

*Leave of Absence**Tuesday, February 01, 2005***SENATE***Tuesday, February 01, 2005*

The Senate met at 1.30 p.m.

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

Madam President: Hon. Senators, I have granted leave of absence to Sen. The Hon. Christine Sahadeo for the period January 30 to February 06, 2005; Sen. The Hon. Knowlson Gift and Sen. Basharat Ali from today's sitting of the Senate.

SENATORS' APPOINTMENT

Madam President: Hon. Senators, I have received the following correspondence from His Excellency the President, Prof. George Maxwell Richards:

“THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

By His Excellency Professor GEORGE MAXWELL RICHARDS, T.C., C.M.T., Ph.D., President and Commander-in-Chief of the Republic of Trinidad and Tobago.

/s/ G. Richards
President.

TO: MRS. MAGNA WILLIAMS-SMITH

WHEREAS Senator Christine Sahadeo is incapable of performing her duties as a Senator by reason of her absence from Trinidad and Tobago:

NOW, THEREFORE, I, GEORGE MAXWELL RICHARDS, President as aforesaid, acting in accordance with the advice of the Prime Minister, in exercise of the power vested in me by section 44 of the Constitution of the Republic of Trinidad and Tobago, do hereby appoint you, MAGNA WILLIAMS-SMITH, to be temporarily a member of the Senate, with effect from 1st February, 2005 and continuing during the absence from Trinidad and Tobago of the said Senator Christine Sahadeo.

Given under my Hand and the Seal of the President of the Republic of Trinidad and Tobago at the Office of the President, St. Ann's, this 31st day of January, 2005.”

Senators' Appointment
[MADAM PRESIDENT]

Tuesday, February 01, 2005

“THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

By His Excellency Professor GEORGE MAXWELL RICHARDS, T.C., C.M.T., Ph.D., President and Commander-in-Chief of the Republic of Trinidad and Tobago.

/s/ G. Richards
President.

TO: MS. ROSE JANNEIRE

WHEREAS Senator Knowlson Gift is incapable of performing his duties as a Senator by reason of his absence from Trinidad and Tobago:

NOW, THEREFORE, I, GEORGE MAXWELL RICHARDS, President as aforesaid, acting in accordance with the advice of the Prime Minister, in exercise of the power vested in me by section 44 of the Constitution of the Republic of Trinidad and Tobago, do hereby appoint you, ROSE JANNEIRE, to be temporarily a member of the Senate, with effect from 1st February, 2005 and continuing during the absence from Trinidad and Tobago of the said Senator Knowlson Gift.

Given under my Hand and the Seal of the President of the Republic of Trinidad and Tobago at the Office of the President, St. Ann's, this 31st day of January, 2005.”

OATH OF ALLEGIANCE

Senators Magna Williams-Smith and Rose Janneire took and subscribed the Oath of Allegiance as required by law.

ORAL ANSWERS TO QUESTIONS

Appointment of Public Officer (Prime Minister's Objection)

25. Sen. Wade Mark asked the hon. Prime Minister:

- (A) Could the Prime Minister advise the Senate if there has ever been any occasion where he had cause to object to the appointment of any public officer to positions in statutory authority organizations falling under the jurisdiction of the Statutory Authorities' Service

Commission during his tenure as Prime Minister with effect from December 24, 2001 to May 26, 2004?

- (B) If the answer to (A) is in the affirmative, could the Prime Minister state when were these occasions?

The Attorney General (Sen. The Hon. John Jeremie): Madam President, consultations between the Prime Minister and bodies, persons and institutions are considered to be privileged and confidential. As a result, the information requested cannot be provided.

Thank you.

Sen. Mark: Could the hon. Attorney General indicate to this Senate, what section of the Constitution or the Standing Orders he has referred to in order to support his statement?

Sen. The Hon. J. Jeremie: I am not referring to any section of the Standing Orders. The authority is found in the Freedom of Information Act which is the practice in other parts of the Commonwealth which applies to parliamentary questions. We have taken advice on this question and it is as I have stated. I am not in a position to assist any further.

Sen. R. Montano: Madam President, will the Attorney General not agree that what he has told the Senate is completely misleading and incorrect and if he were to look in May's, he would not find anything like that? Would he further not agree that what he is doing is known in the vernacular as "a crock"? He is afraid to answer the question because he knows fully that the Prime Minister has breached the Constitution on at least one occasion.

Madam President: Sen. R. Montano, ask one question at a time. Do not make a speech. I allowed you to ask three questions.

Sen. The Hon. J. Jeremie: The short answer is that I am completely unaware. As a matter of fact, I know to the contrary.

Sen. Mark: Madam President, you must guide me. When matters are approved by you—this question was approved by the President of the Senate. For the hon. Attorney General to quote something about the Freedom of Information Act, whether it is London or Britain, is not governed by us. It does not guide our work here.

Madam President: The question is approved by the President of the Senate, but as you know, the presiding officer, in the first place, cannot force a minister to answer a question. I certainly cannot tell the Attorney General what to put in his answer. We have to accept what the answer brings to us. You will have to bring back your question in a different way.

Sen. R. Montano: Madam President, would the Attorney General kindly refer us to the particular section of the Freedom of Information Act upon which he grants his authority?

Sen. The Hon. J. Jeremie: I do not have that information with me at the present time. [*Crosstalk*] It is the section which speaks to exemptions on the grounds of public policy.

Sen. R. Montano: What public policy?

Sen. The Hon. J. Jeremie: If you wish me to present you with a precise reference to the section, I can do so.

Madam President: To avoid any further controversy on the matter, if you can do that, when do you plan to do it? At the next sitting? Do you take that undertaking to do so?

