/San Juan*): Thank you, Madam Speaker. To the Minister of Health: Could the Minister indicate whether he has caused an investigation to be conducted into the claims of Khemraj Ramgohan in light of the North Central Regional Health Authority's press release on his treatment?

The Minister of Health and Acting Minister of Education (Hon. Terrence Deyalsingh): Thank you very much, Madam Speaker. Madam Speaker, in this case it is opposite now. The investigation reveals the following: The patient was seen at 1.12 p.m. on Tuesday at the A&E. At 1.18 p.m., six minutes later, a Senior Registrar and several medical teams in the Trauma Unit saw the patient. At 1.20 p.m., eight minutes after admission, the patient received an x-ray, bloods were taken, he was medicated and got a CT scan. At 4.15 p.m. [*Cellphone vibrates*] on that same day, he was reviewed by a specialist surgery team and an eye surgery unit. He got overnight observation. At 8.40 a.m. the next morning he was reviewed, he was seen by ophthalmology, ENT, general surgery; more CTs were

taken on his head, abdomen and pelvis to determine the extent of his injuries.

Further, bloods were taken to determine kidney function, blood count, electrolytes, blood gases and blood sugar to determine his response to the care. During his entire stay he was under the care and control of a senior specialist surgeon and he was subsequently discharged by his attending physicians having deemed he was now fit to go home.

At no time, as reported, was this patient denied care. And if you try to quantify the amount of care he got here, it is over \$150,000 worth of care that the taxpayer provided to this patient absolutely free of charge. As the release from North Central said, he received world-class care. In this case, I thank the doctors and nurses, because if no one thanks them, I thank them and I stand behind them on this particular case. Thank you very much, Madam Speaker. [*Desk thumping*]

1.45 p.m.

ORAL ANSWERS TO QUESTIONS

Madam Speaker: Leader of the House.

The Minister of Planning and Development (The Hon. Camille Robinson-Regis): Thank you, Madam Speaker. [*Interruption*] How did you know? There are nine questions for oral answer, and, Madam Speaker, as was said by the Member for Oropouche East, and as is the custom, we will be answering all nine questions. [*Desk thumping*]

National Oncology Centre (Details of)

69. Dr. Fuad Khan (Barataria/San Juan) asked the hon. Minister of Health:

With regard to the National Oncology Centre being built on the compound on the Eric Williams Medical Sciences Centre, could the Minister state:

- a) the status of the Centre;
- b) the list of services intended to be provided;

- c) the designated cancer curing equipment intended to be placed at the Centre; and
- d) the designated investigative equipment intended to be placed at the Centre?

The Minister of Health and Acting Minister of Education (Hon. Terrence Deyalsingh): Thank you very much, Madam Speaker. The contractor terminated the contract effective 22 February, 2018. Currently, the Ministry of Health is engaged in the final negotiation of claim settlement. Given the termination of the contract by Bouygues Batiment Trinidad and Tobago Construction Company Limited, the Ministry of Health has developed a re-prioritized list of equipment to replace the proposed MRI and PET/CT, which are investigative pieces of equipment, originally intended for the National Oncology Centre and to allocate the diagnostic imaging units in existing hospitals within the respective RHAs. This re-purposed initiative will serve to replace existing equipment which is nearing the end-of-life cycle at the various hospitals. Additionally, this would provide significant benefits to the respective catchment populations in meeting the critical need for additional and modern diagnostic imaging technology, while still achieving the original mandate of the initiative to address the burden of cancer in Trinidad and Tobago through effective screening and early diagnostic of disease.

The following equipment was installed and is to be installed at the National Radiotherapy Centre in St. James:

- High-dose HDR brachytherapy unit installed and commissioned in July 2017, over a year-and-a-half ago.
- LINAC equipment to be installed by May 2019 and commissioned in June 2019.

The equipment to be installed at each Regional Health Authority includes:

- (1) At the National Radiotherapy Centre, the CT simulator with respiratory gating.
- (2) At the North Central Regional Health Authority, the digital mammography system and stereotactic biopsy.
- (3) At North Central again, 64 slice CT scanner with power injector.
- (4) North Central again, digital general X-ray system.
- (5) Eastern RHA, portable X-ray machine.
- (6) Eastern RHA, mobile fluoroscopic systems at the C-Arms.
- (7) South West, 64 slice CT scanner.
- (8) South West, digital mammography system.
- (9) South West, mobile fluoroscopic systems.
- (10) North-West, Tesla MRI unit, cassette type.
- (11) North-West again, mobile fluoroscopic systems.

Thank you very much, and the other parts do not apply. Thank you very much, Madam Speaker.

Madam Speaker: Supplemental, Member for Caroni East.

Dr. Gopeesingh: Hon. Minister, these equipment that you just mentioned to be sent to the various Regional Health Authorities and the St. James centre, were these equipment the ones that were supposed to be housed at the National Oncology Centre?

Hon. T. Deyalsingh: As I indicated in my answer, that is correct.

Madam Speaker: Member for Oropouche East.

Dr. Moonilal: Thank you very much, Minister. You indicated in the beginning of your answer that the contract was terminated. Could you tell us the reasons for the termination of the contract by either party?

Hon. T. Deyalsingh: That is now before the powers that be for arbitration. I

would not like anything I say in this Chamber to influence those discussions one way or the other. Thank you very much, Madam Speaker.

Madam Speaker: Supplemental, Member for Caroni East.

Dr. Gopeesingh: So as of now, hon. Minister of Health, can the population expect anything what was supposed to be an oncology centre that is no longer going to be there?

Hon. T. Deyalsingh: Thank you very much, Madam Speaker. Hon. Member, if we had paid attention to what I said—

Dr. Gopeesingh: I did.

Hon. T. Deyalsingh:—the St. James facility will now be providing the bulk of services with the LINAC. We commissioned the brachytherapy unit in 2017, and when the other pieces go in there, that centre will be, for want of a better term, a mini oncology centre. Thank you very much again, Madam Speaker.

Madam Speaker: Supplemental, Member for Barataria/San Juan.

Dr. Khan: Thank you, Madam Speaker. Would the Minister indicate whether it will be prudent to have an MRI and a CT in Sangre Grande Hospital rather than just a portable X-ray unit?

Hon. T. Deyalsingh: On the issue of the CT, Madam Speaker, when I came into office in September 2015, the CT was already down for six months under your tenure, already down for six months. We went out and procured a new CT which will be finished in this year, a whole new construction, and all of that. So that is going to be taken care of because the people in Grande deserve a better level of service. MRI, we will look at that and if we can do it—but the new Sangre Grande Hospital, which we are going to build, will have an MRI. Thank you very much.

**Sangre Grande Enhanced Health Centre
(Details of)**

70. Dr. Fuad Khan (*Barataria/San Juan*) asked the hon. Minister of Health:

With regard to the Sangre Grande Enhanced Health Centre, could the Minister state:

- a) the services to be provided at the Centre;
- b) the opening date of the Centre; and
- c) the construction commencement date of the Centre?

The Minister of Health and Acting Minister of Education (Hon. Terrence Deyalsingh): I am answering so many questions today, Madam Speaker.

Question No. 70: The services provided at the centre include:

1. a GP walk-in clinic
2. an anti-natal care clinic
3. post natal care clinic
4. family planning
5. child welfare
6. chronic disease
7. a health office
8. mental health
9. dental
10. ophthalmology and optometry
11. pharmaceutical dispensing
12. pharmaceutical counselling
13. nutrition counselling
14. wound care
15. dressings
16. phlebotomy
17. point of care testing
18. breastfeeding counselling

19. medical social work
20. dressings
21. podiatry
22. ECG services
23. radiology
24. ultrasound
25. minor surgery
26. domiciliary visits
27. wellness centre with gym facilities
28. health education

The answer to part b) is, the community services commenced on September 04, 2018, with GP walk-in started on September 05, 2018. The official opening was on Saturday 12 January, 2019. The answer to part c), the design and construction commencement date was on May 2014. Thank you very much, Madam Speaker.

Madam Speaker: Supplemental, Member for Barataria/San Juan.

Dr. Khan: Minister, I just wanted to find out, the wellness clinic that was earmarked for the obesity management, I did not hear it mentioned as a clinic, could the Minister indicate if that would be a priority seeing that the NCD thrust is occurring in our country right now?

Hon. T. Deyalsingh: Yes. I did say after domiciliary visits, wellness centre with gym facilities. But we are re-purposing that wellness after the new diabetic wellness centre model we have pioneered at North Central, which has proven to be very, very effective. So we are going to roll out that model which we launched in 2018 to all the RHAs. That new model of diabetes—having a diabetic wellness centre. Thank you very much, Madam Speaker.

**Health Centres in Trinidad
(Hours of Operation)**

71. Dr. Fuad Khan (*Barataria/San Juan*) asked the hon. Minister of Health:

Could the Minister state:

- a) the general opening times of health centres throughout Trinidad;
- b) the number of health centres open beyond 9.00 p.m.;
- c) the number of health centres open for 24 hours; and
- d) the date that 24-hour service commenced at the Moruga, Blanchisseuse and Grand Riviere Health Centres?

The Minister of Health and Acting Minister of Education (Hon. Terrence Deyalsingh): Thank you again, Madam Speaker. The general opening times of health centres throughout Trinidad and Tobago is 8.00 a.m. to 4.00 p.m., however, certain health centres with extended hours are opened until 8.00 p.m. or 9.00 p.m., Monday to Friday, and on Saturdays from 8.00 a.m. to 4.00 p.m., on Sundays and public holidays from 9.00 a.m. to 2.00 p.m. There are three health centres that open beyond 9.00 p.m., namely centres in Toco, Rio Claro and St. Joseph. There are three health centres that have accident and emergency service for 24 hours, namely the centres in Cedros, Toco and Rio Claro. The 2019 Budget Statement stated that a 24-hour service is proposed for three additional health centres, namely, Grand Riviere, Blanchisseuse and Cedros, not Moruga as stated in the original question. It should be noted that the Moruga Health Centre was not identified for a 24-hour service at the 2019 budget, but is being considered for this type of service in the future among other centres. Currently, arrangements are being finalized to effect the 24-hour service at the three health centres identified in the 2019 budget. Thank you again, Madam President.

Madam Speaker: Supplemental, Member Caroni East.

Dr. Gopeesingh: Hon. Minister, what is your reason for closing down many of

the health centres, not closing completed but not allowing them to go to 9.00 p.m. when there are approximately 50 that were opened up to 9.00 p.m., now only three you are mentioning so far. What has happened to the other 40-plus?

Hon. T. Deyalsingh: Thank you very much, Madam Speaker. Madam Speaker, it must be recognized that there are other district health facilities that operate on a 24-hour basis. For example, you have Princes Town, 24 hours; Couva, 24 hours; Chaguanas, 24 hours; St. James, 24 hour; Arima, 24 hours; Siparia, 24 hours; and Mayaro, 24 hours. This is in addition to the A&Es at the major hospitals, like San Fernando, Sangre Grande, Mount Hope, Port of Spain. So in looking at resource allocation one has to make a decision, but there are ample facilities in addition to health centres, district health facilities, over seven, plus major hospitals open 24 hours a day to provide service. But, Madam Speaker, let me just add one thing, and this is an issue all Ministers of Health have had to deal with, including my predecessor who literally pulled his hair out over this issue. Our public in Trinidad and Tobago likes to think that they must only go to a hospital A&E when these health centres and district health facilities can more than adequately deal with many of the emergencies.

Hon. Member: Not in Marabella.

Hon. T. Deyalsingh: Not in Marabella. [*Laughter*] So between these seven district health facilities, open for 24 hours, your major hospitals open for 24 hours, many of your health centres with extended hours up to 8.00 and 9.00, there is ample opportunity for people to access medical emergency services. Thank you very much, Madam Speaker.

Madam Speaker: Supplemental, Member for Barataria/San Juan.

Dr. Khan: Minister, I would just like to indicate health centres such as Maracas, Carenage, south areas where there are beach facilities—Cedros—I noticed that the

Sunday opening hours, would you consider opening those health centres on a Sunday based on the amount of the population that goes to these facilities?

Hon. T. Deyalsingh: That is certainly something that could be looked at and I will give him the undertaking to look at it. Thank you very much, Madam Speaker.

Madam Speaker: Supplemental, Member for Caroni East.

Dr. Gopeesingh: Minister, I heard your statement carefully. So is there any intention whatsoever to open some of these health centres close to the population up to 9.00 p.m., because the health centres you have mentioned opening up for 24 hours are sometimes quite remote from the normal population?

Hon. T. Deyalsingh: Madam Speaker, once the numbers and patient throughput could be justified, it is something we are prepared to look at. Thank you very much, Madam Speaker.

Administration of Legal Affairs (Details of)

73. Mrs. Vidia Gayadeen-Gopeesingh (*Oropouche West*) asked the hon. Attorney General:

Could the Attorney General provide this House with the following information that fall within his portfolio responsibility for the administration of legal affairs in Trinidad and Tobago:

- a) the reason for the delay in the return of search praecipe from the Probate Registry; and
- b) the reason for the inordinate delays in the issue of grants of representation of estates of deceased persons?

The Attorney General (Hon. Faris Al-Rawi): Thank you, Madam Speaker. Madam Speaker, the first part of the question asks the reason for the delay in the return of the search of praecipe from the Probate Registry, I am able to say that there are now no delays in the return of the search of praecipe from the Probate

Registry. All searches can in fact now be completed within three days or less. This is based on the Judiciary's launch of an e-probate service—I should add, that was not supported by the Opposition—on July 23, 2018. Of the 2,627 search requests received electronically as of February 01, 2019, 2,435 searches were completed; 155 were returned with errors, 37 are pending. Of the 2,435 completed, 98.5 per cent of them were completed and returned to the requester within a three-day period. That is the Judiciary's stated turnaround policy, and they have kept to it. This period included holidays, I might add. The average number of days by which each of the other 1.5 per cent of submitted searches were overdue is only 1.27 days.

The second part of the question asked, the reason for the inordinate delays in the issue of grants of representation of estates of deceased persons, Madam Speaker, at present the main reasons for the sometimes “longer than usual” time frames for the receipt of grants are, simply put, user inputs, the number of substantive and minor errors which create queries when information such as names, dates and addresses are not consistent in the applications and the related affidavits; the delays in submitting to the Probate Registry the required supplemental information required from applicants, and the loss of trained staff does in fact give us some degree of concern. Trained staff, if at full complement, in a time frame can achieve completion within six to eight weeks if there is an error-free application submitted. Thank you.

Madam Speaker: Supplemental, Member for Oropouche West.

Mrs. Gayadeen-Gopeesingh: Hon. Attorney General, would you agree with me or are you aware that queries are answered via supplemental affidavit, six to eight months it takes for those queries to be checked and then another eight months for those same queries to be resent to the attorney to answer those queries—

Madam Speaker: Question.

Mrs. Gayadeen-Gopeesingh:—so you are looking at eight and six, 14 months—

Madam Speaker: Question, Member.

Mrs. Gayadeen-Gopeesingh: I am asking if the Attorney General is aware of those supplemental affidavits that have to be answered are the same queries returning.

Hon. F. Al Rawi: Madam Speaker, it is for that very reason of the paper management that this Government, in piloting the divisions of court that we did, and very importantly, in piloting the court pay system which was flatly refused by the UNC to allow for electronic systems and payments to happen, [*Desk thumping*] it is for that reason that we brought the legislation which has now resulted in things being done in one to two days. What I find infra dig, most respectfully, is that there must of course be an acknowledgment that the archaic system is fraught with errors, the paper management system, this is why we have gone to an electronic platform. What I would encourage the Opposition to do is to support good measures.

Madam Speaker: Supplemental, Member for Oropouche West.

Mrs. Gayadeen-Gopeesingh: Hon. Attorney General, are you aware that some of the queries that are asked, for example, an applicant is eight years old, the deceased, who is her father, is 95 years old, and one of the queries asked is for a paternity order. How is it that are we going to answer some of those things?

Hon. F. Al Rawi: Madam Speaker, I hope that my learned colleague does not need to declare a conflict of interest in having a vested interest in matters, but I would take the example for what it is. Obviously that is what the law is there for, minors have the ability to be represented via guardians ad litem, et cetera, and there are particulars for the answering things within the locus of the court. That is

what the court is there for. So, yes, there will be complexities as a result of extremities of age. In fact, an infant could be as young as three months old and be entitled to beneficial aspects. The point is that is what the law is there for. Is the law as simple as it ought to be all the time, certainly it is not, Madam Speaker. So those are matters to be worked out in the application of the circumstances of law on to facts.

**Real Property Ordinance
(Lost Grant and Certificate of Title)**

74. Mrs. Vidia Gayadeen-Gopeesingh (*Oropouche West*) asked the hon. Attorney General:

With regard to the Real Property Ordinance Section of the Land Registry, Registrar General's Department, could the Attorney General state the reasons that the applications for Lost Grant and requests for the Duplicate Original Certificate of Titles are taking approximately three years to be issued?