Sen. The Hon. J. Jeremie: Yes.

Sen. Mark: In those circumstances, I would like this question to be deferred. We need a ruling from you on a matter like this. The Attorney General is seeking to use the Freedom of Information Act to deny this Parliament answers to questions. I ask you to rule on this matter by seeking advice from the Solicitor General or some independent attorney.

Madam President: First of all, we will wait to hear what the Attorney General has to bring for us. It was answered already so it cannot be deferred.

Sen. R. Montano: Is the Attorney General aware that there is one instance in the public domain in which the Prime Minister has interfered and given an opinion? That is the Marlene Coudray instance that I can think of, offhand. That was not subject to the Freedom of Information Act. The question is: How many instances were? Is he aware that there is one instance, at least?

Madam President: Let us move on.

Sen. R. Montano: This is serious. This is going to the root of our democracy.

Sen. Mark: Madam President, this Attorney General is a disgrace.

Madam President: We cannot do anything more or get any further information until the Attorney General has made a commitment to bring whatever section he quoted. Can we move on?

**Alexander, Jeremie and Company
(Briefs)**

26. Sen. Wade Mark asked the hon. Attorney General:

- (A) Could the Attorney General inform the Senate if any briefs have been given to the firm of Alexander, Jeremie and Company by the Government of Trinidad and Tobago and/or state enterprises under the control of the Government of Trinidad and Tobago during the period January 01, 2002 to May 26, 2004?
- (B) If the answer to (A) is in the affirmative, could the Attorney General state:
 - (i) the number of briefs that have been assigned;
 - (ii) the amount of money that has been paid to the firm for legal advice and/or for briefs prepared during the said period; and
 - (iii) if there are any outstanding sums of money to be paid to the firm for work done during the period? If there is, what is the amount?

The Attorney General (Sen. The Hon. John Jeremie): Madam President, I do not have a law firm, but I can provide the answer to the question.

Yes. Briefs have been assigned by the Government of Trinidad and Tobago and some state enterprises under the control of the Government to the firm of Alexander, Jeremie and Company, during the period January 01, 2002 to May 06, 2004. Briefs have also been assigned by the Government of Trinidad and Tobago and some state enterprises in each year since 1968, when the said firm came into existence.

Members would recall that on March 11, 2003, in response to questions 19 and 20 posed by Sen. R. Montano, the then Attorney General caused to be circulated to Members of the Senate, detailed documents containing information on legal fees paid by the Ministry of the Attorney General and state enterprises, to private attorneys at law and/or law firms from 1996 to January 24, 2003.

The answer with respect to the relevant period under dispute overlapped with that and is largely contained in those documents. Since the circulation of those

documents to hon. Senators on March 11, 2003, no briefs have been assigned to the firm of Alexander, Jeremie and Company by the Government of Trinidad and Tobago. They are not doing very well, apparently.

Seven briefs were assigned to the firm of Alexander, Jeremie and Company by a state corporation, the National Entrepreneurship Development Company Limited. The amount of money paid to the firm by that state agency for those seven matters was \$81,441.

There is no outstanding money to the firm.

Sen. Mark: Could the hon. Attorney General answer question (B)(i)? I asked specifically for the number of briefs and he has not responded to that. He said something else, but he has not responded to my question.

Sen. The Hon. J. Jeremie: I answered. The short answer is that a previous question covered the entire period except the period March 11, 2003, before I was sworn in, in November to the present time. In that time, no briefs were assigned by the Government of Trinidad and Tobago to the firm of Alexander, Jeremie and Company. Maybe, you did not hear. The question is in two parts. You asked about state enterprises under the control of the Government. It answers the question. As I have indicated, I hate to repeat it, but the answer to that should be in *Hansard*.

Sen. Mark: Could the hon. Attorney General indicate whether his firm has been retained on a permanent basis by the National Lotteries Control Board and if he is in receipt of briefs and legal fees on a regular basis? Could he tell us how much money his firm has been in receipt of under this particular arrangement?

Sen. The Hon. J. Jeremie: I am happy to repeat the point I made at the outset. On assuming office, unlike many others, I gave up everything I had. I have no firm. The firm of Alexander, Jeremie and Company was formed before my life, before I breathed my first breath. I have absolutely no share in the firm.

Sen. Mark: I have asked a specific question and I will repeat it. Can the Attorney General tell this Senate if the firm Alexander, Jeremie and Company has been retained by the National Lotteries Control Board? I would like him to tell this Senate whether he is aware that the firm Alexander, Jeremie and Company has been retained by the National Lotteries Control Board for the last three and a half years.

Sen. The Hon. J. Jeremie: am happy to speak to the period when I was in private practice. The firm had been retained when I was in private practice. I cannot speak to the period since I have been in office. I know absolutely nothing about what is going on. Maybe Sen. Mark might know.

Sen. Mark: I think that the Attorney General is misleading the Senate because he is conscious and aware. He is effectively in control of that company. He is coming to fool the Senate.

Madam President: Sen. Wade Mark, I want absolute quiet please. To begin with, Sen. Mark, you cannot accuse the Attorney General of misleading the Senate when you do not have that evidence to so say. We have to take that the Attorney General is telling us the truth. You bring it and you can prove otherwise. Can we move on to question No. 27, Sen. Mark?

Sen. Mark: Corruption buster, but he is in charge of corruption. [*Words expunged*]

**Attorneys at Law
(Payments Made)**

27. Sen. Wade Mark asked the Attorney General:

Could the Attorney General inform the Senate of the amount of money which has been paid by the Government of Trinidad and Tobago and government controlled state enterprises to the following attorneys at law: Mr. Kerwin Garcia; Mr. Anthony Jacelon; Mr. Michael Quamina; Mr. Theodore Guerra and Mr. Lloyd Barnette during the period January 2002 to May 26, 2004 for services rendered to the State?

The Minister of Public Administration and Information (Sen. The Hon. Dr. Lenny Saith): Madam President, I take strong objection to the Leader of the Opposition making remarks about—[*Words expunged*]. It is like my saying that I am responding to Mr. Dirty and I am not prepared to say that because it is not for this Parliament.

Sen. Mark: You can say it but we cannot.

Sen. The Hon. Dr. L. Saith: I would not say it.

Madam President, the answer to this question is not ready and I seek leave of the Senate to have it deferred to the next sitting.

Sen. Mark: Madam President, I want to remind you as President of the Senate that this question was filed since September 10. It is four months now. It is contempt of this Parliament and 120 days.

Madam President: Sen. Mark, you do not have to make a speech.

Question put.

Sen. Mark: Division.

Madam President: Division.

Sen. The Hon. Dr. L. Saith: Madam President, I saw this happen once before and I am not sure that we are doing the right thing. I do not believe that there could be a vote on whether the question should be deferred. [*Interruption*] I know that the President has ruled and we will vote. I will appreciate if we can get some guidance on this in the future.

Sen. Seetahal: Could I enquire if there is a reason for the delay? I heard nothing. Before we vote, that can be explained for our benefit.

Sen. The Hon. Dr. L. Saith: I indicated that the answer is not ready. The Senator knows that there is a procedure involved. As of today, the answer has not been approved by the Cabinet.

Sen. R. Montano: Cabinet does not run this Parliament. We do.

Madam President: Senators, the hon. Minister has indicated that the answer is not ready. Cabinet does not have the information to send the answer. Therefore, we are asking for a postponement. I am putting it to the House—

Sen. R. Montano: What do you mean by “we”?

Madam President: I am putting it to the House, Sen. R. Montano. Are you instructing me how to do it? I am putting it to the Senate whether we take this postponement.

Question put.

Madam President: I think the “Ayes” have it, but if you want the division, take the division.

Sen. Mark: We want the division.

Senate divided: Ayes 16 Noes 13

AYES

Saith, Hon. Dr. L.

Yuille-Williams, Hon. J.

Jeremie, Hon. J.

Joseph, Hon. M.

Montano, Hon. D.

Enill, Hon. C.

Manning, Hon. H.
Chin Lee, Hon. H.
Abdul-Hamid, Hon. M.
Kangaloo, Hon. C.
Titus, R.
Ramroop, Hon. S.
Hackshaw-Marslin, Mrs. J.
Williams-Smith, Mrs. M.
Janneire, Miss R.
Cropper, Mrs. A.
NOES
Mark, W.
Baksh, S.
Kernahan, Dr. J.
Montano, R.
Seepersad-Bachan, Mrs. C.
Augustus, R.
Mc Kenzie, Dr. E.
Ramchand, Prof. K.
Deosaran, Prof. R.
King, Mrs. M.
Seetahal, Miss D.
Anmolsingh-Mahabir, Mrs. P.
Khan, Bro. N.

Question, by leave, deferred.

Madam President: Could we move on, please?

Sen. The Hon. Dr. L. Saith: Before we move on, could I seek your indulgence?

Oral Answers to Questions
[SEN. THE HON. DR. L. SAITH]

Tuesday, February 01, 2005

You did draw to Sen. Mark's attention that certain statements that he made were not in keeping with the Senate when he cast aspersions on the Attorney General. I ask that that be expunged from the record.

Madam President: If any record was made of those remarks when certain comments—

Sen. Mark: What remarks?

Madam President: Sen. Mark, you know what you said.

Sen. Mark: That was across the floor.

Madam President: If any record of it was made, it should be taken off.

Sen. R. Montano: Madam President, I do hope that what is sauce for the PNM goose will also be source for the UNC gander.

Madam President: Yes. I can assure you, Senator.

**OFFENCES AGAINST THE PERSON
(AMDT.) (HARASSMENT) BILL**

Order for second reading read.

The Minister of National Security (Sen. The Hon. Martin Joseph): Madam President, I beg to move,

That a Bill to amend the Offences Against the Person Act, Chap. 11:08, be now read a second time.

The issue engaging the attention of this Senate is the phenomena of stalking and harassment. Allow me to give some background information as to the type of conduct which this Bill seeks to address. The past few decades have witnessed the evolution of stalking and harassment from obscene occurrences to recognizable and legislative criminal offences, in many other jurisdictions such as the United Kingdom, Canada, the United States and New Zealand.

Public outrage, bizarre incidents of celebrity stalking and an escalation of stalking incidents both within and outside the realm of domestic violence and, the inadequacy of the legal system to address this emerging behaviour, are some of the reasons that legislation has been enacted in these jurisdictions. It is now well-known that stalking involves a person who is most likely unknown to the victim and is shadowing the victim's life in some way.

2.00 p.m.

This conduct takes many forms: it could be persistent phone calls, which may or may not be obscene; the constant sending of unwanted gifts; continuously

walking past a person's home or simply following the victim. A consideration of stalking cases in England reveals that there are three essential components that are present regardless of the type of conduct that is involved.

Firstly, Madam President, stalking is characterized by its ongoing nature and the intransigence of the stalker. Thus stalking may involve the repetition of numerous incidents of the same nature, such as silent telephone calls, or it may involve a prolonged campaign of varied conduct. The element of repetition has been said to be, and I quote:

“...one of the defining characteristics of stalking: irrespective of the nature of the component acts, stalking can be distressing and threatening to a victim because of its sheer, oppressive persistence.”