The Attorney General (Hon. Faris Al-Rawi): Madam Speaker, the question relates to the Real Property Ordinance Section of the Land Registry, and I have been asked to state the reasons why applications for lost grant and requests for duplicates certificates of title are supposedly taking approximately three years to be issued. Madam Speaker, I can say that this is a two-stage process. In the first stage with respect to lost grant applications, the timeline for a lost grant application, it is set to be processed within seven working days. The actual timeline where there are no queries is five to seven days. If there are queries, it is five to seven days from when the queries are answered. If there are no queries then the attorney-at-law can proceed to the second stage. At the second stage, which is the issuance of the original duplicate certificate of title, currently that time frame for issuance is within four weeks. Madam Speaker, it should be noted that the time

frames are dependent upon factors, and these include: the length of time the applicant, attorney-at-law, takes to answer a query, the length of time the applicant or attorney-at-law takes to collect the notice to publish in the daily newspaper, the length of time the applicant or attorney-at-law takes to publish the notice in the newspaper, the length of time it takes to register the request for the issuance of the new CT after publication of the notice, and the length of time the attorney-at-law takes to withdraw the certificate of title.

Madam Speaker: Supplemental, Member for Oropouche West.

Mrs. Gayadeen-Gopeesingh: Hon. Attorney General, so why then electronic means is not also used in this probate in the Registry to send the queries to the attorneys?

Hon. F. Al Rawi: Absolutely, brilliant question. I wonder if my learned colleague understands what she has just said. The reason is that there was no operationalization of the following things:

- (1) The Electronic Transactions Act.
- (2) The Electronic Transactions Act Rules as applied under the Audit and Exchequer Rules of 2014 and 2015.
- (3) The failure of the last Government to digitize the records that were in perspective. [*Desk thumping*]

Madam Speaker, I am able to say today that coming into the office of the Registrar General as Minister of Legal Affairs, I met a system where none of the IT was up to date. The licences were allowed the lapse. The building was crumbling. The towers where we have moved to on Richmond Street were empty for nine full years. Since that time we have actually digitized millions of records, Madam Speaker. [*Desk thumping*] And I would like to say, we intend to go live with electronic payments as we ramp through in stages, February 2019, March 2019,

April 2019, so that people can have the dignity of having electronic transactions paid for and managed in a circumstance that the last Government was incapable of delivering. [*Desk thumping*]

Madam Speaker: Supplemental, Member for St. Augustine.

Mr. Ramadhar: Would the hon. Attorney General indicate whether in fact, in terms of the electronic payment, that the substantial work had already been done to prepare that? [*Desk thumping*] And two, that in terms of the digitization of the records that that had been started and that there was international funding that had already been approved to deal with those issues and that you inherited that foundation?

Hon. F. Al Rawi: Madam Speaker, I wish to agree that work had been started when the Member for Arouca/Maloney was the Minister of Legal Affairs. [*Desk thumping*] And in fact, Madam Speaker, the digitization effort happened under her hand as Minister of Legal Affairs. What happened in the period 2010—2015, through no fault of the Member for St. Augustine, was that the technocratic push for electronic transactions was not managed. The scanning of the Real Property Ordinance files had begun, but, Madam Speaker, the RPO titles represent under 25 per cent of Trinidad and Tobago's titles. It is the old law titles that represent the other 75 per cent which we have done in the millions. Secondly, Madam Speaker, we met the property business real estate solution package, the IT package, as merely something on paper. It took this Government, under Minister Hinds and my management, with the Minister of National Security then in that Ministry, to execute the contract, put it into delivery, and I am pleased to say that we are two months into a 12-month contract as we intend to make this reality for the first time. [*Desk thumping*]

**Land Registry
(Issuance of Certified Copies)**

UNREVISED

75. Mrs. Vidia Gayadeen-Gopeesingh (*Oropouche West*) asked the hon. Attorney General:

Could the Attorney General state the reasons that Certified Copies of Common Law Deeds at the Land Registry, Registrar General's Department in San Fernando take six (6) months to be issued to the purchaser?

The Attorney General (Hon. Faris Al-Rawi): Madam Speaker, I have been asked to state the reasons that certified copies of common law deeds at the Land Registry in San Fernando supposedly take six months to be issued to the purchaser.

2.10 p.m.

I am able to say that registered deeds are processed within three weeks. The scanning and data entry for deeds registered in San Fernando are done at the Port of Spain office, because we are currently battling a limitation of space constraints in San Fernando, and certified copies of deeds which are already on the system are processed within five days.

**St. John Trace, Avocat
(Non-functional Sluice Gates)**

78. Dr. Lackram Bodoie (*Fyzabad*) asked the hon. Minister of Works and Transport:

Could the hon. Minister state the expected date that rehabilitation works will commence on the four (4) non-functional sluice gates in St. John Trace Avocat?

The Minister of Works and Transport (Sen. The Hon. Rohan Sinanan):

Thank you, Madam Speaker. There is a seven sluice gate structure which currently exists in the St. John Trace, Avocat. Four of these gates are non-functional. The Drainage Division under the development programme has a dedicated programme for the upgrade of pumps and gates called the Programme of Upgrade to existing drainage pumps and gate inventory. This programme was approved by Cabinet,

and as part of the programme one of the projects earmarked for completion during fiscal 2018/2019 is the upgrade of the gate structure at St. John's.

The objective of this project is to repair and motorize all seven gates located in St. John Trace. The tender process is set to begin by mid-March 2019, following which the rehabilitation of these gates is carded to commence in June 2019.

**Minister of Agriculture, Land and Fisheries
(Cessation of Regular Fuel)**

79. Dr. Lackram Bodoë (*Fyzabad*) asked the hon. Minister of Agriculture Lands and Fisheries:

Could the Minister state whether there are plans to meet with fishermen to discuss their concerns on the recent cessation of the supply of regular fuel?

The Minister of Energy and Energy Industries (Sen. The Hon. Franklin Khan): Thank you very much, Madam Speaker. I am not Acting Minister of Agriculture, Lands and Fisheries, but this question has been redirected because of its nature, to the Minister of Energy and Energy Industries.

The Ministry of Energy and Energy Industries has written to the Fisheries Division of the Ministry of Agriculture, Lands and Fisheries requesting a meeting with representatives of the Fisheries Division to discuss the logistical changes the fishermen may have to adopt in order to access fuel, following the secession of the supply of regular fuel, after which it is our intention to meet with the fishermen to discuss the outcome and chart a way forward as to addressing the grave situation that they face.

Dr. Bodoë: Mr. Minister, following a meeting with fishermen at the Otaheite fishing facility, the question was raised as to whether the Government would consider providing a subsidy in that particular case. Is that something you would give consideration to, Minister?

Sen. The Hon. F. Khan: Through you, Madam Speaker, that will fall into the laps of the Minister of Agriculture, Lands and Fisheries. But from the Ministry of Energy and Energy Industries side, we have made it quite clear that it will be impossible to supply the market with regular, at least in the short-term, until the refinery becomes operational hopefully later this year or next year. If the Ministry of Agriculture, Lands and Fisheries is so inclined, we will work out the logistics of whether a subsidy could be paid or not.

Dr. Bodoë: Minister, can you indicate what sort of time frame is anticipated before the fishermen can get a definite answer on this matter?

Sen. The Hon. F. Khan: We are looking at weeks.

Dr. Bodoë: Weeks?

Mr. Al-Rawi: Yes.

Mr. Singh: Thank you, Madam Speaker. Minister, have you contemplated, other than the subsidy, whether or not there are electric engines for the fishing industry to use instead of the fuel engines?

Sen. The Hon. F. Khan: That has never been considered by the Ministry of Energy and Energy Industries. I could probably enquire as to whether that technology is available and how useful it is.

Trinidad and Tobago Police Service Ammunition (Seizure of)

80. Dr. Lackram Bodoë (*Fyzabad*) asked the hon. Minister of National Security:

With regard to the recent arrest involving the seizure of twenty-three (23) rounds of Trinidad and Tobago Police Service (TTPS) issued ammunition along the Arima Old Road, Arouca, could the Minister state if anyone within the TTPS has been held culpable?

The Minister of National Security, Minister of Communications and Minister

in the Office of the Prime Minister (Hon. Stuart Young): Thank you very much, Madam Speaker. With respect to the seizure of the 23 rounds of Trinidad and Tobago Police Service issued ammunition along Arima Old road, Arouca, that matter is currently being investigated by the Professional Standards Bureau of the Trinidad and Tobago Police Service, and as such they have asked that no further particulars be provided at this time.

Dr. Bodoë: Minister, following that incident, the Commissioner of Police announced that an audit would be undertaken into ammunition over the past 20 years. Can you give us an update on the status of that audit?

Hon. S. Young: Madam Speaker, the audit is ongoing. The Commissioner of Police has put in place certain resources to carry out that audit. As you would expect, Trinidad and Tobago Police Service has quite a lot of arms and ammunition, so it is currently being undergone.

Dr. Bodoë: Thank you, Minister. In light of that incident, is there any assurance you can give the public as to steps that may have been taken in the interim to prevent that sort of incident happening again.

Hon. S. Young: The right person to give that assurance would be the Commissioner of Police. But what I can say is that after this incident, at a meeting with the heads of security it was raised, the serious concern. Unfortunately this is not the first time it has happened, so really it is for the armouries to carry out proper audits to make sure that everyone who gets ammunition, comes back in, accounts for it, et cetera, and we have made a renewed call for the officers in the police service to make sure they take that very seriously.

DEFINITE URGENT MATTERS

(LEAVE)

**Prime Minister Dr. Keith Rowley
(Section 137 of the Constitution)**

UNREVISED

Mr. Ganga Singh (*Chaguanas West*): Madam Speaker, I hereby seek your leave to move the adjournment of the House today under Standing Order 17 for the purpose of discussing a definite matter of urgent public importance, namely, the failure of the hon. Prime Minister to trigger section 137 of the Constitution of the Republic of Trinidad and Tobago for the appointment of a tribunal to enquire into the conduct of the Chief Justice.

The matter is definite because it centres on the issue of the rule of law and an impasse being showcased by allegations against the Chief Justice by the Law Association and others.

The matter is urgent because it impacts on the image and public confidence in the Judiciary of Trinidad and Tobago, as there is a strong public perception in the legal fraternity that the independence of the Office of the Chief Justice had been severely compromised and exposed to external influences.

The matter is of public importance because the Prime Minister has a constitutional duty to the public and the legal profession to take action to ensure allegations against the Chief Justice are investigated in accordance with the provisions of the Constitution.

I so move, Madam Speaker.

Madam Speaker: I am not satisfied that this matter qualifies under this Standing Order. I advise that the Member pursue this matter under Standing Order 16.

Ministry of Rural Development and Local Government
(Negotiation of Garbage Disposal Contracts)

Mr. Barry Padarath (*Princes Town*): Madam Speaker, I hereby seek your leave to move the adjournment of the House of Representatives today under Standing Order 17, for the purpose of discussing a definite matter of urgent public importance. Namely, the failure by the Ministry of Rural Development and Local

Government to negotiate and finalize long-term contracts for the collection and disposal of garbage and waste services affecting the constituencies of Princes Town, Naparima, Moruga/Tableland and San Fernando East.

The matter is definite because it pertains to the current situation faced by the constituents of Princes Town, Naparima, Moruga/Tableland and San Fernando East, who are being denied garbage disposal and waste collection services in their areas due to the absence of reliable service providers over the past few weeks.

The matter is urgent because service providers who have been operating via month to month contracts with central government have refused to continue with this arrangement, and there is no contingency plan to provide any relief to constituents.

The matter is of public importance because if this situation were to persist, the health and sanitation hazard that already is a threat will become a crisis that will affect the health and lives of the many citizens across these constituencies.

I thank you, Madam Speaker.

Madam Speaker: Hon. Members, I am not satisfied that this matter qualifies under this Standing Order. I advise that the Member pursues this matter under Standing Order 16.

MAGISTRATES PROTECTION (AMDT.) ACT, 2018

Order for second reading read.

The Attorney General (Hon. Faris Al-Rawi): Madam Speaker, I beg to move, as I appreciate the warm welcome:

That a Bill to amend the Magistrates Protection Act, Chap. 6:03, be now read a second time.

Madam Speaker, the Bill before us is deceptively simple; it is a mere four clauses in length. The first clause is simply the short title. The second clause says

that “the ‘Act’ means the Magistrates Protection Act”, and it is clauses 3 and 4, spread across a few paragraphs only, that seek to amend section 4 and section 5 of the Magistrates Protection Act.

Madam Speaker, despite the brevity of that approach, this is actually a very serious matter for our august House to consider, this matter having passed through and having received the approval of the Senate already.

The Magistrates Protection Bill seeks to cause an amendment to the Magistrates Protection Act. That is Chap. 6:03 of the Laws of the Republic of Trinidad and Tobago, which was brought onto the books, the laws of Trinidad and Tobago, by Act No. 34 of 1917. That is now 102 years ago. It was amended only once in history by Act No. 45 of 1978, which is now 40 years ago. And this Magistrates Protection Act in fact was modelled after the Justice Protection Act of the United Kingdom, which was an Act of United Kingdom in the year 1848. So, Madam Speaker, there is antiquity in this purpose. There is reason which needs to be put onto the record, and there is a matrix into which we must actually consider the Bill.

So, Madam Speaker, suffice it to say, this Bill is intended to address the significant issue of our criminal justice system. Crime is the number one issue for most of our citizens. Crime is an issue which is without political boundary, without racial consideration, without our respective views on creed. It is something that affects us all. For those who feel that they have never been affected by crime, I would say it hits you in your pocket because the taxpayers of this country foot the Bill as it relates to the management of the situation crime.

Madam Speaker, the issue of crime touches our constitutional rights set out in section 4, which deal with the most basic provision of the right to life and freedom and liberty.

So, Madam Speaker, year after year, decade after decade, governments have come to the Parliament and tweaked laws. They have amended the Firearms Act, they have amended the Kidnapping Act, they have amended the Sexual Offences Act, but very few governments have managed to get to the deep cause root reform of the criminal justice system.

In our tenure, we have spent the first three years in particular of our time addressing the improvements to the criminal justice system. Very importantly in our fight against crime and in our pursuit of white collar crime or follow the money crime, and in our focus on money laundering as it is driven into reality from the predicate offences from corruption, fraud, drug offences, et cetera, trafficking in narcotics, what we have done is to harmonize a lot of our laws. We have taken what were previously indictable offences only, we have brought them down to summary offences or offences triable either way. What does that mean? We have taken serious matters such as anti-gang matters, anti-terrorism matters, proceeds of crime matters and we have converted them alongside matters in the Insurance Act, the Copyright Act, a number of different laws, into summary offences.

With that in mind, it is important to remember that the persons who are charged with the responsibility of managing summary offences are Magistrates. Magistrates have the ability if a charge is raised on a summary basis to have a full determination of a matter, and for it not to go to a higher court or the Assizes if it is triable either way or indictable offence, meaning you will have no High Court jurisdiction.

So, Madam Speaker, the first point is that our laws and our management of our system, the introduction of our Criminal Division as we brought on, the introduction of the Criminal Procedure Rules, all of these things have taken us to point of looking at the security of the office of the Magistrate holder. That is the

aim of this Bill, to improve the security of the office of a Magistrate. So why do we need to do this? Surely people believe that Magistrates are equivalent to Judges. Surely people look to the fact that the common law protects Judges as an ancient right of the common law.

In fact, there is very useful dicta on that point that I would like to put forward, and this comes from an interesting case decided July 13, 1907. It is *McCreadie v Thomson*, and it is a case which concerned analysis of liability of Judges versus Magistrates, et cetera. And I would like to put on to the record the dicta of Lord Justice Clarke delivered in that case. Madam Speaker, here is what Lord Justice Clarke had to say as it relates to—the citation is, forgive me, I do not have the first page to give you the citation, I will give it to you. It is 1907 reports. I do not want to give you the wrong point as to whether it is Queen's Bench or All England, so permit me to get that for you.

Here is what Lord Justice Clarke had to say:

“Upon the question of immunity of the Judges of the Supreme Court there can be no doubt. The principle is clear and the decisions are emphatic. The principle is that such Judges are the King's Judges directly, bound to administer the law between his subjects, and even between his subjects and himself.”

That is a very interesting dicta which was properly adopted in some of the leading cases in Trinidad and Tobago.

In analysing the protection which Judges of the Supreme Court have, they being created by the section of our Constitution in recognized, entrenched protected provisions, the point is that Judges and the immunity of Judges are firstly managed by the common law aspects of judicial immunity. I thought it important to add to the *McCreadie* thinking or confirmation of law, by reflecting upon the

decision coming from Mr. Justice of Appeal, Nolan Beraux, in the case of *Myrtle Crevelle, Administratrix Ad Litem of the estate of Clyde Crevelle v the Attorney General*. It is Civil Appeal No. 45 of 2007.

In that judgment there was proper reflection on two leading cases. I am sure most of the attorneys present would be aware of *Maharaj v the Attorney General*. We call it “Maharaj No. 2”. That is 1978, 30 West Indian Reports at 310, and then of course there is the *Independent Publishing Company Limited and Others v the Attorney General*. That is a Privy Council decision 2004 UKPC at 26.