The second essential characteristic of stalking is that the conduct involved is unwanted by the recipient, thus enforcing on another that which they should have the freedom to decline. As such, stalking is characterized by the obduracy of the stalker which deprives the victim of the autonomy to determine the parameters of his or her own interpersonal relationships.

The final characteristic of stalking is that the repeated and unwanted conduct engenders a negative response in the recipient. The stalker, deliberately or inadvertently causes fear, distress, anger or some other adverse reaction by engaging in a relentless pursuit of the victim.

Madam President, by analyzing stalking in terms of its composite characteristics, it becomes clear that the “wrongness” of stalking lies not in the nature of the conduct itself, but in the deployment of this conduct, which is to enforce upon another that which they may wish to avoid.

Whilst the nature of the conduct pursued by some stalkers is clearly unlawful, often the conduct can appear to be *prima facie*, non-threatening. However, to the victim, its mere persistence causes it to become disturbing and threatening. Although we are unaware of the existence of any official statistical data relating to our population, it cannot be denied that in respect of the female population, stalking is a very real and persistent danger.

Madam President, later in my presentation I will try to discern to what extent some of the statistics that we have—raw as they are—to see if we can infer that—I do not want to say stalking would have resulted in that, but clearly we would like to look at some of the domestic-related violence statistics to see whether or not we could make some connection. It might be impossible to do it because of the nature of the statistics, but we will treat with that later.

Sen. Mark: Hon. Minister, this Bill is about harassment but you keep making reference to stalking, is that part of this Bill?

Sen. The Hon. M. Joseph: Madam President, Hon. Senator, just give me a little time; wait a while please.

Madam President, this Government is of the view that notwithstanding the fact that the problem of stalking has received a partial solution where it arises in the context of a domestic violence relationship, the time has now come to expand the protection of the criminal law to everyone.

In 1999, the Law Reform Commission examined the ad hoc response of the law to this type of behaviour and found that both the criminal and civil laws failed to provide adequate remedies. Moreover, within the civil law, the courts have been unable to deal with the problem of harassment in a range of different context. Quite apart from the Domestic Violence Act of 1999, the only form of harassment, which is addressed by our criminal law, is by means of telephone contact.

Section 106 of the Summary Offences Act makes it an offence to use a telephone to convey messages which are grossly indecent, obscene or of a menacing character and imposes a fine of a mere \$200 and one month's imprisonment. For the victim who receives harassing phone calls, TSTT has provided services such as "call trace", which victims may install for a fee in order to protect themselves against unwanted calls. However, such concessions can only offer temporary reprieve for the victim but does not punish the offender.

Sen. Seetahal: Hon. Minister, what is the name of that Act? Is that the Telecommunications Act?

Sen. The Hon. M. Joseph: I do not know. All I know is that I have a section 106 of the Summary Offences Act.

Perhaps I should make it clear that while the conduct which is being targeted is referred to as stalking, and many jurisdictions refer to their legislation as anti-stalking legislation, the offence being created is the offence of harassment so that both terms may be used interchangeably.

As to the civil law, with the exception of the limited relief provided by the Domestic Violence Act, injunctive relief is available only where a victim can show that there is a course of action which can fall within the tort of nuisance. It has been recognized that this is a slow and more complex remedy which is not appropriate in instances where emergency relief may be necessary.

Having regard to this unsatisfactory state of the law, the Law Reform Commission has recommended the creation of the new offence of harassment which would offer hybrid remedies, that is, both civil and criminal remedies in the form of both injunctive relief and criminal sanctions. Madam President, the Bill for our consideration today embodies that recommendation.

As I mentioned earlier, increased awareness of stalking has led a number of other jurisdictions to legislate against such conduct. The primary purpose of these enactments is to allow enforcement officials to intervene before the conduct results in physical injury to the victim. The United Kingdom and New Zealand have made great strides in formulating comprehensive legislation to deal with all aspects of stalking and harassment.

The United Kingdom's Protection from Harassment Act of 1997 is very proactive and creates two new criminal offences and a statutory tort of harassment. The Act also facilitates the imposition of criminal liability on a person who contravenes any of the orders that are made following civil or criminal proceedings. Members would observe the majority of these features have been incorporated into our proposed legislation.

The New Zealand Harassment Act of 1997 goes further by defining the specific elements of the offence of harassment such as watching and loitering around a person's home, business or place of employment; pursuing, stopping or accosting a person; making contact by telephone; giving offensive material to a person; or acting in a manner which causes a person to fear for his or her safety.

Madam President, while England and New Zealand have opted to enact separate legislation to address the issue, Canada and South Australia have chosen, as we have, to incorporate these provisions into existing criminal legislation.

In 1993, Canada amended its Criminal Code to facilitate the charging and prosecution of persons accused of stalking. By section 264, the offence of criminal harassment was created and carries with it a penalty of five or ten years imprisonment, depending on whether the charge is laid indictably or summarily. Interestingly enough, although persistence is the key to securing a conviction under section 264 where the conduct complained of takes place in the vicinity of a person's home or workplace or if it is accompanied by threatening behaviour, then only one incident would suffice to obtain a conviction.

The proposed measure before this honourable House has been crafted with our peculiar societal values and practices in mind, and within the context of our legal system. A cursory perusal would reveal that it does not speak to the issue of

sexual harassment. Sexual offences are addressed in the Sexual Offences Act, and sexual harassment involves behaviours, which would be more appropriately addressed in the Act.