What I want to put on to the record is that the Court of Appeal affirmed the dicta coming from Lord Diplock in Maharaj No. 2, in putting forward the reality that the claim for redress as brought against Judges is a claim against the State for what has been done in exercise of judicial power of the State. This is not vicarious liability, it is the liability of the State itself. It is not a liability in tort at all. It is a liability in the public law of the State, not of the Judge himself, which has been newly created by section 6(1) and 2 of the Constitution.

In looking at the independent publishing, it was noted that the Privy Council held in deciding whether an individual’s right to liberty had been violated, it was the legal system as a whole which must be looked at, and not merely part of it. The reflections coming out of the Crevelle case in upholding the dicta in the Maharaj No. 2 and in the publishing case, affirm the fact that Judges have an immunity which is by common law standard, a general immunity, because they are acting for the State itself.

Magistrates however, stand in a very different class. Magistrates are creatures of statute. Magistrates find their grounding in the Summary Courts Act, Chap. 4:20. If we turn to sections of that parent law, and we look, starting with the definition section at section 2:

“‘Clerk’ means Clerk of the Peace;

‘Magistrate’ includes a Magistrate appointed on contract under section 3B;”

But when we get to section 3:

“There shall be such number of Magistrates in the public service as may be required for the purposes of this Act.”—and:

“Every Magistrate shall be ex officio a Justice of the Peace...”

Section 3A goes on to give you the qualifications for Magistrates: Attorneys-at-law in Trinidad and Tobago practising for not less than five years, et cetera, et cetera. So Magistrates find their grounding in statute, and it is because they find their grounding in statute, and that they are not in the situation of the king himself, as I have referred to in the McCreadie decision, Magistrates are therefore confined to act within the statutory limits of their jurisdiction.

It is there that we must draw the line to look at the Magistrates Protection Act. The Magistrates Protection Act as a law itself is one that provides immunity in certain circumstances only. And that circumstance begins to find grounding in sections 4, 5, et cetera, continuing right down to section 9 of that parent law. And effectively, it is sections 4 and 5 that we now come to measure. In section 4 and section 5 we find the limits of authority that a Magistrate operates under.

In section 4, we specifically say—this is the Magistrates Protection Act, Chap. 6:03—section 4 says, the current law:

“The endorsement of the writ of summons in every such action shall allege either that the act was done maliciously and without reasonable and probable cause, or it was done in a manner not within the jurisdiction of the Magistrate, otherwise the writ shall be set aside on summons, and if the plaintiff fails at the trial to prove the allegation, a verdict shall be given for the defendant.”

Terminology has changed. We now have claim forms, we now have claimant verses plaintiff, et cetera, but what this law says is that you have a right of action against a Magistrate in his personal capacity, pursuant to section 4 of this parent law, in two circumstances: if the Magistrate acted maliciously and without reasonable or probable cause, or, in the second category, that the Magistrate acted outside of his jurisdiction, meaning did not comply with the strict provisions of any written law.

Section 5 provides a limit, and that originally is that where an act is done without jurisdiction, malice need not be alleged, but:

“No action shall be brought...until...the conviction...”—is—“quashed...”
So there is a form of a safeguard in section 5, no need for malice, but you had to quash the thing upon which you are complaining, meaning a High Court could have overturned it or the court itself could have dealt with it.

Sections 6 to 13 of this short law treat with the other circumstances in which you can manage the magisterial exercise of jurisdiction in respect of warrant, in respect of arrest, where a Magistrate acting in the place of another Magistrate on the return of a warrant or arrest, et cetera. In all of those circumstances, the various permutations to combinations are measured. But it is a few other laws which articulate with this that must also be part of the parliamentary record. They include the Indictable Offences (Preliminary Enquiry) Act, because it is in that Act that we find the definition of the “Magistrate” or “Justice”. Remember the Magistrates Protection Act treats with Magistrates or Justices. It is the Indictable Offences (Preliminary Enquiry) Act, Chap. 12:01, section 2(2) that defines “Justices” as “Clerks of the Peace”.

That is to be distinguished of the definition of “Clerk of the Peace” in the Interpretation Act, Chap. 3:01, section 78 where that refers to a Justice of the

Peace. So there is a distinction between Magistrate and Justice. Justice means “Clerk of the Peace”, not a regular Justice of the Peace. Importantly the Criminal Division and District Criminal and Traffic Courts Act, which is now law in Trinidad and Tobago, redefines the Clerk of the Peace to be the Registrar of the Magistrates’ Court effectively, and we have now harmonized those terms. So the target of this legislation is to treat with immunities and obligations of the Magistrate, and what is now going to be the Registrar of the Magistracy who is the Clerk of the Peace referred to in older law.

Why are we doing this? It is because the State Liability and Proceedings Act, Chap. 8:02, has a specific limitation. In section 2 of that Act, the State Liability and Proceedings Act, we define an:

“‘agent’, in relation to the State, includes an independent contractor employed by the State but does not include a statutory corporation except where the State has entered into an expressed contract...”

And very importantly in that same section we define a servant. In the definition of “servant” in relation to the State, et cetera, includes:

- “(a) a Minister of the State;
- (b) a member of the armed forces of the State;
- (c) a member of the Trinidad and Tobago Police Service,
but does not include—
- (d) the President;
- (e) any Judge, Magistrate, Justice of the Peace or other judicial officer;
- (f) any officer, employee or servant of a statutory corporation;”

Because section 4 of the State Liability and Proceedings Act is the section that says that the State shall have liability in tort for its agents or servants. What does that mean? Prior to the amendment in English law, you could not sue the State in tort,

meaning you could not get damages for things that were done wrong.

The English law came about in the 1800s, effectively to amend that position to allow for damages to be applied against the State. Our version of the State Liability and Proceedings Act, which is an Act of Parliament, No. 17 of 1966, that says the State will pay damages in negligence, in tort, et cetera, for people that are its agents or servants, but we say the servant could never be Judge or Magistrate.

When you now look to the immunities that I started off with for a Judge, the Judge is covered. That is why I read McCreadie, that is why I referred to Maharaj No. 2, that is why I referred to the publishing cases, that is why I referred to the common law and the umpteen texts that give us guidance, and commendably so that from Dana Seetahal as we have all read.

That is to lay the groundwork now in terms of proportionality to say that this Bill but must treat with a lacuna. The lacuna in the law is that the Magistrate is left in the lurch. We have established as a matter of fact that the Magistrates are now, in modern Trinidad and Tobago, subjected to the obligation to apply the law in very serious circumstances for the summary offences, for the multiple amendments that we have made. But, Madam Speaker, it was brought home to the fore, I think most clearly, in litigation and by way of correspondence coming to the attention of the Office of the Attorney General.

Madam Speaker, in the case of *Indar Jagroo v Anisha Mason*—and that is two particular judgments that I would like to refer to—there is the High Court decision of the honourable Mr. Justice Peter Rajkumar as he then was; he is now Justice of Appeal—and his decision was given on the 23rd of May, 2014. And then there is the Court of Appeal version of that case, which is Civil Appeal No. P182 of 2014, and there is the judgment that was delivered by the honourable Justice Narine, Justice of Appeal, who gave the decision on behalf of the majority.

I want to put on to the record the fact that both courts reflected upon a very important need. In the circumstances of that Jagroo case, basically the Magistrate was invited to consider a fit person's order, or a beyond control order, within the context of sections 44 and 45 of the Children Act, as it was then unamended. The Magistrate put a minor who was declared to be 17 years old into the women's prison, even though she was not charged. In the interrogation before the court, the courts were clear that there was no malice, that the Magistrate acted in the best interest of the child, but the court found it an irrefutable thing that the Magistrate acted outside of the statute, which is the Children Act, and the Magistrate had no jurisdiction to put the child into the women's prison because the child was not somebody apparently at ages 14 or 15 that could have fit into a different category.

2.40 p.m.

The Court of Appeal went on to agree completely with Mr. Justice Peter Rajkumar's decision, and the Court of Appeal said this at paragraph 28, which I wish to put onto the record. After holding that the Magistrate had acted with bona fides, with no malice, in the best interest of the child, after finding that the Magistrate had acted outside of the statutory provision of authority, the court went on to say this at paragraph 28:

“It follows that we have found no merit in this appeal.”

—The appeal was that of the Magistrate.

“However, we must express our concern for the position in which a Magistrate is held personally liable for his actions while presiding on the bench, in a situation where he has acted without or in excess of jurisdiction but without malice of any kind. The injustice that may arise in such a case, and the need for legislative intervention was recognised by the House of Lords in *Mc C v. Mullan*”—which is—“[1984] 3...”—*All England Law*

Reports.

And they went on to quote dicta from Lord Justice Templeman, which I think is extremely relevant for today's purpose and which I wish to put on the record, with your leave. Again, quoting from paragraph 28 of the Court of Appeal judgment, and these are the words of Lord Templeman who opined at page 29, 929 as follows:

“This appeal demonstrates that the time is ripe for the legislature to reconsider the liability of a magistrate and the rights of a defendant if an unlawful sentence results in imprisonment. There is no liability on a judge of the High Court acting as such and no right for a defendant to damages for an unlawful sentence imposed by a High Court judge; harm may be prevented or cut short by bail and an appeal procedure which results in the sentence being quashed...”

—The Judge goes on to say:

“On the other hand a magistrate is personally liable where an innocent error of law or fact results in an unlawful sentence or imprisonment imposed without jurisdiction. A magistrate is not personally liable for an innocent error of law or fact which results in an unlawful sentence or imprisonment within jurisdiction.”

I have referred to that particular dicta, Madam Speaker, in the judgment appearing in the 1984 *All England Law Reports* because they fit the exact circumstances of our debate today.

Now, Madam Speaker, this actually came, this issue of jurisdiction, this issue of lack of immunity and protection, came to the attention of the predecessor government. In particular, they came to the attention of Attorney General Ramlogan, as he sat there, and I had confirmation of this position by way

of letter from Allum Chambers, under the hand of Rajiv Persad who wrote to me almost a year ago, on Monday the 19th February, 2018, effectively asking for a written indemnity to cover Magistrate Indar Jagroo and the letter, with your permission, addressed to me, if I may quote portions of that, says:

“Senior Counsel, Mr. Seenath Jairam and I have been briefed by the good office of the Solicitor General to represent his Worship, Mr. Indar Jagroo, the Defendant in the captioned...

Magistrate Jagroo has been sued in his capacity as presiding Magistrate for the Arima Magistrate’s Court for having committed the Claimant to prison...”—et cetera.

“The matter is now before the Court of Appeal...

We had written to your predecessor seeking to have a decision made in relation to the provision of an indemnity to protect the Learned Magistrate. To date we have not had a response and we have been advised by those instructing us that another letter should be prepared and directed to your office renewing our request on behalf of the client.”

I can tell you, Madam Speaker, that I indicated to counsel that the indemnity was guaranteed and that I would move immediately to the Parliament to put parent law into effect to amend the parent law to give that immunity to the Magistrate. And, therefore, standing in the House of Representatives, as I do today, on the 15th of February, 2019, it is to keep an undertaking given to a Magistrate who is exposed to indemnity—who is requesting indemnity as he was exposed to personal liability, the court having, in fact, found that he was personally liable in the circumstances of acting without malice but without jurisdiction. [*Desk thumping*]

So, Madam Speaker, it is important to bear in mind that the Magistracy is having a careful look at what we do. The Magistracy is being called

upon to exercise greater jurisdiction. The Magistracy is being asked to intervene in the affairs of our citizens of this country in a very important way, and that that is something which we must hold dear.

There is one last case that I would like to bring to the attention of the honourable House, Madam Speaker, through you, and that is the case of *Sirros v Moore*. It is 1972, Court of Appeal. It is S. No. 1660. It is the dicta of Lord Denning, Master of the Rolls, and it concerns an action not being maintainable where a Judge acting judicially in good faith. But it is the dicta of Denning M.R. at page 136 that I think is really very relevant to the honourable House.

Madam Speaker, this helps us under the caption—if I may, as I quote from page 136, it is under the caption, “The modern courts”.

“In the old days, as I have said, there was a sharp distinction between the inferior courts and the superior courts. Whatever may have been the reason for this distinction, it is no longer valid. There has been no case on the subject for the last one hundred years at least. And during this time our judicial system has changed out of all knowledge. So great is this change that it is now appropriate for us to reconsider the principles which should be applied to judicial acts. In this new age I would take my stand on this: as a matter of principle the judges of superior courts have no greater claim to immunity than the judges of the lower courts. Every judge of the courts of this land—from the highest to the lowest—should be protected to the same degree, and liable to the same degree. If the reason underlying this immunity is to ensure ‘that they may be free in thought and independent in judgment,’ it applies to every judge, whatever his rank. Each should be protected from liability to damages when he is acting judicially.”

And the Judge goes on, et cetera. And he ends by saying this:

“This principle should cover the justices of the peace also. They should no longer be subject to ‘strokes of the rodde, or spur.’ Aided by their clerks, they do their work with the highest degree of responsibility and competence—to the satisfaction of the entire community. They should have the same protection as other judges.”

Madam Speaker, these are words in 1975, 47 years ago, coming from Master of the Rolls, Lord Denning, and they are absolutely appropriate to the circumstance in Trinidad and Tobago today.

So, Madam Speaker, that is some of the rationale, that is some of the depth, that is the comparison between the Judges having immunity, the Magistrates not having immunity, the Clerks of the Peace, as they are now Registrars and Clerks of the Court pursuant to the criminal arrangements that we have done in the Criminal Division, et cetera, coming to the fore.

But if we look to the terms of the Bill before us, I would like to say that the Bill really helps us, because we are now providing, firstly, for a simplification; secondly, a clarification that we do not oust by way of implied repeal, certain other remedies available to litigants, and then we are harmonizing the parity between the Judges of the Supreme Court and the Judges of the inferior court, or the puisne Judges as they—sorry—or the Magistrates and Masters when exercising that jurisdiction under the Criminal Division.

So clause 3 of the Bill which repeals section 4 of the Act, replaces it with the following. 4(1) now says:

“No action shall be brought against a Magistrate for any act done by him in the execution of his office in relation to a matter within his jurisdiction.”

New subsection (2) says:

“Nothing in subsection (1) shall in any way impair the availability of other forms of relief in respect of decisions of courts of summary jurisdiction, including appeals, applications for judicial review and applications for redress under Section 14 of the Constitution.”

What does that mean? First part is pellucidly clear. It harmonizes the rules and functions which we have for Judges of the High Court with the Magistrates and Clerks of the Peace. But the second part was really taken from the text of the laws of Bermuda, the Magistrates Act, 1948, which said in their section 10(a)(2):

“Nothing in subsection (1) shall in any way impair the availability of other forms of relief in respect of decisions of courts of summary jurisdiction, including appeals, applications for judicial review and applications for redress under section 15 of the Bermuda Constitution.”

Now, we felt in the original version of this law that there was no need to state that, largely because the UK legislation Courts Act, 2003, and umpteen other jurisdictions: Jamaica, New Zealand, et cetera, have a similar provision to ours, where they had judicial review legislation and Constitutional section 14 rights similar to ours prior to the Act, and there was enough dicta to say that, look, that law would not be disturbed. But we listened to voices in the Senate, having recognized that it was debatable either way, and put in the language from the Bermuda Magistrates Act to make sure that the law was in no need of challenge for clarity or statutory interpretation.

The second part of the law which we treat with is the amendment to section 5 and this is treated with by clause 4. We amend the marginal note. We remove the need for malice not being alleged and we simply put a new subsection (5)(1), leaving (5)(2) as it is. (5)(1) now says:

“A person may maintain an action against a Magistrate for any act

done in a matter not within his jurisdiction or in excess of his jurisdiction, where it is alleged and proved that the act was done maliciously and without reasonable and probable cause.”

So, Madam Speaker, the aim of the law is stated. The proportionality of the law is as relevant today as it was 47 years ago in the United Kingdom as per the dicta in the Sirros decision by the Master of the Rolls, Denning, in that circumstance. It is as relevant as Lord Diplock’s decision in *McC v Mullan*; it is as relevant as Lord Templeman in 1907 in the McCreadie case. And, Madam Speaker, it is particularly relevant in Trinidad and Tobago because of the harmonization of jurisdictions that we have achieved under the Criminal Division positions. It is particularly necessary if you are going to invite Magistrates to act robustly and without fear of action or intimidation by suit which may come against them, that they be provided with the form of indemnity that the Judges of the High Court enjoy.

Madam Speaker, I look forward to contributions of my learned colleagues and I beg to move. [*Desk thumping*]

Question proposed.

Mr. Prakash Ramadhar (*St. Augustine*): [*Desk thumping*] I thank you very much, Madam Speaker. The Attorney General, in his very articulate way, opened by saying that this law is deceptively simple. I think he misspoke. I want to suggest that this law is simply deceiving. Let me explain why. If it is that the purpose of the amendments and the change of the status quo is to give protection, immunity, to Magistrates, then it is a far simpler thing to do than to what we have now before us.

Milady, with all due respect, I am not going to be long but please do not measure the importance of what I am about to say by the shortness of my

contribution. What the Attorney General—and I hope unintentionally—is doing here, is making it near nigh impossible for citizens to be able to take action against Magistrates, because what they have introduced here now is a positive need for malice to be alleged and for malice to be proven. What is malice? The simple English dictionary meaning is: “to cause pain, injury or distress to another”, or “to do something with an intent to commit an unlawful act”, or “cause harm without legal justification or excuse”. In our law, there is something called malicious prosecution, and malice has not been properly identified or defined. It is really dependent upon the factual circumstances of every case that the court may find or not find, that malice attended to the actions or inactions of one of our citizens, whether a judicial officer, a police officer or anybody exercising administrative, or executive authority.

If I may—and I know the Attorney General is familiar with this case. It is the matter of *Trevor Williamson v the Attorney General*. It is reported as Privy Council Appeal, No. 0039 of 2012. And there the matter of malice was discussed in relation to malicious prosecution. And it will help a little bit to shed light where this judgment, being delivered by Lord Kerr, said this at page 3, paragraph 11:

“In order to make out a claim for malicious prosecution, it must be shown, among other things, that the prosecutor lacked reasonable and probable cause for the prosecution and that he was actuated by malice. These particular elements constitute...”

—And I want you to pay particular notice, Madam Speaker:

“...significant challenge by way of proof. It has to be shown that there was no reasonable...proposition, normally amongst the most difficult of evidential requirements.”

Let me repeat that:

“This requires the proof of a negative proposition, normally among the most difficult of evidential requirements. Secondly, malice must be established. A good working definition of what is required for proof of malice in the criminal context is to be found in”—the authority of —“*A v NSW...*”

And they went on to reflect on that, quoting:

“What is clear is that, to constitute malice, the dominant purpose of the prosecutor must be a purpose other than the proper invocation of the criminal law – an ‘illegitimate or oblique motive’. That improper purpose must be the sole or dominant purpose actuating the prosecutor.”

It is known to almost every schoolchild and most of us here, I imagine, that statement that not even the devil knoweth the mind of a man, and that proposition is found in support, in even the *Bible* at Kings 8:39. What this means is that you, a person who feels aggrieved, must prove—you must allege that the Magistrate acted with malice and you must be able to prove it. How can one ever possibly do that? Unless, of course, the Magistrate is so reckless and allows to fall from his or her lips, that, “You see you”? “Ah going tuh buss a jail on you that you will never, ever imagine you coulda got.” “Whatever the offence, you come back before me, no bail”, or something like that. Actual words, hardly actions, because the Magistrate sits there in judgment. How can you prove the malice?

Milady, let me give you an example of something that really occurred. Years ago, a Magistrate sitting in Arima; there was a matter I was involved in—and I make full disclosure upfront—and for whatever reason, that Magistrate took an action that we thought was wrong in law and we filed for a judicial review. And I want to say before then, the relationship was one of mutual respect between the court and myself. But when we took judicial review there was a change in attitude and tone from this Magistrate. We are all human. We are all very human,

and I could understand. There was no intent, of course, for personal liability and that sort of thing, but really a way to vindicate what we considered a wrong.

Some years after, this Magistrate moved to another jurisdiction, and a relative of mine—he had a business that included a bar, and he had died. His grandson wished to have the liquor licence transferred into his name, what we would have considered a very easy, simple, non-complicated issue. Every time that matter came before that Magistrate—and he carried my surname—there would be a request for something new. If it was not Town and Country plans, some amendment, some fire issue, and it went on for two years, the effect of which was that the business was killed. Now, I cannot say if there was malice. I cannot prove it. But I know what I feel. If there was an action to be brought, what could you say? The Magistrate was acting within jurisdiction for asking for these things. And this thing about jurisdiction means authority and power. That is simply what it is. But you know, something has gone terribly wrong. How can you prove malice?

And I want to make another disclosure. I am very keen on this issue of indemnity, Attorney General. What is not known to the general public, in the middle of the year, 2015, with an election imminent, the good Prime Minister of the day, Kamla Persad-Bissessar, had appointed me to be the Minister of Justice, and under that purview were the prisons.

Hon. Member: And clause 34.

Mr. P. Ramadhar: Yes. And what happened as a big surprise and shock, that when I went into that Ministry we realized there was a need for immediate mitigation of some of the health and OSHA issues. We put together a committee. Nobody asked. We did this on our own volition in the Ministry; put the President of the Prison Officers' Association as a member of that committee to move

forward with urgency, to repair things that had not been done in terms of ventilation and other safety issues. A lot of work had already been done in terms of creating alternative prisons. You might recall the centre that was purchased as a decanting centre, first of all, and plans were well afoot for the building of new cell blocks within the prison.

But in the old prison there was an immediate need, so we decided to put this committee together, and the committee met on several occasions, and the one person who never really turned up, or helped, was the President of the Prison Officers' Association. But to my shock and dismay—Member for Laventille West, you know how it is—I got served that I am now charged with an OSHA breach. I was told that I could go to jail for this thing, the irony of which is, for the very prisons that we had control over, if I am found guilty.

We went to the Industrial Court. The matter was dismissed summarily because there was a breach in the process and procedure. I thought that was the end of it. Just around election day I am served again. They relayed the very, very charge. The matter came up before the Industrial Court, dismissed, only last December. I understand now there is an appeal. But this time the original players, I understand, who were myself, the Permanent Secretary and the Commissioner of Prisons. I understand I am now the only person—

Mr. Deyalsingh: Madam Speaker, Standing Order 48 (1), please.

Dr. Gopeesingh: He is attempting to show malice.

Madam Speaker: Member for St. Augustine, if you could quickly tie your story into, I think, what was your original premise, please.

Mr. P. Ramadhar: It is a most relevant of statements I am making— [*Desk thumping*]

Madam Speaker: Tie it in.

Mr. P. Ramadhar:—that officers of the State do need indemnity and protection. And I understand, probably, the sensitivity of my learned friend, because I was about to make the point that apparently the only person against whom they have appealed is me, the irony of which is, that not the—

Dr. Gopeesingh: Political.

Mr. P. Ramadhar: My friend from—the present Minister of National Security who now has the remit of the control of the prison, he was never sued, nor the former Minister. How many did we have? Four or five of them?

Hon. Member: About six.

Mr. P. Ramadhar: Whatever they were, not a single one of them had been sued, but I was singled out and I carry this burden still before the Court of Appeal. And I want to congratulate the lawyers from the Ministry of the Attorney General—junior lawyers but very capable lawyers—who have done yeoman service to that end to vindicate. Because it is not about Prakash Ramadhar. It is really about an officer of the State doing his duty and becoming vulnerable and possibly liable.

So I make that point to show you that there is a real need to crystallize who is protected in what form or fashion. I did nothing wrong, I could say here, but I am before the courts on that. The point, at the end of the day, if it is that we are afraid that Magistrates could fall into error and that you can possibly sue them and succeed because there is still judicial review and constitutional motions that are available, then who and what are we really protecting? [*Desk thumping*]

It is a simple matter with tremendous gravity for the Attorney General to move an amendment to the law that protects all of the State agents with, of course, some exceptions, and expand it—the State Liability and Proceedings Act, Attorney General. Why do we not go there? And say for whatever reason, if the Magistrate or any judicial officer or former Minister who is apparently still protected under

that Act, does anything outside of their jurisdiction or whatever, that the State becomes liable. So that you will avoid now the ignominy of a person having to sue. And I understand, Attorney General, nobody wants a Magistrate to become personally liable, and for several reasons, one of which is obvious, that they will be afraid. And as Lord Denning had put it, they should not, when they are administering their courts, be turning their pages with trembling fingers, afraid that their decision would lead to some action being taken against them, and therefore, they cannot live up to their Oath to do good and to do their duty without fear. Because they will act under fear.

So we are pushing at an open door in terms of protecting judicial officers in the exercise of their duty, but you are pushing the door in the wrong direction, because let me explain why, and it goes back now to who are Magistrates. First of all, let me just say I know Mr. Jagroo for a long time as a practitioner, first-rate human being, an excellent lawyer and a Magistrate with a demeanour that is really to be admired and replicated. And for whatever reasons he got into problems, it is because he thought he was doing the right thing.

And, Attorney General, I congratulate you if you have actually given indemnity. I am delighted to hear that. But I would like to ask you, in all this melee, and so, is there any number that you could point to us, or example, as to who, or how many Magistrates have actually had to pay personally? [*Desk thumping*] Because I really do not know if there are any. Because responsible Attorney Generals, generally, will give the indemnity. But it should not be left up to the decision of any one Attorney General. I agree with you. And if it is that we are to give judicial officers protection, like Judges and, as you have indicated, the Judges were given that protection because they were seen as the King's own, and that the Magistrates were differentiated because they are creatures of statute, but

there is another thing equally, that Judges have something called inherent jurisdiction. In other words, you cannot find their powers limited within any law book. They can give justice in any cause by their own conscience, what they think is right and therefore, they can go outside of what is expected or what is normal to give justice.

So it is a simple fix, Attorney General, to deal with that issue by expanding the State Liability and Proceedings Act. It is as simple as that. But what you have done, or are attempting to do here, is really restrict the rights of citizens to take action against officers who hold power over their lives. A Magistrate today, and a Judge, have tremendous power because they can determine the fate of your future, whether you go to jail or you go free. Now, to put a restriction on our citizens is a retrograde, undemocratic effort. [*Desk thumping*] Why is it we wish to protect the Judiciary without enhancing the ability of our citizens to be protected? [*Desk thumping*]

But I had cause to reflect upon it, and it is, in a way, part of the DNA of the party to which you belong. We got Independence many years ago but when we got Independence as a people, there was a belief now that we have our local leaders who will determine our destiny and they would look after the interest of all of our society. What we had then was an exchange from the colonialist to the neo-colonialist; a change of face and really—but no real change of the way we empower our people.

In fact, 1970 had to be a wakeup call to the democracy when men like Makandal Daaga had to force social change. But now, here we are in the year 2019, this Government, once again—and it is a long history replete with efforts to suppress our citizens—

Hon. Member: Push back rights.

Mr. P. Ramadhar: A push back of rights, and this is the most glaring of examples. And when I said that this law is simply deceiving, I mean, it because it gives the noble impression that we are to protect our judicial officers so that they could be fearless in the administration of their function.

Of course we want that, but the method by which you use to achieve it is creating more harm than the good that it will. [*Desk thumping*]

3.10 p.m.

Madam Speaker, there is before us a very simple decision, whether this side will support section 5 amendment more than anything else, because the malice that we have spoken about, where you now have to prove—and I was actually at the Privy Council two years ago where we were trying to change the law a bit from malice to recklessness to a point where you will infer the malice from the recklessness, and the Privy Council was not ready at that point in time to go that route. In malicious prosecutions it is easier to show by the actions of police officers that you can infer malice from it, but to infer malice, not just infer, but to prove malice, really, is putting up an almost insurmountable impediment to accessing the courts on these matters.

So I ask the Attorney General to reconsider because this is really a piecemeal approach, because as the Attorney General has indicated and we all know, there are many other functionaries now being brought into the judicial biosphere that would require protection. And to do this piecemeal bit, to deal only with Magistrates at this point in time when you could expand the State Liability and Proceedings Act, really would be not doing service when it is readily at hand to have a fixed answer to all of these problems. Let me give an example as to how a terrible injustice could be meted out, and we go back now equally to the appointment of Magistrates.

All you need, five years of practice. What our experience has been in this country is that there are young lawyers who, straight out of law school, apply to the DPP's Department and they do yeoman's service there, and the moment they reach that five-year mark it is their ambition—because of the workload and the terrible conditions some of them have to endure—to ascend to the Magistracy, and they apply there and many of them are chosen. I do not wish to go now into the low level of salaries that they may have received for those five years, but the moment they become Magistrates they become vulnerable unless we protect them. You may have a Magistrate making an error and a matter is proceeded with where damages and costs are awarded against the Magistrate, and an Attorney General takes a position that I am not going to indemnify you, that Magistrate may not even have the assets—home, car or whatever—to sell to be able to deal or to pay for the damages and to pay for the cost.

So on that point alone, an injustice could be had in relation to a citizen, because that Magistrate could have acted with pure malice, could have made the threats I referred to earlier and do the things awfully to injure that person's rights, and the Attorney General could readily say no—in the circumstances, I am not going to give you an indemnity, and then the citizen now has no recourse because the Magistrate himself or herself would not have the asset base to pay these things. So there is a real need, but please do not put it in the way you have because the real intent and purpose of this, if you want to take a different point of view, is that this has little to do with protecting the Magistrates, but it has everything to do with restricting rights. [*Desk thumping*]

So, Madam Speaker, I have heard the Attorney General, and a simple amendment either to the State Liability and Proceedings Act could deal with this, or as one of my colleagues would have made a suggestion in another place, that all

damages or costs can be apportioned to the State from the Consolidated Fund to be paid, which is not really much of a difference if it is that is the real mischief that we want to deal with.

So Madam Speaker, I am not going to detain you much longer, except to say that we have an easy fix; and the Attorney General put a very colourful thing into the population, a colourful statement two days ago, where he spoke about discussing water and whatever. All I will say here, if you want to put out the fire, he has come without a fire engine, he has come without water, he has not come with a proper solution. All he has come with is an empty hose to give the impression that they are dealing with something, when in fact the answer and the solution are readily at hand, and I am sure all of my colleagues will support a meaningful way that does not mitigate and take away some of the rights of our citizens.

So I thank you very much, Madam Speaker. [*Desk thumping*]

Mr. Ganga Singh (*Chaguanas West*): Thank you, Madam Speaker. I am a bit taken aback that no one rose to support the Attorney General on that side with respect to this matter. Madam Speaker, the Attorney General in promising simplification, clarification, and harmonizing parity, he ran up like Michael Holding, if I were to use a cricketing metaphor, but when you look at the content of the amendment, he really delivered like Uton Dowe. [*Desk thumping*] This issue really deals with the functioning of the Magistracy and it really deals with—and I will start with the oath for the Magistrate and then move on to link that with the issue of the independence of the Judiciary, and I will demonstrate that in order to protect the independence of the Judiciary this amendment does not go far in accordance with the Constitution of this country. [*Desk thumping*] I am very familiar with the authorities indicated by the hon. Attorney General, Madam

Speaker, and I will go into them in some bit.

Madam Speaker, the Magistrate, in taking an oath and upon his appointment by the Judicial and Legal Service Commission—and the hon. Attorney General indicated the qualifications for appointment—takes this Oath:

“I,”—having been appointed a Magistrate—“do swear (solemnly affirm) that I will bear true faith and allegiance to Trinidad and Tobago and will uphold the Constitution and the law, and that I will conscientiously, impartially and to the best of my knowledge, judgment and ability discharge the functions of my office and do right to all manner of people after the laws and usages of Trinidad and Tobago without fear or favour, affection or ill-will.”

So the Magistrate by taking this Oath promises to be an impartial arbiter, an independent impartial arbiter, and a protector of the rights of the people.

So this issue—and when you look at the legislation, Madam Speaker, and you look at what the extent of the work that is required of a Magistrate, you understand that the Magistrate—in fact, when you look at the Improving Court Services Through Process Reform: Annual Report of the Judiciary 2017-2018, they point to over 165,154 matters filed in the period 2017/2018, and it goes on to give you an extent and a breakdown of the matters. The hon. Attorney General also indicated that there are grave matters now before the Magistracy, anti-terrorism laws, you have the proceeds of crime, you have the copyright, the data protection, and a series of heavy legislation before the Magistrate.

So, Madam Speaker, tremendous workload. The Magistracy is really the marketplace for justice in this country [*Desk thumping*] and when you see the dispensation of that justice and the extent of the workload of each Magistrate, I think it is in the—in the other place, the hon. Attorney General indicated that capital offences, 168; domestic violence, 8,332; petty civil, 1,350; private summary

matters, 8,242; ejectment, 772; inquest, 797; non-capital offences, 28,186; family matters, 14,535; traffic, of course, 102,875, and then he went on, as the report indicated, the disposition rates and so on. So in today's world the Magistrate is really the workhorse in the Judiciary—is the workhorse—and when you go into your constituency and you have to deal with matters, you really see the dispensation of justice to the poor and downtrodden in our society.

So when you have that kind of appreciation of the workload of the Magistrate, Madam Speaker, I cannot understand why the Attorney General, as he indicated, after 102 years, is seeking to bring an amendment to this legislation, sought to “chinks”. This is not a time for “chinksing” after a century. [*Desk thumping*] This is a time for opening up your bat and hitting the ball to the boundary. So what is required, Madam Speaker, that the Attorney General, as he quoted the various cases, should have seen that there ought to be no distinction whatsoever between the immunity provided to the superior courts of record and the Magistracy in Trinidad and Tobago. [*Desk thumping*]

So the relevant issue for us in this Parliament today is: How do you reconcile the personal liability of the Magistrates for actions done in their judicial capacity, with the core democratic concept of judicial independence and judicial accountability. So you have personal liability for a Magistrate, personally liable in the exercise of his function, and how do you reconcile that with the concept of judicial independence?—freedom from influence. The Attorney General, by his own words, indicated that he gave an indemnity to Magistrate Jagroo and that is because the Magistrate—both the High Court and the Court of Appeal found him guilty of exceeding his jurisdiction, notwithstanding that he felt there was no malice that he could not have gone out there and found a location for the young lady, 17-year-old, because the law under section 45 of the Children Act at that time

only provided for 14 and 15-year-olds; apparently 14 and 15-year-olds.