Madam President, I now turn to the Offences Against the Person (Amdt.) Bill, which seeks to amend the Offences Against the Person Act to make provision for the offence of harassment. There are only two clauses in this Bill and as we need not concern ourselves with the first, I will proceed to an examination of the second clause. Clause 2 would insert six new sections into the principal Act: sections 30A—F. The focus of the new offence is the wider notion of harassment which obviates the need to define stalking. Instead, the proposed section 30A prohibits harassment, which is defined as a course of conduct that causes harassment to another and which the defendant knows, or ought reasonably to know, would amount to harassment. This definition forms the basis of the offence.

It is clear that the definition contained in the proposed section 30A reflects the essential characteristics of stalking. The requirement of a course of conduct, which is defined at paragraph (b) as conduct on at least two occasions, reflects the continuing and repeated nature of stalking. The second and third characteristics of stalking that the conduct is unwanted and engenders an adverse reaction in the victim are also reflected in the statutory definition of harassment. Madam President, I am seeking to show that the essential characteristics of stalking have been encapsulated in the definition.

A course of conduct is also defined as conduct occurring on at least two occasions and this also includes speech. Moreover, the wide definition does not require that the incidents be of the same nature. Stalkers habitually engage in a diverse range of behaviour during their pursuit of the victims. The cases have shown that it is extremely unusual to display only a single type of behaviour and therefore any limitation as to the nature of the conduct would limit the reach of the law. By requiring only two incidents as a basis for liability, the proposed measure establishes a means of intervention at an early stage of stalking. The proposed offence would carry a penalty of \$2,000 and imprisonment for six months.

The new section 30B creates a second, more serious offence: the offence of causing fear of violence. Although very similar to the offence of harassment in that it is based upon a course of conduct, it must, in addition, cause the victim to fear that violence will be used against him or her and would, therefore, attach a

more onerous penalty depending on whether the charge is laid indictably or summarily. It is to be noted that the narrow parameters of the bare offence of harassment under 30A, may not allow the more serious cases to be dealt with and the intention is to impose a more harsh sentence where the nature of the conduct impacts more seriously on the victim by placing him or her in fear. In other legislation, this offence is sometimes referred to as aggravated harassment. Madam President, if laid on indictment, the offence carries a penalty of \$10,000 and imprisonment of five years. If it is laid summarily, there is a fine of \$5,000 and six months imprisonment.

Madam President, there is one further matter which I will draw to the attention of this honourable House. The proposed section 30F permits a court to make an Order under sections 6 and 13 of the Mental Health Act. This provision allows the court to ascertain the psychological and mental state of the offender and the avenues that are open for the treatment of recognized mental conditions of persons who stalk.

Section 13(1) states that the Psychiatric Hospital Director may by Order of a judge or magistrate admit to a hospital any person named in the Order. From studies conducted in the United States, it has been deduced that 95 per cent of stalkers suffer from mental disorders.

There are many benefits to be derived from the enactment of provisions to address harassment, one of which is the convenience of a person being able to obtain both civil and criminal remedies from one court. It would be naive to think that anti-stalking law would resolve the problem. The psychology of many stalkers may not be amenable to change and thus their behaviour may continue, regardless of the punishment imposed on them. However, it is only by recognizing and dealing with the offensive conduct in law that protection can be provided to victims.

Madam President, I said earlier in the presentation that we were not in a position to see how this behaviour negatively impacts on us in Trinidad and Tobago; the most we could do is to infer. What I am going to provide here—I am not saying that these figures, which I am about to read, are as a result of stalking, but there are some elements of domestic violence, abuse in some way, that has led us to where we are. The attempt of the legislation is to see to what extent we can reduce unnecessary behaviour that could ultimately lead to something more disastrous.

Sen. Mark: Madam President, I wonder if the Minister could explain to the Senate the rationale—I did not understand, from his presentation, what prompted the Government to introduce this legislation. I am not getting the rationale.

Sen. The Hon. M. Joseph: Madam President, I think I have laid the case of the reason we have come to this Parliament.

If we look at violent criminal behaviour in our society—the worst being murder—in 2000, there was a total of 120 murders committed in Trinidad and Tobago of which 24 or 20 per cent were domestic violence related murders—I am just giving some broad categories—one was gang related; nine, drug related; and the other 86 or 71 per cent were murders resulting from other circumstances like robberies, et cetera. In 2001, there were 151 murders of which the number of domestic violence related was 17, or 11 per cent; gang related, four or 3 per cent; drug-related murders 25 or 17 per cent; and the others 105 or 69 per cent.

In 2002, there were 171 murders of which 15 or 9 per cent were domestic related; 17 were gang related; 13 were drug related and the other 126 murders resulting from other things. In 2003, there were 229; domestic related 22 or 10 per cent; gang related 42 or 18 per cent; drug related 12 or 5 per cent; and the others 153 or 67 per cent.

In 2004, the total was 259 of which 9 were domestic related; 55 or 21 per cent were gang related; 18 or 7 per cent drug related; the others 177.

Madam President, if you look at the murders resulting from domestic violence, while there is no pattern, the numbers go up and down. It is an area in which whatever action can be taken to prevent it from reaching that point is important. The only other category I could have looked at to see if we could have gained any inference is kidnappings, and let me share the information with the Senate. In 2001, there were 156 kidnappings reported; 152 were kidnappings, not for ransom; four or 3 per cent were kidnappings involving ransom.

I recall when we were debating a bill relating to the question of kidnappings, there were lots of discussions about kidnappings that did involve ransom but that it was some domestic-related activity that went bad; somebody snatched somebody and kept them overnight for some particular time—*[Interruption]* I do not know about the bogus ones—

Madam President, I cannot say that as a result of these kidnappings not involving ransom that the extent of domestic-related incidents led to this. I am saying that the best we can do is to look at these statistics and hopefully we will reach the point where we will be able to have much more precise statistics that will allow us to—*[Interruption]* Well the statistics will drive the activity.