So that, therefore, it must not be left to the discretion of an Attorney General to cherry-pick and determine which Magistrates he assists. [*Desk thumping*] Never! I want to really congratulate the Attorney General for doing the right thing because in the absence of malice there is a presumption of regularity in the acts of public officials, and I want to really congratulate the Attorney General for taking that kind of decision, but I think that we need to go further. We need to go further because we have to understand that you cannot as a matter of course engage the Magistracy, give them that workload to function and not provide them with the necessary cover of indemnity.

Madam Speaker, when you look at the Latimer House Principles which is a publication of the—“A Guide for the Magistrates and Commonwealth: Fundamental Principles and Recommended Practices”, when you look at the Latimer Principles this is what they have to say at item 1.2:

“Aspects of Judicial Independence Enshrined in the Latimer House Principles and Guidelines.

The Latimer House Principles and Guidelines support two fundamental principles: the rule of the law and judicial independence.

Although a difficult notion to define, the ‘rule of law’ is seen as the ‘antithesis of the exercise of arbitrary power’ and entails ‘the equal subjection of all classes to the ordinary law of the land administered by the ordinary courts’. The twin notions of non-arbitrariness and equality before the law have a direct relationship with the concept of judicial independence:

If the governed and the governors are to stand equally before the law it is imperative that the judiciary should be impartial and have the appearance of impartiality.

As an impartial judiciary is not possible without a truly independent judiciary, judicial independence is fundamental to the effective operation of the rule of law.”

So, Madam Speaker, you have that reality, but yet at the same time in the exercise of its functions the Magistrate is exposed for personal liability in certain matters. So our argument today is that all the authorities, authorities quoted by the hon. Attorney General, *Sirros v Moore*, and before that he quoted Jagroo, and Lord Templeman in Jagroo quoted by Justice Rajendra Narine in that matter, pointing for the role of the legislature to correct this anomaly. Because what currently happens is that notwithstanding the fact that the Magistracy is part of the Judiciary, you have a dichotomy.

In fact, I will go so far as to say you have a caste system in which the Magistrate is at the lower end of the caste, and the High Court Judges, Judges of superior record are at the higher end of the caste system, and in order to—
[*Interruption*] You do not know—no, no, no, no. [*Interruption*] Madam Speaker, I am speaking to you. So you have a caste system, and when you look at how this emerged we are looking at a colonial system—101 years ago, Marxism. Marxism has not yet arrived in which workers of the world unite; you have nothing to lose but your chains. You did not have that egalitarian, universal principle, egalitarian principle and universalism, so therefore you had a class component. That is why the English—we inherited this from the English and the AG was right. The hon. Attorney General was right, 1848 law came down here in 1917. 1848 was the year of the revolutions in Europe.

So that in this context—and I want to say that the variation between a superior court of record has been justified by the jurisdiction of these courts. A superior court, jurisdiction is not limited by either person, place or subject matter.

I think my colleague, the Member for St. Augustine, pointed out of the inherent jurisdiction of the High Court and it is a superior court of record. Madam Speaker, it is said that this jurisdictional issue between the inferior court and the superior court, it is unconvincing, and it was rejected by the Court of Appeal and quoted by the hon. Attorney General in *Sirros v Moore*. The 1975 1 Queen's Bench at page 132, and he already indicated that and I want to requote because I want to use it in a different context, Lord Denning:

“Every judge of the courts of this land - from the highest to the lowest - should be protected to the same degree, and liable to the same degree. If the reason underlying this immunity is to ensure ‘that they may be free in thought and independent in judgment’ it applies to every judge, whatever his rank. Each should be able to do his work in complete independence free from fear. He should not have to turn the pages of his books with trembling fingers, asking him himself: ‘If I do this, shall I be liable in damages?’ So long as he does his work in the honest belief that it is within his jurisdiction, then he is not liable to an action.”

And then they go on to Lord Bridge, Madam Speaker:

“...suggested that the distinction between senior and inferior courts in respect of judicial immunity was ‘so deeply rooted in our law that it cannot be eradicated by the Court of Appeal and probably not by your Lordships’ House’ since ‘so fundamental a change would...require appropriate legislation.’”

This is why with Jagroo—Jagroo was the trigger, that is why we are here today. That was the trigger, but there is a larger catalyst taking place outside this environment.

In New Zealand, they accepted this common law position. Canada did not

accept it. New Zealand accepted this position. But when the hon. Attorney General, creating through the criminal division legislation, creating all the various offices, are you going to now still have this dichotomous immunity system in place and continuing the caste system away from our colonial masters that we inherited?

So you have that situation taking place, and when you look at that you recognize that now there ought not to be any distinction. There is what is happening in Trinidad today at level of the Magistracy, it is called the “Jagroo effect”. Some good, some not so good. I am told, I am advised, that a lot of the Magistrates are now looking twice before they engage in meting out justice and that is a good thing that they are able to look twice, but the question is that looking twice now, there is an element of fear emerging. An element of fear has emerged and that is the “Jagroo effect”, that the Magistrates are now fearing that they may personally become liable in matters if they exceed their jurisdiction.

So, Madam Speaker, in a Jamaican case, High Court, Claim No. 2013 HCV 05366, Brenton Henry the claimant, Her Hon. Mrs. D. Gallimore-Rose first defendant, the Attorney General of Jamaica second defendant. The authorities quoted by the hon. Attorney General, Maharaj No. 2, you have the other matters. What you have there, Madam Speaker, is that right next door in Jamaica you have had a change in the law, that there is no distinction now between the Magistrate and the court of superior record. So *McC v Mullan*, and I want to quote from page 13 of this judgment, paragraph 40.

“It is to be noted that Parliament has now placed this issue of personal liability of Resident Magistrates (now Judges of the Parish...)...”

Now, when you look at our Criminal Division matter, Madam Speaker, we have a similar kind of nomenclature change taking place. So that what you had previously, you have now under the Bill which will be soon be proclaimed, I think

it is 31st March, the Criminal Division and District Criminal and Traffic Courts Act,

“‘District Court Judge’ means a Magistrate referred to in section 13;”

So you have a district court Judge, what they have done in in Jamaican setting, they have now Judges of the Parish Court and I quote:

“It is to be noted that Parliament has now placed this issue of personal liability of Resident Magistrates (now Judges of the Parish Court) beyond dispute since the passage of the Judicature (Resident Magistrates) (Amendment and Change of Name) Act, 2016 which came into operation on the 24th of February 2016. Section 7A of the principal Act provides—

...Judges of the Parish Court shall enjoy the same immunity from liability as Judges of the Supreme Court.”

If Jamaica could do it, “who is we”? “Who is we?” And now that you are triggering the Criminal Division and you are creating district court Judges, why do you not go—I am tempted to say, the whole hog, but I want to say, Madam Speaker, why do you not in fulsome protection of district Judges in this country, meaning Magistrates, Madam Speaker.

So I think that you cannot allow this dichotomy to continue, and you are engaged in a system—and I try to fathom why the hon. Attorney General embarked on this enterprise of “chinksing”. You know, Lloyd Best used it in a different political context. I want to make reference to the *Hansard* of the Senate at page 129 of the 11th of the 12th, 2018, and this is what the hon. Attorney General had to say:

“...my problem with introducing the indemnity provision, that the new clause 4 suggests”—this is a provision which was introduced by Sen. Wade Mark—“is that we do not yet have an opportunity to do the consultation

with...other stakeholders that really ought to be caught in this basket.

So I think it is a noble suggestion. I think it really ought to be something that is applied across the board, but then again one has to balance the question is there a mischief to be had and just saying, 'Go ahead and do whatever you do because I will pick up your tab'. Because the complete indemnification and exculpation of even a judicial officer is to allow them to do anything they want regardless because the taxpayers pick up the burden. Right now, there is in the balancing act, the need for some sort of sword if you have acted maliciously, without good faith...whatever you want to call it. So one could argue on the other side of the coin in legislation, and being judicious in the approach, that perhaps you really ought to have a circumstance where civil liability does attract in some form or fashion.”

Now, how do you reconcile this statement of the hon. Attorney General with the independence of the Judiciary? How do you reconcile that? Because the executive is retaining a sword. How do you reconcile that? [*Desk thumping*] Madam Speaker, in my understanding of a liberal democracy and the context of the separation of powers, you cannot sustain a sword in the hands of the Executive against the independent impartial Judiciary of this country. [*Desk thumping*]

So, Madam Speaker, you know, in order for us to get an appreciation of where we have come from, to understand our 1962 Independence Constitution, our Republican Constitution, and the evolution of our society, we must recognize that preservation of the rule of law is critically important, but more so we must also recognize that there is an evolutionary process in governance.

3.40 p.m.

And I thought I would bring to the attention of this House, Madam Speaker, a lecture given by Justice Adrian Dudley Saunders entitled: “The Role of the Court

of Appeal in Developing and Preserving an Independent and Just Society”—a lecture given at the Trinidad and Tobago Judicial Education Institute in 2012 and I want to quote from page 24, a brief quote:

“Each generation of judges must examine and re-examine those printed words to ensure that their interpretation is in sync with evolving standards of humanity and with internationally accepted norms. Law must be certain and predictable but it must also be just and evolve with the times. It is the ongoing role of courts to resolve this delicate tension.

The independence of the judges is constitutionally protected and their fidelity to the law and the constitution is not compromised by any need to please a particular constituency as their tenure...Judges must be sober, cautious, deliberate, but they must also be self-confident, courageous, strong, willing to go where no judge has gone before if after mature consideration that is the path one thinks right.”

Madam Speaker, I want to commend the reading of this to the hon. Attorney General if he has not done so before because the path we have to take, after 101 years of this legislation lying fallow and given the evolution and the environment, as my colleague from St. Augustine said, the biosphere that we now inherit in the legal environment in Trinidad and Tobago, I think we need to provide immunity to Magistrates equivalent to that of Judges in this country. [*Desk thumping*]

Madam Speaker, you know, in the protection of a democracy and the importance of the independence of the Judiciary, it is not the protection of the Magistrate we are looking at, you know, Madam Speaker, we are looking at the protection of the public [*Desk thumping*] because if the Magistrate is protected, then law can be dispensed with judicially, impartially, fair and the rights of the citizen can be asserted. That is the connection. The independence and the

protection are the means to an end, not the end in itself.

So with these few words, I call upon the Attorney General to take the approach of the Jamaican Act. The Jamaican Act is entitled: An Act to amend and Rename the Judicature (Resident Magistrates) Act and it is in that Act, you have various nomenclature changes.

“‘Resident Magistrate’ and substituting therefor in each case the word ‘Judge of the Parish Court’;”

So the Magistrate becomes a Judge as is happening in the Criminal Division.

“‘Magistrate’...therefor in each case the word ‘Judge of the Parish Court’;

“‘Resident Magistrate’s Court’...substituting therefor in each case the words ‘Parish Court’;”

And so on, Madam Speaker. And section 7A, you have in 2016 in a Caricom country, in a country that shares the same Commonwealth history, that shares the same common law history and shares the same jurisprudence, they are saying to their people that:

“Judges of the Parish Courts shall enjoy the same immunity from liability as Judges of the Supreme Court.”

[*Desk thumping*] This is what we recommend on this side and this is what will allow our democracy to grow and not be stifled and the Magistrates will not have a sword hanging over their heads or whomsoever that person might be, an Attorney General who will cherry-pick as to who he provides indemnity to and who he provides indemnity against.

So I think, Madam Speaker, that we are in today, the Legislature. You have had the Court of Appeal of England, you have the Privy Council, you have the Court of Appeal of Trinidad and Tobago, the High Court Judges, all over the Commonwealth saying that you need to have that harmonization of immunity

between courts, so-called courts of inferior status and courts of superior record together that the personnel must be protected so that the justice that will be meted out will be for the benefit of the people of the country. No more caste, no more class differentiation. Let us have an egalitarian approach to the provision of justice in Trinidad and Tobago.

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

Mrs. Vidia Gayadeen-Gopeesingh (*Oropouche West*): Thank you, Madam Speaker, for recognizing me as I join in this debate a Bill entitled “An Act to amend the Magistrates Protection Act, 2018, Chap. 6:03”. Madam Speaker, before proceeding with the substantive issues in this Bill, which is a very few amendments, I would like to congratulate the Member for St. Augustine and the Member for Chaguanas West [*Desk thumping*] who were not only brilliant but they demonstrated, I would say, a collective flair of perspicacity in their contribution. [*Desk thumping and crosstalk*]

Madam Speaker, we are here to deal with this Bill that deals with the protection of Magistrates and one has to ask the obvious question: Who are Magistrates? What do Magistrates do that warrants them this protection and why should they be protected? Madam Speaker, we all know that Magistrates are creatures of statute, meaning they act with limited jurisdiction and they have to act *intra vires*. Madam Speaker, this Magistrates Protection Act is about 102 years old, Act No. 34 of 1917 amended by Act 45 of 1979. And if the hon. Attorney General is bringing legislation to protect one arm of the Judiciary, I am asking him: Why are you doing it piecemeal? You have an opportunity to bring something solid to the Parliament.

You would recall, Madam Speaker, when we had done the Criminal Division and District Criminal and Traffic Courts Bill in 2018, it was debated on

the 13th of April, 2018, for the removal of the preliminary enquiries, we would have Masters dealing with sufficiency hearings and Masters too will have to be dealing with applications from other attorneys and they too can make errors. Are we going to bring a separate piece of legislation to protect Masters? We know Court of Appeal Judges, we know High Court Judges, they all derive their protection from common law *Sirros v Moore* case and Lord Denning said in *Sirros v Moore*:

“...no action is maintainable against a judge for anything said or done by him in the exercise of a jurisdiction which belongs to him.”

So I am asking also the hon. Attorney General: What about Industrial Court Judges? What are we doing with these Judges? Members of the Tax Appeal Board and we have also commissions: The Equal Opportunity Commission; we have the Judicial and Legal Service Commission. What are we doing to deal with all these different judicial arms? So why do we not bring amendments that are all encompassing to these judicial officers? Why do we not expand the State Liability and Proceedings Act so the State will take up this burden? That is a question I ask the Attorney General and he may want to respond to that later.

But according to the Commonwealth Magistrates’ and Judges’ Association Constitution, a Magistrate is defined as:

“any judge of a Court not being a Court of unlimited jurisdiction in civil or criminal matters”.

In fact, Madam Speaker, Magistrates play a very integral part in the justice system. They are deemed the foot soldiers of the Judiciary. But, Madam Speaker, they do much more because if we look at the Magistracy, we see that it is comprised of 12 magisterial districts as per the Summary Courts Act. We see that Magistrate districts operate with a distribution of 18 Magistrates’ Courts and there are 46

members of the Magistrates' Courts. There is one Chief Magistrate, one Deputy Chief Magistrate, eight seniors and 36 Magistrates.

So what we have is that Magistrates, they perform a range of functions. They deal with matters from capital offences right down to traffic offences, and when we look at the Annual Report of the Judiciary for 2017/2018, we saw over 165,000 cases were filed, and when we look at traffic offences alone, Madam Speaker, there are over 102,000 cases in the traffic offences. We saw family matters close to 15,000 matters; non-capital offences, over 28,000; and when we look at private summary matters, over 8,000. In fact, Madam Speaker, they even do petty civil—

Mrs. Robinson-Regis: Madam Speaker, may I invite you to look at Standing Order 55(1)(b) please?

Madam Speaker: Please continue, Member for Oropouche West.

Mrs. V. Gayadeen-Gopeesingh: Thank you. So, Madam Speaker, what you will have is that Magistrates would have done approximately 10,000 cases per year. So there is actually, Madam Speaker, if Magistrates are performing so many matters, the probability for them to make mistakes increases. So there is that lacuna in the law that Magistrates can be personally held liable for acting outside their jurisdiction. In other words, Magistrates must act *intra vires* and within the law, and I will deal with section 5 when we look at malice and when we look at reasonable and probable cause that has to be proven.

Madam Speaker, if we have to have Magistrates performing their job efficiently, they must be provided the resources to do it. They must be trained. And this takes me to a point from an article from the *Morning Herald*, the 22nd of November, 2018, as recent as three months ago, where in New South Wales where a Magistrate succumbed to the stresses and anxieties of the field. It meant that so

many applications were coming before her that she succumbed, she got depressed. She said that there was a “crushing workload”. Some days she had to 45 seconds to deal with each charge and it severely impacted her mental health. She continues:

“I simply could not get through the lists without making mistakes.”

“I was aware that I was extremely stressed and very anxious...”

So, Madam Speaker, it is similar to us in Trinidad. We have many Magistrates that have to be running from, take for example, Madinah Court in San Fernando. They have to be moving from the Magistrates’ Court to the Supreme Court, the High Court, and they are working like a junior sec system. I know the hon. Attorney General on the last time took umbrage to it when the Member for Oropouche East spoke about it, but that is the reality because the Judge has to get up, the usher has to move out his books to make room for a Magistrate to move in to deal with the Second and Fourth Court and the Fifth and Sixth Courts. So they are working under stressful situations and they are not being provided with the necessary resources.

In India, another Commonwealth country:

“...in *Anwar Hussain vs. Ajay Kumar Mukherji*...AIR 1965 SC 1651 held that the order of arrest and detention of the plaintiff was not made in bonafide belief in exercise of jurisdiction.”

The Magistrate:

“...was found to have...acted recklessly and maliciously...”

And the court awarded damages where the Magistrate was personally liable. I will give you a second example, Madam Speaker. South Africa, a Magistrate had to pay 115,000 rands of damages plus interest out of her own pocket to a convicted fraudster after she refused to hear her bail application because it was in a language

called Afrikaans. That is, the Magistrate herself had to be held personally liable and she had to pay damages. And of course, we all know about our own local case here, Indar Jagroo and Anisha Mason.

Madam Speaker, if Magistrates are to be protected and we want them to be protected, they have to be equally trained. They have to have that training because if they do not have the training, they are liable also to make mistakes. They may say things in open court which may be prejudicial to a defendant and an action, a suit, can be brought against them. So training is another issue and that takes me to the status of Magistrates in the Commonwealth's Report, February 2013 at page 11. This is what they had to say about training and the reality Magistrates face within the Commonwealth and I quote—

Madam Speaker: Member, I think now, if you are going to deal with training, I think you are really bordering on irrelevance. Okay? So that either you restructure your argument or you go to another point please, because we are not dealing here with training of Magistrates.

Mrs. V. Gayadeen-Gopeesingh: Thank you. So, Madam Speaker, let us look at section 5 and I believe my friend from Chaguanas West already spoke about the Latimer Principles and where we talk about the independence of the Judiciary, so I would not go there and I will look at section 5 which says— clause 4 of the Bill seeks to amend section 5 of the Magistrates Protection Act by shifting the burden of proof to the claimant to successfully bring an action. Essentially, the proposed amendment provides that once it is established that the Magistrate acted outside of his jurisdiction, the claimant must specifically plead and prove the existence of malice based on the actions of the Magistrate. And when we look at the case law of *Manzano v the Attorney General of Trinidad and Tobago* at paragraph 46, the case is CV. 2010 in 2754. What was malice? Malice means not only spite or ill

will but also an improper motive. It is also recited in *Gibbs v Rea* in 1998 AC at 768.

Madam Speaker, to succeed in an action for malicious prosecution, a claimant is required to prove the defendant instituted or carried on the proceedings maliciously, there was an absence of reasonable and probable cause for the proceedings, and the claimant has suffered. This principle has also been followed in *Lister v Perryman*, where they dealt with probable cause which consists of such facts and circumstances as would lead a reasonably prudent person in like circumstances to believe the plaintiff guilty.

So, Madam Speaker, those who are listening to this trying to figure out what does this mean? What does all this mean to the ordinary reasonable man? It simply means by having this clause here inserted, it means that the citizens' rights are eroded because of this provision. This is what it means because it will be very difficult for any litigant to sue a Magistrate based on malicious prosecution. Because what are the ingredients for malicious prosecution? It is very difficult to prove. There must be some sort of balance for the Magistrate and the litigant because a person's right must be intact and kept intact under the Constitution and not infringed upon by some hurried amendment.

In fact, Madam Speaker, every time a Judge makes an error, an error of judicial decision cannot be equated with malice. So how is it that a litigant can go and prove malice? It is one of the most difficult things to do. What would you say? Would you look at the demeanour of the Magistrate to say that was malice? Would you look and say, well, he said something during the trial to the aggrieved party and that is malice? Those things are so subjective, Madam Speaker, it is very difficult to prove and that might prevent a litigant from bringing an action of suit against the Magistrate and even if he were to bring that action, it is difficult to

prove because now the burden shifts to the claimant and he has to prove malice.

Madam Speaker, but when we talk about the concept of protection and immunity, we have to ask: Do they really deserve it? One school of thought said that Magistrates' protection should be equivalent to the protection afforded to the Judges. In an article dated 2016, a former judge of Gauhati High Court, in India, Sreedhar Rao said:

“Can Judges Get Blanket Protection?”

Can Magistrates get blanket protection? And he said:

“The need for judicial immunity was advocated by Justice Edward Coke in *Floyd and Barker* 77 English Report at 1305...for judges of the higher courts, for the reasons that in every litigation there would be one losing party and a winning party. The losing party is always likely to blame the...”—Magistrate or—“judge concerned and the controversy is bound to embarrass the...”—judicial officer. “Besides, such persistent onslaught on the decisions...”—on these judicial officers—“would shake the will and independence of the...” judicial arm.

So, Madam Speaker:

“In course of time...”

He said:

“protection of judicial immunity...”—must be—“extended to all...”—judicial officers.

When we look at the Criminal Division and traffic courts Bill in 2018 which was piloted here by the Attorney General, Madam Speaker, we saw that the Attorney General, from the Bill, and 2018 traffic division and traffic courts Bill, Magistrates are going to sit in a Criminal Division court as district Judges. So this perhaps is an anomaly because how is it that the same person sitting as a

Magistrate and adjudicating on matters and he makes a wrong decision can be sued, whilst you as the same person, Magistrate, sitting as a district court Judge in the same Magistrates' Court, you have blanket immunity? So this has to be reconciled.

And Madam Speaker, the Government believes that, or the Bill as has been brought here, that Magistrates should enjoy the same privileges as Judges of the High Court and Court of Appeal and now we have heard that these two amendments, Madam Speaker, when we look at really the two amendments to this Bill, they really do not give the Magistrate 100 per cent immunity. So you have again, a lacuna existing because you do not have 100 per cent immunity. It is just like what the hon. Attorney General said once, that there is no absolute right to privacy, so this means that the Magistrates themselves have what is called only qualified rights and privileges or immunity.

So, Madam Speaker, with those few words, what is important is that the Bill, section 5, we need to maintain the rights of citizens. We have to give them that liberty and their right in section 4 should not be infringed and they should still have that right intact so they can bring an action against the Magistrate in the event that they are aggrieved. And with those few words, Madam Speaker, I thank you.
[Desk thumping]

Madam Speaker: Member for Laventille West.

The Minister in the Ministry of the Attorney General and Legal Affairs (Hon. Fitzgerald Hinds): Thank you very much, Madam Speaker. Today, the discussion before us has largely to do with the Magistrates in our jurisdiction. Of course, as a former colony of the United Kingdom, we inherited, for what it was worth, some of the vestiges that we still manifest from our former colonial masters. But as a consequence of the leadership of the PNM and of course, in particular Dr.

Eric Williams and a number of intellectuals who he gathered around him, we forged a way beyond that and in some ways, we retained some of these elements and one of them is the establishment and the existence of the Magistracy.

Just for the benefit of the record, the Office of the Justice of the Peace, otherwise called Magistrate, can trace its origins back to the reign of Richard I, who appointed “keepers of the peace” to enforce the law. Justice of the Peace, as a title, came into existence during the reign as far back as 1361. Madam Speaker, in its originality, they had the power to restrain offenders, rioters and as it was then called, barrators, to pursue arrest and take and chastise them according to their trespass or offence. In other words, Madam Speaker, had the UNC been around in 1361, the Justices of the Peace would have dealt with every one of them. [*Desk thumping and crosstalk*]

It was in 1835 that the Municipal Corporations Act empowered boroughs—and we still have those today in Trinidad—to request the appointment of paid stipendiary Magistrates. At first, these Magistrates were not required to have any formal legal training but today, we have heard and it is a fact that Magistrates must now be an attorney-at-law of at least five years standing, so we know that. And of course, I was just reading from a document that came out of that jurisdiction, the first female Magistrate in England was appointed in 1919 and of course, the majority of Magistrates in England today, laypeople as they for the most part are, untrained in law but bringing a common and local feel to the jurisdiction, they are female as indeed is the case here today.

The Magistrates in Trinidad and Tobago today, Madam Speaker, have, as the Member for Chaguanas West correctly pointed out, if it is the only correct thing he shared with us today, a very significant caseload. And for that reason, while we speak glibly and loosely in some cases of them, they deserve our highest

commendation as a people of Trinidad and Tobago, and I would like to join in commending them and thanking them for the work that they have carried on for the benefit of this country. Many thousands of cases, traffic matters, petty civil matters, preliminary enquiry matters into serious crimes, including the capital offence and of course, petty civil as I said. I think they have a jurisdiction of up to \$15,000 or \$18,000, you can resolve your matter in the Magistrates' Court. So they do serve this country and serve quite well.

But, of course, even today in 2019, they are treated differently as has been established in the course of this debate today and there is an argument that they ought not to be treated that way, and many jurisdictions have moved away from treating them as a second-rate bunch and in the particular case that is before us today, not providing them with the indemnity and the protection against personal suit and against personal liability when they act in accordance with their functions as Magistrates.

That's essentially is the issue before us here today, and a lot has been said so far about it.

4.10 p.m.

We have heard the word "jurisdiction" used over and over again, and some citizens may think that jurisdiction speaks about a country, or a territory simply or simpliciter. That, of course, is not so. The word "jurisdiction" is a highly complex term, and it has exercised the minds of courts in England and around the world on many occasions. I recall just very briefly—

Mr. Charles: Standing Order 48(1). Every point the Member for Laventille West has made, I have heard it at least five occasions. Thank you. [*Crosstalk*] Five occasions—relevant.

Madam Speaker: Please continue.

Hon. Member: Take a sip. Take a sip.

Hon. F. Hinds: Might I proceed, Madam Speaker? [*Crosstalk*] Madam Speaker, one of the major cases that I recall dealing with this business of jurisdiction, is the case of *Anisminic Limited v Foreign Compensation Commission* in the UK.

Mr. Singh: Old case, boy.

Hon. F. Hinds: Yes, a very old one, but it was very decisive in deciding about this business of jurisdiction. And according to the now common understanding, Madam Speaker, jurisdiction, though it has very many meanings, in the context of that which we speak in this, means the power and authority, constitutionally conferred upon, a court or judge, to pronounce a sentence of the law, or to award the remedies provided by the law, upon a state of facts proved, or admitted, referred to the tribunal for decision and authorized by law to be the subject of investigation or action, that that tribunal, and in favour or against persons who present themselves or who are brought before the court in some manner sanctioned by law as proper or sufficient.

That is the given definition of it, and there are a number of cases which grappled with this question of jurisdiction, and I think it was important for us to at least, for those members of the public who listen to us to understand what we mean. It is the power of the court, under law, to act and to make decisions. So, when we talk about within jurisdiction and without jurisdiction and ultra vires, we are talking about the court or tribunal acting within the power that is accorded to it under law, and if it acts outside of jurisdiction, or outside of the law then, of course, that has its own implications.

The problem for us today, which the Attorney General and the Government is attempting to resolve, is that while these Magistrates are serving the public in the way we describe, making very important decisions, deciding in some cases on

items of property, on people's liberty, on all kinds of issues, they do not, Madam Speaker, enjoy the indemnity and protection that Judges of the jurisdiction enjoy, and therefore they are at risk. And we heard ad nauseam about the Jagroo case and the so called "Jagroo effect", by my friend, the Member for Chaguanas, who argued against this Bill, in essence, and who argued for it going and coming. He was within and without jurisdiction whole day. He was not sure, and it is one of the reasons why I tried to clarify that issue. But, Madam Speaker, he argued all sides of his face—if I may use a metaphor—but the current arrangement—

Mr. Charles: Madam Speaker, 48(5), "he referred" and "he referred".

Madam Speaker: I think sometimes it is difficult in one sentence, to repeat the "hon. Member". All right, so I say that as an overall warning, but also Member for Laventille West, please be guided in terms of referring to your colleagues that you do use hon. Member or Member for whatever.

Hon. F. Hinds: I thank you very much. I thank you again, Madam Speaker. But, Madam Speaker, as it now stands, the understanding is, as the Magistrate decides on the facts and on the law, and on the combination of the facts and the law, as the Magistrate must often do, to come to important decisions affecting, as I say, liberty and property in this jurisdiction. The understanding is, that he or she could be held personally liable and be subject to suit if they act within their jurisdiction—if they act sorry, without their jurisdiction, or even within if they act with malice, or bad faith or ill will.

The Member for St. Augustine had difficulty—and the Member for Oropouche West—with this question, this old and time worn issue of malice. The law books, the cases are replete with use of that concept and the courts of this country, the Commonwealth and the world would have exercised themselves over the use of the term, and an understanding of the term "malice" so many times it is

documented and written. I cannot see what problem they would have, I heard both Members, for St. Augustine and the Member for Oropouche West tell us here today that it is the most difficult thing to prove, right here.

The Member for Diego Martin West had a matter against the Integrity Commission of this country, where he had to go to clear his name in the court and Madam Justice Rajnauth-Lee, as she then was I seem to recall, found that that entire Integrity Commission acted with malice, or what she called on that occasion, misfeasance, malfeasance this is well known to us. So, I cannot see what is troubling my friends so patently on the other side. The Member—

Mrs. Gayadeen-Gopeesingh: Ingredients.

Hon. F. Hinds:—the ingredients. And they are in the habit of acting in a concerned way. You see, it—you look on the record. Madam Speaker—

Madam Speaker: Member for Laventille West, there is a certain innuendo in what you have just said there that borders on a breach of the Standing Orders, so I will ask you to say that in a different way.

Hon. F. Hinds: I thank you very much, Madam Speaker. Let me withdraw it, let me withdraw that.

Madam Speaker, the Member for Chaguanas West told us that the amendments that we propose here today, two simple amendments to section 4 and section 5 of the Magistrates Protection Act, they do not go far enough. I listened carefully to the Member to find out how far we should have gone. But, of course, I am obliged to remind him and his colleagues on the other side that they were in Government for six years between 1995 and 2001, the Member for Siparia was Attorney General during that period, but for a brief while. They did nothing about the status of affairs with the Magistrates.

They were in Government from 2010 to 2015 in the month of September,

five years and three months—

Mrs. Gayadeen-Gopeesingh: Madam Speaker, Standing Order 48(1), please.

Hon. Member: He is talking about the Magistrates.

Madam Speaker: Please continue.

Hon. F. Hinds:—they did nothing about the very Act. Today, the Attorney General, on behalf of the Government and the people of this country, recognizing that there is a serious issue which arose most poignantly in the matter with Magistrate Jagroo—

Mr. Singh: First time it came up.

Hon. F. Hinds: And then they criticize and tell us it does go far enough. The Member for Chaguanas West accused the Attorney General of “chinksing” and said to us “Now is no time to ‘chinks’, now is no time to play on the defensive; you should be firing the all around the field; open up and hit the ball”, while they are waiting on the boundary to catch and run away with the ball, you know, and grab the stumps, you know, and take the bat too. If I may use his metaphor.

Hon. Member: Take something and run.

Hon. F. Hinds: And that is one of the reasons why people are afraid the ball with them. They will take it. [*Desk thumping and laughter*]

Madam Speaker, he accuses the Attorney General of cherry-picking. He reminded me immediately of the Member for Princes Town, once he said that. But I will tell you why later. [*Interruption*] No, I cannot tell you now, there is no cherry there to—no I will talk about that when I am ready. I will talk about that when I am ready. [*Crosstalk*] But, Madam—[*Interruption*]—I will tell you that when I am ready, Member for Siparia. I know you are curious to hear now, but I will deal with that. But he accused the Attorney General of cherry-picking. In other words—

Madam Speaker: The hon. Member.

Hon. F. Hinds:—yes, the hon. Member did that. In other words, what the Member for Chaguanas West was saying to the national community on this floor, is that the Attorney General was making these amendments, passing law to deal with one case, one Magistrate—

Mr. Singh: No, I never say that.

Hon. F. Hinds:—I overheard the Member for Siparia—[*Crosstalk*]—I overheard the Member for Siparia saying “imagine they making the law for one person”. I heard the Member for Siparia—if I am not speaking the truth, she is free to get up and deny it. [*Crosstalk*]

Madam Speaker: Please, desist from the crosstalk. Member for Laventille West, please direct your contribution this way.

Hon. F. Hinds: Thank you. So that what I understood the Member for Chaguanas West to be talking about cherry-picking. I simply want to say to him, the Member for Siparia, and my friends on the other side, this is not about ad hominem law, this is not about one person; this is a principle. This is a principle. [*Desk thumping*] And that is where we come from, principle. Madam Speaker, that is where we come from.

And, Madam Speaker, he identified correctly this dichotomy between the Magistrates and Judges, and he went as far as to call it a caste system. I just wanted to point out to him one minute difference. We have many examples of Magistrates making their way to become Judges in this jurisdiction. That is hardly possible in the caste system. His metaphor is inappropriate.

Hon. Member: Great point, move on.

Madam Speaker: Inappropriate. So, Madam Speaker, let us look at the parent Act, the Magistrates Protection Act, Chap. 6:03, and it tells us that this is an Act, the existing law is an Act that is designed to protect Magistrates and Justices from

vexatious actions done by them in the execution of their office. [*Crosstalk*] I just want to mention in passing while the amendment today is to accord legal protection or protection from legal action and personal suit and liability, Magistrates in this jurisdiction as well as many others are also the subject of physical threats. The law books are replete with those, and on this basis only in passing, some Judges enjoy all high levels of security. I think we are at the point, if I may say so in passing, that Magistrates should enjoy this too. But that is not what we are here for today.