In 2001, there were 135 kidnappings: 128 were kidnappings not involving ransom, or 95 per cent; there were only 7 kidnappings involving ransom. In 2002,

there were 235 kidnappings, 207 or 88 per cent were kidnappings not involving ransom, and 28 involving ransom. In 2003, there were 235 reported kidnappings, 185 were kidnappings not involving ransom; 50 were kidnappings involving ransom. In 2004, there were 173 reported kidnappings, 145 or 84 per cent were kidnappings not involving ransom and 28 were kidnappings involving ransom.

Madam President, I took pains to provide the honourable Senate with this information to, again, indicate while I cannot make a direct link between harassment, stalking and domestic-related murders, which represents the ultimate and in terms of the kidnappings, I am saying that I would like Members of this Senate to support this legislation because it will provide law enforcement officers with the means to treat with the kind of behaviour, which left unchecked can likely lead to something more disastrous.

Madam President, I beg to move.

Question proposed.

Sen. Robin Montano: Madam President, first of all, forgive my voice, I am suffering from the after-effects of the flu that is raging in the society right now.

When I got this Bill and read it, the first thing I did was to go to the UK legislation. As the Minister has said, this Bill is basically a carbon copy of what pertains in the UK; therefore the question would arise, quite naturally, if it was good enough for England or the United Kingdom, why should we not support it here. It is reasonable; look at what they have to say about it. The Minister went to great pains to talk about harassment and he is quite right because at the present harassment is not a crime and it is making it a crime. I accept what he is saying that—although he has not provided the evidence—there is a link between harassment and stalking and kidnapping. When you look at this, for example, you say to yourself that there is nothing on the surface that is unreasonable and after all, the British passed, it so why should we not pass it.

When you look at section 30C, it is “a get out of jail free card” for the police:

“It is a defence for a person charged with an offence under section 30A or 30B to show that –

(a) his course of conduct was pursued for the purpose of preventing or detecting crime;”

On the surface that is not unreasonable.

“(b) his course of conduct was pursued under any written or unwritten law or to comply with any condition or requirement imposed under any written or unwritten law.”

On the surface that is reasonable except that I had to put a point here. I said wait, wait, wait, wait, wait; hold it sheriff; she is heading for the strawberry patch! What is the fundamental difference between the society in the United Kingdom and in Trinidad and Tobago? I will give the answer in one sentence. The United Kingdom has a police force that the population trusts and which is efficient. Or, put the other way: the United Kingdom has an efficient police force that has, by and large, the overall trust of the population which it serves and protects. In Trinidad and Tobago, at least half the population of the country does not have faith in the management of the police service of Trinidad and Tobago. Is that not a terrible thing to have to say? Is that not awful? It is the truth but it is awful.

2.30 p.m.

It is the truth! There is a case going on right now in which an accusation is being levelled by a senior police officer against the hierarchy of the police service, accusing, in effect, the hierarchy of being party group 13 of the People's National Movement (PNM). We are not going to discuss the case obviously, and we will wait to see what happens when the judicial review is finally over. We shall wait to see it.

Most certainly, when the case is over I am going to have a lot of questions. But imagine that a very senior police officer has made this kind of accusation. Where there is smoke, there is very often fire and the situation is serious.

There was the situation when kidnapping started in 2002 with the Prime Minister trying to pass it off by saying, oh, only a certain kind of people were being kidnapped, but it is those "certain kind" of people who have no faith because they have not been protected. There is also a potential get-out-of-jail free card for the media, but I am very concerned about the media. According to new section 30C:

"It is a defence for a person charged with an offence under section 30A or 30B to show that—

- (c) in the particular circumstances, the pursuit of the course of conduct was reasonable."

But let us be a little hypothetical here. Let us say that there is a hypothetical minister who has built a \$5 million house and a golf course, and he has built this after he got into government. On the surface it is unreasonable to presume that the minister could afford a \$5 million house but he goes and he builds this, and he puts four brand new cars in his garage and a journalist decides that the journalist

and the photographer are going to take pictures of the house and, because they suspect the minister of corruption, they are going to see who is coming and going especially at nights in the minister's house, because they suspect that the minister is taking bribes, the minister could complain and the next thing you know, is the journalist can be charged here.

The journalist could argue that in the particular circumstances the pursuit of the course of conduct was reasonable, but that journalist would find himself or herself as the case may be, charged, brought to book and have to spend a lot of money on lawyers to defend himself or herself. Difficult. And do not say it cannot happen. There is a case going on right now in the country where a journalist has been charged with resisting arrest. She said she was taking photographs of police brutality. Again, we cannot comment on that and the Minister of National Security is silent. But, most certainly, the question that arises is: Why was she being arrested in the first place? I guess we will find out. But why was she resisting arrest? What was she doing to be arrested in the first place? But she is charged with resisting arrest. Well, boy, we have a problem and the problem basically is this yes, Canada has this legislation and Canada's legislation actually defines stalking and it says:

“Stalking occurs when a person, without lawful excuse or authority and knowing that another person is harassed or recklessly as to whether the other person is harassed, repeatedly engages in conduct that causes the other person reasonably, in all the circumstances, to fear for his or her own safety.”

And the Canadian legislation also has something that I think, personally, is quite good in that it declares that a person who stalks another person commits a tort, that is to say, a civil wrong against that person. In other words, it gives rise to an action in civil law without proof of damages which I think would be a good thing if you are really serious about this thing.