I recall three Magistrates coming to see me in an earlier time to discuss the simple business of maybe diplomatic passports and them being accorded—

Madam Speaker: Hon. Member, you know, your last comment showed that you were trying to regulate yourself in accordance with the Standing Orders—

Hon. F. Hinds: Yes.

Madam Speaker: And I suggest you continue that way—

Hon. F. Hinds: Indeed.

Madam Speaker:—with respect to this point you are going to embark upon. Okay.

Hon. F. Hinds: Indeed. Thank you, Madam Speaker, indeed. And, of course, in the parent Act section 3 tells us:

“Every action to be brought against any Magistrate for an act purporting to have been done by him in the execution of his office shall be brought in the High Court.”

The amendments that we propose here today are to effectively protect the Magistrate from such actions unless, of course, he or she is acting with malice, or mala fides, or with misfeasance, which is I take it the sword that the Member for Chaguanas spoke about.

He raised the question of this sword, and he took one simple line dicta from the Attorney General's potent presentation in the Senate and hung on to that to suggest that the Attorney General was saying he wants a "sword". The Government wants a sword over Judges and that is a serious threat to the independence of the Judiciary, and a threat to the democracy of this country. My God, how trifling.

Mr. Indarsingh: The Government is a threat.

Hon. F. Hinds: But, of course, it is quite clear in all of the law that we quoted for the entire day today that if the Magistrate is found to be acting with malice, mala fides, then naturally some sanction must apply. And if that is the sword he is talking about, it exists everywhere, and there are means for removing Judges from office if they are found to have acted in that and other ways.

Hon. Member: The Chief Justice as well.

Hon. F. Hinds:—and that and other ways. So I will come back to that particular amendment in a very short while, our particular amendments. As for the Member for St. Augustine, Madam Speaker, he accused the Attorney General and by extension the Government of being deceiving. And he suggested that rather than attempt as we are doing today to amend the Magistrates Protection Act, we should have done it a little more differently. We should have done it differently by expanding the remit of the State Liability and Proceedings Act. I want to say to the Member, and that Act—is to be—Chap. 8:02—where is my phone. Now, I just want to take a quick look, Madam Speaker, if you would permit me since the Member for St. Augustine raised it, at the said State Liability and Proceedings Act, which the Member suggested as their first speaker, we should have expanded its remit. That Act says, Madam Speaker, in section 3, under the rubric "Substantive Law":

“Where any person has a claim against the State after the commencement of this Act, and, if this Act had not been passed, the claim might have been enforced, subject to the grant of the fiat of the President, by petition of right, or might have been enforced by a proceeding provided by a statutory provision repealed by this Act...”

And it goes on. More poignantly, section 7 tells us. Yes:

“Where the State”—

Hon. Member: What is your point?

Hon. F. Hinds: I will tell you just now.

“Where the State is subject to any liability by virtue of this Part, the law relating to indemnity and contribution shall be enforceable by or against the State in respect of the liability...”

So it contemplates “liability” and it exempts some stakeholders from such liability which a private person can ordinarily have enforced or enjoyed, it is now attached to the State.

The Member for St. Augustine is suggesting that we could have expanded the remit of this Act and include the Magistrates in that much more easily than we have done today. But, of course, even if you try to expand it to include it in the definition of “servant”, the Magistrate will still be sued and have to deal with the consequences of that. So, I want to suggest to my friend that is not the most efficient way to do it. And we this Government, as a matter of policy, considered that an amendment to the Magistrates Protection Act would be the best way to deal with this. Now, the existing Act at section 4 tells us:

“The endorsement of the writ of summons in every such action shall allege either that the act was done maliciously and without reasonable and probable cause, or that it was done in a matter not within the jurisdiction of the

Magistrate...”

So that you will have to plead that it was not within the Magistrate’s jurisdiction. But very often the act complained of is done within the Magistrate’s jurisdiction and if you cannot prove that it was done outside, you have some difficulty. You have difficulty from the very start it goes on to say or otherwise the writ shall be set aside on summons. And if the plaintiff fails at the trial to prove the allegation a verdict shall be given for the defendant.

We are amending that provision today, Madam Speaker, and we are saying that that section 4 should be amended to read, it should be repealed altogether and the following subsection substituted. 4(1), the new subsection:

“No action shall be brought against a Magistrate for any act done by him in the execution of his office in relation to a matter within his jurisdiction.”

Now, of course, if he acts outside of his jurisdiction you can have a repeal against his decision. So the Member for Oropouche West wondered what would happen if he acted outside of his jurisdiction, and whether there will be no remedy. Of course, there will be a remedy there is an appeal against that decision but when he acted within his jurisdiction—[*Interruption*]—well there might be some but you can, you know, you have other ways you can treat with it. I am just responding for the Member for Oropouche West. And it says in subsection (2):

“Nothing in subsection (1), shall in any way impair the availability of other forms of relief in respect of decisions of courts of summary jurisdiction, including appeals, applications for judicial review, and...”

Madam Speaker: Member for Laventille West. Hon. Members, it is now 4.30. We will take the suspension. This House is now suspended. We shall resume at 5.00 p.m.

4.30 p.m.: *Sitting suspended.*

5.00 p.m.: *Sitting resumed.*

Madam Speaker: Member for Laventille West, you have 4 minutes and 25 seconds of original time left. Do you intend to exceed that?

Hon. F. Hinds: Yes, indeed, Madam Speaker.

Madam Speaker: Okay. So that I will grant you the extended 15 minutes.

Hon. F. Hinds: Thank you very much, Madam Speaker. Before we took the break, I was reading for the benefit of the citizens of the Republic, if not my friends in this Chamber, the amendment that we propose in clause 3 which is an amendment to section 4 of the existing Act and I had gotten to the point of subsection 4(2) new subsection 4(2) which should say—which says:

“Nothing in subsection (1) shall in any way impair the availability of other forms of relieve in respect of decisions of courts of summary jurisdiction”—just pause—“including”—of course, and most importantly Magistrates Court—“including appeals, applications for judicial review and applications for redress under section 15 of the... Constitution.”

Which we are all familiar with that person’s rights have been infringed in a manner that is not conducive to the observation of the democratic rights and freedoms in this law-abiding society as it is supposed to be.

We propose in clause 4 as well, Madam Speaker, an amendment to section 5 of the Act, and colleagues have that Act. But we are repealing subsection (1) altogether, a minor change to the side note, but we are Madam Speaker, in the main saying in the new 5(1):

“A person may maintain an action against a Magistrate for any act done in a matter not within his jurisdiction...”

So this contemplates that he acts outside of his jurisdiction where it is alleged. So, in addition to him or her acting outside of the jurisdiction, the allegation must be:

“...alleged and proved that the act was done maliciously and without reasonable and probable cause.”

So, there are those two elements that are necessary. So just to harken back very briefly before I close, the Member for Chaguanas West described that possibly as a sword that the Attorney General was holding over Judges in this country, and made a song and dance over it. If that is the sword, it is necessary in any tribunal, any Judge, any Magistrate who acts outside of jurisdiction and does so, and you can prove malice and misfeasance in their conduct, in which case you should have a sword, because that cannot be acceptable in a democratic society, constitutional democracy as indeed we are.

In conclusion, Madam Speaker, I want the citizens of the Republic to know that this issue of the unfair treatment that is possible for Magistrates, vis-à-vis Judges, in other words and put differently, the protection that Judges and the immunities that Judges enjoy, Magistrates do not now enjoy it, we now are moving to fix that. We respect the work of the Magistrate. We respect the load that they carry in this society, the importance of their work, and based on the Jagroo case and our general knowledge and experience, they deserve to be treated equally to Judges in this regard. [*Desk thumping*]

This, Madam Speaker, is not unique to Trinidad and Tobago. This has been achieved in many other jurisdictions, a long time passed. For example, in England and Wales, their Courts Act of 2003 at section 32 says, and I quote:

“An action lies against a justice of the peace in respect”—i.e. magistrate—
“of what he does or omits to do—

(a) in the purported execution of his duty as a justice of the peace...”

So in the course of his duty you still have an action but:

“(b) in relation to a matter not within his jurisdiction...”

So he must be seen to act outside of his jurisdiction:

“if, but only if, it is proved that he...acted in bad faith.”

So in this case in the Courts Act of 2003, section 32, out of England and Wales, they require to bring an action against a Magistrate, he must have acted outside of his jurisdiction, and in addition to that it must be proved, and you can only bring the action. So in other words, even if he or she acted outside of their jurisdiction, an action shall not lie against them. In addition to finding that they acted outside of jurisdiction, you must as well demonstrate—and this says, and I quote:

“if, but only if, it is proved that he or she acted in bad faith.”

So that is England.

In Bermuda the Magistrates Act of 1948, section 10A(1) says:

“...a magistrate shall be immune from personal civil liability in respect of his judicial acts whether within or without his jurisdiction...whether within or without his jurisdiction.”

I have already gone through the amendments—[*Interruption*]

Dr. Moonilal: “What he telling you is to wind up.”

Hon. F. Hinds: I have already gone through the amendments as we propose them, and I am suggesting, Madam Speaker, that we stand here in full support of the measures offered by the hon. Attorney General. And this will allow the Magistrates to operate as they are doing, but now without fear of being subjected to litigation, as are contained in the amendments proposed in this Bill.

I thank you, Madam Speaker.

[*Dr. Moonilal and Hon. Al-Rawi stand*]

Dr. Moonilal: I thank you, Madam Speaker.

Hon. Al-Rawi: Thank you, Madam Speaker.

Madam Speaker: Attorney General.

The Attorney General (Hon. Faris Al-Rawi): I sincerely thank all hon. Members for their kind contribution. [*Desk thumping*] I am very pleased to bring conclusion to this debate, Madam Speaker, but I know many of my colleagues have duties in other parts of the country. I know my colleague from Oropouche East has torn commitments that he would like to attend to as much as us all.

Madam Speaker, I would like to thank the hon. Members, in particular the hon. Member for Laventille West for practically winding up this debate. I think he traversed all of the issues by way of response. I would just simply like to say to the one issue that I think is left, apart from that which Laventille West mentioned, and that is the issue of why only this approach, why not take the approach further as per the recommendation of Chaguanas West, who I compliment on a well-researched debate. I think Chaguanas West brought a great deal of contribution to the floor today.

I would like to say the Government has taken note of, in particular, the New Zealand Law Commission in its fulmination relative to the extent of immunity, the personalities for immunity and whether they ought to be parity in immunity between the superior and inferior courts of record. [*Crosstalk*]

Madam Speaker: Hon. Members, the tea break is over, we are back in the Chamber. It seems some of us tend to forget the decorum that is required. Attorney General.

Hon. F. Al-Rawi: Thank you, Madam Speaker. In looking at the New Zealand Law Commission Report as well as the Commonwealth Magistrates and Judges Associations Report, which is entitled “The Status of Magistrates in the Commonwealth”, it is a CMJA report of February 2013. We note that many jurisdictions have been struggling with the issue of whether courts of inferior record ought to have the same management between the other distribution of

courts, that is courts of superior record.

It is true to say, Madam Speaker, that the limitations that are placed on the Magistrates Protection Act are going to be significantly removed by this legislation. I would like to say in very summary fashion that whilst I welcome the Members for St. Augustine and Chaguanas West in their contributions today, it is not true to say that Jagroo was the first case concerning magisterial indemnity. There were several other cases that had arisen, but which were not determined in the fashion that Jagroo was, [*Desk thumping*] and therefore the issue was well known.

5.10 p.m.

In particular, and I pay no blame to the hon. Members opposite now, I put this blame at the feet of the previous Attorney General, Mr. Ramlogan. He sat on this issue—2011, 2012, 2013, 2014 into the final days of his term, and I think he did his colleagues a disservice in not bringing forward the issue, which I am sure they would have agreed to treat with had it been centralized.

Mr. Hinds: Correct.

Hon. F. Al-Rawi: Madam Speaker, the Member for Chaguanas West, in his absence, I was paying tribute to his contribution and the extent of research, and to the very valid point that he had brought. I would just like to say that in looking at the New Zealand Law Commission Report, looking at the status of Magistrates in the Commonwealth Report, we have not decided at this opportunity to go further than we do, because we are in the middle of conducting research by way of a law reform exercise to all of the other courts.

We want to look at the Equal Opportunity Tribunal, we want to look at the commission, we want to look at the Industrial Court, we want to look—and it is not as simple as saying, well courts of superior record enjoy X. There is, in fact, a

degree of dissonance between the respective tribunals, particularly when we look to the quasi-judicial tribunals that we have now brought into law with the land tribunal and the adjudication systems, and that is really just the quite simple reason as to why we are bringing this. That becomes very relevant when we look at the Summary Courts Act, section 3A, where the qualification requirements for a Magistrate are barely at five years' practice at the Bar.

So there is a need for positions. Trinidad is very unique. We have the Maharaj phenomenon. The Privy Council's decision in Maharaj No. 2 allows for a section 14 of the Constitution approach for challenge to a presiding officer in circumstances that other jurisdictions do not recognize. And I want to point that out in the New Zealand Law Commission Report where they specifically ask themselves in their draft report, whether the view should be that a remedy against the Crown as exists in Trinidad and Tobago—and they quoted Maharaj No. 2, which was relied upon in their Court of Appeal in the Bagant case should apply there.

And as far away in the Commonwealth as New Zealand, a full exercise on limits of judicial immunity, state of mind, the significant good faith or bad faith malice or knowledge arguments, the subject matter of immunity, the area of jurisdiction, the indemnity provisions, they were studied in detail, and importantly, they rejected the Maharaj remedy as they called it in New Zealand. They found it *infra dig* in their Commonwealth context to allow a judicial officer to be brought to court to have his or her credibility tested under cross-examination and, therefore, Trinidad and Tobago stands very unique, not only in our 1976 Republican Constitution, with the degrees and levels of entrenchment which we have, but very much so in the Privy Council having upheld in Maharaj No. 2, as it had, that section 14 breach of fundamental rights provision which prevails quite uniquely in

our jurisdiction.

So, respectfully, to the Member for Chaguanas West, very good contribution, very good point, the rationale for not going as far as that just yet is that the work is being done by way of analysis. We give the undertaking to come back to the issue. I think this House can be well satisfied that I have given undertakings on the record on umpteen occasions, and on umpteen occasions, I have returned to the Parliament to keep that undertaking. [*Desk thumping*]

Madam Speaker, there is not much else to say. With respect to St. Augustine, the issues of malice have been well traversed as has reasonable cause, et cetera. The case law is replete with an understanding as to that, and I think the Member for Laventille/West has properly traversed that, and I beg to move. [*Desk thumping*]

Question put and agreed to.

Bill accordingly read a second time.

Bill committed to a committee of the whole House.

House in committee.

Clause 1.

Mr. Al-Rawi: Madam Chairman, may I just enquire before you do it, insofar as the Member for Pointe-a-Pierre is sitting opposite me, I have not seen any circulated amendments nor does the Government intend to put certain things forward. Would it be agreeable that we actually were to treat with this in the round?

Mr. Lee: We have an amendment in clause 4.

Madam Chairman: So can we do 1 to 3 then?

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

Clause 4.

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

Mr. Lee: Chair, to the Attorney General. We would like to recommend an amendment in clause 4 by deleting the existing clause 4 and amending it:

Where in any claim brought against a Magistrate in the execution of his duties, any Order is made for damages or costs, such Order shall be met out of the Consolidated Fund.

Mr. Al-Rawi: Madam Chair, could the Member repeat that please?

Madam Chairman: Will this be to section 5(1) or—? **Mr. Lee:** Well, it is clause 4, we are proposing to delete, the amended clause that the Attorney General was saying—

Madam Chairman: In clause 4, there is (a) and (b).

Mr. Lee: Yeah, the entire (a) and (b).

Madam Chairman: So, the entirety. That is the proposal?

Mr. Lee: Yes. And change it to these words.

Madam Chairman: Change which “it” and replace with?

Mr. Lee: Clause 4:

“Section 5 of the Act is amended”—by adding the following:

Madam Chairman: Adding to where, may I ask? Section 5 of the Act is one: a subsection (1) and a subsection (2). So your proposal relates to what?

Mr. Lee: Subsection (1).

Madam Chairman: Subsection (1)? Yes.

Mr. Lee: Madam Chairman:

Where in any claim brought against a Magistrate in the execution of his duties, any Order is made for damages or costs, such Order shall be met out of the Consolidated Fund.

Madam Chairman: Attorney General.

Mr. Al-Rawi: Sure. Madam Chair, I understand what my colleague is recommending. It is the “let us take it the whole-hog approach”, if I could be permitted to use that expression, which is the argument raised by the Member for Chaguanas West. I indicated that the Government is in the course of looking at the issue of indemnity in its whole sense across the board. If we were to accept that language, we would be buying that argument now, and as referred to in the debate without reviving it, we are not yet, respectfully, in a position to do that. So I must, in these circumstances, respectfully decline the invitation to accept that recommendation, but we are looking at it.

Mr. Lee: Madam Chairman.

Madam Chairman: Yes, Whip.

Mr. Lee: Madam, just for clarity, is there something for Magistrates or even the Judiciary, something called indemnity insurances?

Mr. Al-Rawi: May I?

Madam Chairman: Yes please, Attorney General.