But what concerns me more than anything this afternoon is, I see this legislation, unfortunately, as part of a galloping dictatorship. I do not see this legislation as giving sufficient protection to the press. And I know I will hear the argument in the particular circumstances, the pursuit of the course of conduct was reasonable.

Let us take another hypothetical example. Let us say that there was a minister who was involved in a land development deal and there was an accusation that the minister was in bed with the contractor in a government project and that the minister and the contractor were in cohorts, and the contractor was taking

materials from the government project and feeding the minister's project with it, and again a journalist wanted to follow the two of them around. The journalist had begun taking photographs of the government minister and the contractor who might say, "We are old friends", and the journalist began taking pictures of them at a restaurant here or at a home there and so on, and then the government minister turns around and calls up the police, and the police comes and arrests the journalist. Not good enough. And again, I agree this legislation works for a First World country, it works for a vision 2020 country, but we 'ain't' there yet and we are not going to get there for a long, long time, not at the rate we are going, unfortunately. We are paying lip service to it, but not with this.

This legislation regrettably, and it is with regret, because if there is a proper functioning police force, if there is a police force that is truly apolitical, if there is a police force that is efficient—just to digress for a moment, the Minister was talking of kidnappings and he was going through the list; 183 kidnappings here, 220 kidnappings there, but he never said in any of those years that he quoted how many people had been caught. Madam President, I now pause to give him a moment to tell the Senate, the people of Trinidad and Tobago, and the world how many people have been caught and convicted on any one of those numbers. Why am I so surprised?

Sen. Joseph: Do not be surprised. While you pause, let me correct one time a statement that you made. You said kidnapping started in 2002.

Sen. R. Montano: If I say that, that is not correct. Kidnapping did not start then. My cousin who was murdered who you "steuped" at.

Sen. Joseph: I never "steuped" at—

Sen. R. Montano: You "steuped" at his murder. Do not lie!

Madam President: Senator!

Sen. R. Montano: What?

Madam President: Please sit down. Your behaviour today has not been of the best and there is no need to shout at me, and there is no need to shout at anybody. If I could give you a little medical advice, the more you shout the worse your voice is going to get.

Sen. R. Montano: But at the same time understand this, he "steuped" when I mentioned my cousin last week, and to say otherwise is a lie!

Madam President: Just give me a chance. I investigated that matter. I am not taking up for anybody, but I did ask a few people and the answer I got was that

the “steups”, if there was one—I did not ask the Minister himself, but I just thought I could clarify this matter now.

Sen. Mark: You did not ask me.

Madam President: I did not ask you either but I asked a few other people around and they said that it did not come from him. Now, it may have come from somebody else. I just want to clarify that.

Sen. R. Montano: Madam President, just for the record—[*Crosstalk*]

Madam President: Senators, as I am on this matter, I should let you know that “steupsing” shall not be acceptable in this Senate. [*Desk thumping*]

Sen. R. Montano: Madam President, I am not crazy and when I heard it I threw down my pen in disgust, anger and hurt. Why, I am not surprised that the Minister does not have those answers, that is, how many people have been caught and how many people have been convicted. I do not have the statistics either but I will bet anybody here, dollars to donuts, that the percentage is real, real, real low.

Madam President, as I was saying, there is a police service that refuses to do anything other than pay lip service to the real serious issue of crime.

The Commissioner of Police has refused on more than one occasion to give the parliamentary select committee and the country benchmarks saying how we can judge his performance. A simple question.

Sen. Joseph: What is the relevance?

Sen. R. Montano: I am going to show you the relevance. The relevance is—and it relates back to trusting the police to give them the powers under this legislation—if there is an inefficient police service, if there is a police service that bends to the political will of the Government in power, then there is a real problem and if there is a police commissioner who cannot tell you, look, these are the points at which he will consider himself a success or failure, these are the goals and the standards that he is setting himself for the next, say 12 months, so that in 12 months’ time the country can say okay, he has done a good job, pat him on the back or by his own standards he has failed and you can now say to him, resign, move, get out of the way, but nobody wants to take responsibility, nobody.

I do not think my voice will hold out for much longer. I know that will thrill the Government but the fact of the matter is the point that I am raising is a point that ought to be taken seriously. We cannot give more power to a police service that is fundamentally flawed in that it is subject to political control, and that is the

basic problem. [*Interruption*] That is a good point. The Attorney General is already in charge of a so-called anti-corruption unit. That is breaching all the standards of keeping political control out of the hands of a police service. When there is an Attorney General being in charge of an anti-corruption squad, there is now an anti-corruption squad that is answering to whom, a politician? There is a sub-anti-crime unit in the Ministry of National Security reporting again, to whom? There is an anti-crime unit reporting—[*Crosstalk*]

Madam President: I have to listen to what is being said. If you all do not want to listen you can do something else but please, Sen. Mark and Sen. D. Montano that kind of crosstalk there—

Sen. Mark: Madam President, I apologize.

Sen. R. Montano: Just for the record, a senior police officer said, and it was reported in the papers in a matter that is going on in the courts now, that there was a Cabinet Minute of January 2002 to that effect. What you have here now are two very serious crimes, corruption or whatever you want to call it, of police units being controlled by politicians. Now if one were to take a look at the Constitution of Trinidad and Tobago, one would see that is not supposed to happen, so that these two units are operating outside the Constitution, *ultra vires*.

Sen. Jeremie: The point is that in all societies which are run by civilian governments the ministers have ultimate control over the police force. In some territories the Minister of National Security is also the Minister responsible for the office of the Attorney General. That is a non point.