Mr. Al-Rawi: Thank you. I appreciate the Member’s question. The State self-insures, if I could use that expression again. So it is not economical nor prudent nor customary that the State insures. In fact, there are examples where lenders require us to ensure it results in hundreds of millions of dollars spent where we could have, had we self-insured, spent much less. So it is not something that we do, and it is not in the interest of the State to do that because the State is too large an entity, and then who is underwriting it would also depend upon risk, and risk in the context of the current situation would be almost impossible to factor and the cost would be astronomically high.

Question put and agreed to.

Clause 4 ordered to stand part of the Bill.

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

House resumed.

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

CROSSING OF THE MACE

The Minister of Planning and Development (Hon. Camille Robinson-Regis):

Thank you very kindly, Madam Speaker. Madam Speaker, I am rising to move the adjournment, but I would like to crave your indulgence to raise an issue that has disturbed me, and I think it is a grave breach of the decorum of this House. I observed a while ago, a Member of this House cross the Mace and, Madam Speaker, yes, and go walk between the divide whilst the sitting of the House was in session and, Madam Speaker, this is indeed a breach and a disrespect of this House that we hold quite sacred. [*Desk thumping*]

The House was in session, Madam Speaker, and as Leader of the House, I draw this to your attention, just mainly because of the fact that this is the Parliament of Trinidad and Tobago, the highest court in the land. This is perceived as one of the most egregious breaches of this House to cross the Mace and, indeed, to cross the Speaker, whilst the House is in session [*Desk thumping*] and, Madam Speaker, I feel it incumbent on me as the Leader of the House to bring this to your attention. [*Crosstalk*]

Madam Speaker, I am pained by this, because it is the first time— [*Crosstalk*—I am pained because it is the first time in all my years in the Parliament that I have ever seen that happen, and I think I needed to bring it to your attention before I adjourn the House. [*Crosstalk*] I am not taking it to the Privileges Committee, but the House must be respected at all times. [*Desk thumping*]

Mr. Hinds: Yeah, yeah, yeah. [*Desk thumping*]

Hon. C. Robinson-Regis: And, Madam Speaker, I bring this to your attention in my capacity as Leader, not just as the Leader of Government Business, but as Leader of this House. It would be remiss of me if I did not bring that to your attention. So, Madam Speaker, I am bringing that to your attention for your observations to be made on this, Madam Speaker.

Madam Speaker: Member for Couva South.

Mr. Indarsingh: Thank you, Madam Speaker. I wish to indicate to you, coming off the tea break, I inadvertently walked down the aisle, and I do apologize. I also had a conversation with the Deputy Marshal of the House indicating, in retrospection, I realize the error that was committed, and I apologize. [*Desk thumping*]

Madam Speaker: I want to say to you, Member for Couva South, whether the Leader of the House raised it or not, I intended to raise the issue, particularly because I consider you a Member of some seniority and a Member who is well familiar with the rules of the Standing Orders and with the decorum which this House requires. So I want to say one, thank you for owning up and I do recognize the apology.

I also want to say to you and to all Members of the House that at times we do forget where we are, but that is inexcusable. We all have to, at all times, be mindful of where we are, We have to abide by the Standing Orders that we ourselves—it is our contract with each other, it is our contract with our constituents, it is our contract with the wider Trinidad and Tobago. Yes, it is a very serious breach of decorum, but I think in the spirit in which you have come up and apologized outright, we say yes we frown on it, but we hope that for all of us, such will not happen again. I thank you. Leader of the House. [*Desk thumping*]

ADJOURNMENT

UNREVISED

Adjournment

2019.02.15

The Minister of Planning and Development (Hon. Camille Robinson-Regis):

Thank you very kindly, Madam Speaker. Madam Speaker, I beg to move that this House do now adjourn to Friday, the 22nd day of February, 2019, at 1.30 p.m. Madam Speaker, at that time, we will do a Bill to amend the Companies Act and we will start at 1.30.

Madam Speaker, I am, though, recalling that there is no Friday the 29th so, in those circumstances, I will ask if the Opposition would like to have that as their Private Members' Day, and if they do—

Dr. Moonilal: Private Members' Day is the fourth Friday.

Hon. C. Robinson-Regis: I know it is the fourth Friday, but there is no fourth Friday in February.

Dr. Moonilal: February 1st was not a Friday? [*Crosstalk*]

Hon. C. Robinson-Regis: No, it was—So, Madam Speaker, in those circumstances, I am asking the Member for Pointe-a-Pierre, in his capacity as Leader of the Opposition Bench, if he would like to have that—[*Crosstalk*] That is what I am saying. It is the fourth Friday. I stood here and I am now recognizing that Friday the 22nd is the fourth Friday. [*Crosstalk*] I said there is no 29th of February. You were saying that.

Dr. Moonilal: Who cares? It is the fourth Friday of the month—

Hon. C. Robinson-Regis: Madam Speaker—

Madam Speaker: We just had a conversation with respect to the Standing Orders and our contract with each other. Excessive crosstalk is one of those provisions of the Standing Orders that is not allowed. Leader of the House.

Hon. C. Robinson-Regis: Thank you, Madam Speaker. I will repeat. I am recognizing that Friday the 22nd is the fourth Friday. I recognized that whilst I stood. So could I please ask the Member for Pointe-a-Pierre, what we will be

Adjournment

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doing on that fourth Friday which is Private Members' Day? Thank you.

Mr. Lee: Thank you, Madam Speaker. We will be doing on the fourth Friday, the 22nd of February, which is the fourth Friday, Motion No. 1 on Private Members' Business, a continuation of Motion No. 1 by the Leader of the Opposition.

Madam Speaker: Hon. Members, there is one matter that qualifies to be raised on the Motion for the adjournment of the House. I now call upon the Member for Caroni Central.

**Water Supply Throughout T&T
(Measures Taken by Government)**

Dr. Bhoendradatt Tewarie (*Caroni Central*): Thank you very much, Madam Speaker. In accordance with the provisions of paragraphs (2) and (3) of Standing Order 16, I raise the matter today, Madam Speaker, of the need for Government to ensure that there is a constant and reliable water supply throughout Trinidad and Tobago. Madam Speaker, based on what I am hearing in my own constituency, and what I am hearing from constituencies around me, and what I am hearing from constituencies further away from me, I think that we are approaching, if we are not already there, something of a water crisis.

Several communities in the constituency of Caroni Central have been experiencing grave difficulty. They do not receive pipe-borne water, except sporadically and truck-borne supplies are few, and this happens in-between days, sometimes weeks, sometimes more than a week passing, without any water at all being delivered either through the pipes or with a truck to the homes. These communities include Preysal Village, Chick-land, Gran Couva, Arena Road, Freeport, Caparo, Siewdass Road and several other communities, and this happens from time to time.

In other parts of the country, Madam Speaker, several communities from Carenage to Toco, along the East-West Corridor—not every community—but in-

between along the East-West Corridor, most communities in central and south and the deepest part of the southern border, and communities on the north coast, as well, have also been under pressure by not receiving a predictable water supply during the period, and this is a period that is especially grave because the Met Office predicts this to be one of the driest seasons of dry seasons ever.

I have two documents here which represent complaints that I have had for the last three weeks in my own constituency, and I want to draw on the January 10, 2019 media release of the Met Office in which they made the assessment of the criteria necessary for the onset of the dry season, showing that conditions have been met and are now entrenched. And they basically indicate that it is a combination of reasons for this, one of them being climate change, but the other home-grown reason really is the management of the flow of water within the available supply in Trinidad and Tobago.

Madam Speaker, one day after that 10th January media release by the Met Office, the Minister of Public Utilities indicated to citizens that there were plans in place to deal with the dry season and, basically, that was an assurance that things would not turn out to be bleak, and although the dry season might be harsh, we would have water, because in addition to that, both from the Met Office and from WASA and from the Ministry, we got warnings that we should conserve water, we should try and manage it, et cetera, but if you do not get water in your taps and if you do not get any pipe-borne water, then there is nothing to manage or conserve, and this is the situation in which many of the citizens of this country find themselves, Madam Speaker.

We also had editorials, one from the *Guardian* and one from the *Express*. The *Guardian* is on the day 02/11/2019 and the *Express* editorial is on January 04, 2019 and they speak of these perennial water woes and the difficulty of

communities. In the *Guardian* editorial, many of the communities are, in fact, mentioned, having these difficulties with water and with suffering—without water and with suffering.

Now, Madam Speaker, I raised a question on this matter on the last sitting of Parliament, not today, and I asked it to the Prime Minister at that time. The Acting Prime Minister answered, but I was not satisfied with the answer and because question time ended, when he gave his first answer, I could not follow up with any of the issues. And, as I said, I found the answer unsatisfactory, and I hope the Minister who is present will, in fact, give some answers of what is to be done to bring relief to the citizens in the communities which exist in my constituency, but also all of these communities because water is an essential ingredient. You cannot live without it; you cannot function without it, and it really causes a tremendous hardship when you do not have it, and the unpredictability of it is perhaps the hardest kick of all.

Now, Madam Speaker, I want to raise this in a context in which, you know, in 2010, there was an 18 per cent reach of pipe-borne water to the population. By 2014, under the then Minister, the Member for Chaguanas West, we had gotten to the point where we had achieved a 73 per cent reach. How did that happen? That Ministry, at that time, up to 2014, early 2015, laid out about 1,000 kilometres of pipeline. That exists now. They added 18.4 million gallons of water to the pool [*Desk thumping*] and that was per day to the pool, potable water. So they added that to the distribution system, and they did that on the basis of the way they managed desalination water, and on the way they also managed ground and surface water sources.

Now, at that time, they did an assessment and they assessed that what we needed in Trinidad and Tobago—which is a high-consumption country for water

compared to other countries, and we do need to conserve; so I support the Minister in the whole call for conservation—is that we needed about 270-something million gallons of water per day, but we actually had about 241.8. So we had a deficit of 17.2 million gallons per day, which means that for all intents and purposes, notwithstanding that you had improvements, water still had to be managed.

So, my question to the hon. Minister is: What have you done and what can you do to relieve the situation? There must be some things that you have done to build on what was our legacy or build on what we were able to contribute and there must be some things that you must be considering now to bring relief to the ordinary people. And Minister, you would appreciate that this seems like a simple matter when you talk about water. It sounds like an everyday affair, but to people whose lives are being disrupted by lack of water, it is not an everyday affair. It is really a stressful thing, and if you have children compounded in this situation—if you have to go to work, if you have chores to do, et cetera—it is a very unhappy thing. You and I know if you do not get water for two or three days you are like a fish out of the water, literally. All right? It is very, very, hard in your home because you are accustomed to that as part of your comfort. So the question I ask is: What have you done that we are in this situation now? And, secondly, what can you do or what are you willing to do to make it better?

5.40 p.m.

Now, there are things that can be done and they were identified in the manifesto that we did in 2015, that we needed to have new sources of water supply, that we added to reduce demand, so I support you on that—

Madam Speaker: Hon. Member for Caroni Central, your speaking time is now spent. Minister of Public Utilities. [*Desk thumping*]

The Minister of Public Utilities (Sen. The Hon. Robert Le Hunte): I will like

to start, Madam Speaker, by stating, emphatically, that this Government wants to ensure that there is a constant and reliable water supply to the people of Trinidad and Tobago and that we are working towards the realization of that vision. We are doing this despite the fact that this goal has evaded Trinidad and Tobago since our birth as a nation and despite the grandstanding and glib statements that are often made for political mileage, like “water for all”. Let me also state that the figures as said before, the starting figure and the ending figure, I would like to put on record that I disagree with those figures. Madam Speaker, everyone stands up and says that we are fixing the water supply problem without strategically and systematically taking the steps that are needed to do so. I remember saying, in my maiden address in the Senate, that fixing WASA was like fixing an aeroplane while it is in the air and that it requires a multi-pronged strategy implemented over a period of time. I stand by that analogy, Madam Speaker, and I will share with you what we have been doing to fix the aeroplane while piloting it. [*Desk thumping*]

Madam Speaker, we are not a water-scarce country. The truth is that during the dry season we produce an average of about 217 million gallons of water and during the wet season we produce about 243 million imperial gallons of water per day. This is more than enough for a population of 1.4 million people. Despite our relatively high level of water production, we are faced with some challenges in the area of transmission, distribution, storage and demand management, and the end result is that during the wet season only 60 per cent of the population gets water 24/7, and during the dry season that figure drops to 31 per cent. That is the reality that we face and it is one that will become even more acute in the harsher than usual dry season that we have upon us. Of course, Madam Speaker, we find ourselves in this distressing situation because when the national coffers were full

and we had money to invest in WASA, it was not done efficiently and effectively. Madam Speaker, over the period 2010—2015, almost \$14 billion was spent on WASA to cover operational and capital investments. The critical question that we must ask is whether the people of Trinidad and Tobago received value for that money.

I will like to use three examples, Madam Speaker, that will illustrate just how that money was used. The first involved the fact that during that time, 41 kilometres of 24-inch pipe were installed at a cost of \$4.8 million per kilometre. Currently, Madam Speaker, we are installing the same 24-inch pipe at a cost of \$2.1 million per kilometre; half the price that was previously used. [*Desk thumping*] What that means is that for the same financial investment we are doubling the impact. Put another way, if we had the same amount of money, we would have been able to do, not 41 kilometres but 82 kilometres of pipe. [*Desk thumping*] Then there is, of course, the infamous \$1.6 billion Beetham water recycling project that was awarded to Super Industrial Services Limited; to date, over \$1 billion was spent and not one drop of water was produced. [*Desk thumping*] The third example, Madam Speaker, involves the 12-month action plan that was developed. Yes, it was, it was there. To date, many of the projects have not been completed although all of the money that was earmarked for it had been spent and a number of contractors are still calling on WASA to pay outstanding debts.

As I said before, years of mismanagement aside, our shortfall in water supply, as it currently exists, is worsened by what is now called drought conditions. Madam Speaker, the fact of the matter is that the current water levels at some of our reservoirs are as much as 20 per cent below the average period at this time. In Trinidad and Tobago 60 per cent of our water supply comes from

surface water. When this is coupled with the fact that our reservoirs can lose as much as 190 million gallons of water to evaporation during the dry season, we realize we must find a way to effectively manage this crisis, and we are doing just that. I will go into some of the strategies that we are implementing, but I will like to make it clear that besides those initiatives which have a national scope, we are also dealing with the water supply problem at the regional level because we understand that each region is influenced by unique factors. Caroni South, for example—

Hon. Member: Central.

Sen. The Hon. R. Le Hunte: Caroni Central, for example, is supplied by the Caroni Water Treatment plant, the Carlsen Field Water Treatment Plant, the Freeport Water Treatment Plant, together with a number of wells. During the dry season the Caroni Water Treatment Plant has reduced its production to the south region by 15 million gallons per day, which has resulted in these areas now being placed on a scheduled supply.

Some of the wells supplied in the areas also need rehabilitation, and while the rehabilitation of the wells can be addressed and are being addressed, the reduction of water supply from the Caroni Water Treatment Plant is required to conserve water during this dry season, and could only be augmented by truck borne delivery, which we are attempting to do. Madam Speaker, now that we have fully grasped our current position and the reasons behind it, I will spend a little time giving an idea of what it is that is planned in the future. I am on record as saying that state enterprises are established primarily to provide a service, not only to provide a service for the people and just the creating of the jobs, and therefore efficiency must be one of the core principles that govern their operations. Madam Speaker, I am happy to say that we have already made gains in this area by

dramatically cutting the number of contractors that WASA hire and by allowing the WASA employees to do the work that they are paid to do. In terms of the production of water, we are currently drilling 15 wells throughout the country, in north, south, Chatham, Chaguaramas, Maraval, Santa Cruz, Tobago. Two of these projects are scheduled to be completed by March of this year. Together they will add 500,000 imperial gallons of water to the system today. When all 15 wells are operational, they will add an additional 3.5 million gallons of water to Trinidad's distribution system and 4 million gallons in Tobago. We are also rehabilitating the existing wells, of the 27 that were earmarked for rehabilitation, 21 have been completed and the remaining six would be completed by the end of next month.

In terms of storage, despite the billions of dollars that were spent in various years, we are only approximately 5 per cent of international standards; 13,000 gallons per capita versus 400,000 gallons per capita in international storage. So we will be expanding our storage capacity across Trinidad and Tobago. One of the major projects in this regard will be the desilting of the Hillsborough Dam in Tobago that is due for a very long time. We are all aware, Madam Speaker, that the infrastructure is aged, which results in leaks throughout the network. We have identified close to 150 kilometres of pipe that are in immediate need of replacement and we are moving expeditiously to have those replaced. Over the past year we have brought a number of reported leaks down and we are working on that. Madam Speaker, the reality is we also have a lot of problems with regard to water demand management, and because of the level of water demand that is being used and the excess amount, I have yet to find in my research where you have 24/7 water with this level of water demand. The fact is, Madam Speaker, the vision for 24/7 water is within reach. The promised land is close at hand. With deliberate focus and astute management and leadership, it is possible. Madam Speaker, I

Water Supply Throughout T&T (cont'd)
Sen. the Hon. R. Le Hunte (cont'd)

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thank you for your time and attention. [*Desk thumping*]

Question put and agreed to.

House adjourned accordingly.

Adjourned at 5.50 p.m.