The police officers report to the Commissioner of Police. The role of the Minister of National Security, the role of the Attorney General is simply to provide resources to the force to do things which they are required to do in an age of transnational crime. And I remind you, that in the year 2000 or thereabout, when there was a particular gentleman who was acting as Minister of National Security, the anti-corruption squad was starved of resources for an entire year and as a consequence of that, was unable to travel to any part of the world. In this day, the fruits of corruption are not hidden in Trinidad and Tobago. They find themselves into accounts in the Bahamas, in Lechleiten, in Miami, all over the world. I am just explaining to you what the position is.

Sen. R. Montano: Madam President, the Attorney General's point was, in essence, oh, it happens in other jurisdictions and then he went off on a frolic of his own, not answering the point.

I would say to the Attorney General, through you, Madam President, this: we operate under a Constitution. Our laws begin and end with the Constitution and either the Government is operating under a law that is constitutionally correct or it is not, and either the Government can go and point to the section of the Constitution which says that they can pretty well set up an anti-corruption unit and have it reporting to a politician using police officers outside of the police service or they cannot.

I have been through the Constitution backwards and forwards and I have not seen that in the Constitution. I have not seen in the Constitution where Brigadier Peter Joseph can set up an anti-crime unit and not report to the Commissioner of Police and I know he does not report to the Commissioner of Police because I personally asked the Commissioner of Police. “Does Brigadier Joseph report to you?” And the answer to that was no. He reports to the Minister of National Security and essentially that is the point. Remember there is, for example, when my colleague Sen. Baksh had cocaine and ammunition planted in his water tank by police officers and that was in the press, I had called the names of the police officers in this Senate. I cannot remember them offhand but I can get them for you again. It is in the *Hansard* and I am not afraid to call them. I was told incidentally that if I called the names I would be killed and I called the names. I genuinely cannot remember the names but I would—

Madam President: Get back to the Bill.

Sen. R. Montano: I agree with you. The point is that here you have a real problem. There is half the population of Trinidad and Tobago, at least—and I am not talking about any Market Opinion and Research International (MORI) poll, I am talking about facts—that are really, really concerned about their safety. I am talking about at least, minimum, their safety, the impartiality of the police. There is a situation whereby people worry about the ability of the police to solve crimes. There is a situation where there are many people who believe that there are policemen who are in league with the criminals and who believe that half the problem in the country is because the police are actually part and parcel.

Madam President, do you know what is being said on the streets right now? Last week or the week before when there was almost a big shootout between members of West End Police Division and the Organized Crime and Narcotic Unit (OCNU), the people in Carenage were saying the reason for the shootout was because certain officers in OCNU are in league with the drug lords, and they were saying that the West End Police Division were trying to catch the drug dealers and OCNU was there to sort of protect them. That is what the people on the ground are

saying. That is what is being said. It all comes back to this Bill and it all comes back to trust.

In a civilized society, in a society that you can trust the police, in a society whereby it is felt the police will act fairly, will act responsibly, will not allow the political bias to show, then yes, there is nothing wrong with this but in this society—

Madam President, put another way, if on making an accurate guess and the senior police officers had to tell the truth and my life depended upon guessing where their political sympathies lay, I would have no hesitation whatsoever. Think about it. How many people can you be unsure about in this terribly divided society, and what a dreadful thing to have to admit.

The legislation of itself appears innocuous but without serious protection for the press and the press would be the ones that will suffer the most, the journalists will be the ones who will find themselves coming under the gun and one of two things will happen. It is either the press will become more afraid to pursue allegations of corruption against this Government—and they have been noticeably afraid. They have not gone off to this Government and the allegations against them in the way they went off to the UNC, and that is a fact. If you say they have no reason to, oh yes, they do, but they have not and you have to ask the question why. It is either they are going to become more afraid or more of their numbers are going to get locked up with the end result being that they will shut down. This does not help our democracy and in the circumstances, it is with great regret that I have to say I cannot support it.

Sen. Prof. Ramesh Deosaran: Madam President, when I studied the Bill, I did not give serious thought to the last remarks that Sen. Montano made and, in fact, whilst he was speaking my hair stood on end because of the implications of what he was alluding to.

I quickly revisited the provision and the examples of how harassment is defined in subsection 30A(i). For example, “making visual recordings of” which occurred to me instantaneously as part of the work that the media do, so I began to think the last two or three minutes, and this is quite apart from my own notes that I prepared before this debate started.

Not having had a fuller time to reflect, I would be very grateful—in fact, I think the whole Senate should be grateful if in the response by the Minister of National Security some clarification or some assurance—I do not know if legislatively or perhaps, in terms of public policy he might give us the assurance

because it is not that I am making a charge. I am merely saying if that is an implication or possible consequence, given the fact that one of the guarantees we have in section 4 of the Constitution, is freedom of the press, it is a matter as I open my contribution, I would invite the hon. Minister to engage us in some clarification because it does carry a very serious implication.

But having said that, I began to see the Bill as one attempting to empower victims in this country. I saw it as a Bill for empowerment until, of course, I heard the remark from Sen. R. Montano. Nevertheless, I think it gets into an area which is fast developing in the realm of criminal justice and this is victims' rights and welfare.

When I examined the Bill in its specific provisions as well, I saw an attempt to disempower those who would harass and threaten others in several ways. So for that conjoint purpose, I would like to support the Bill with my qualifications here and there, and my request for further clarification in certain specific clauses, of course.

A stalker, as the Minister rightly said, has certain qualities. Quite often from the literature, they are psychopaths, sociopaths who relish bringing injury to others for their own psychological fulfilment and I am quite sure, Madam President, it is an area in which you would certainly know more than the average person will.

In fact, at the university I take pleasure in saying we have a course that is going to begin in a new graduate programme with the title "Victim Rights and Welfare." It is a whole new graduate course which we are inviting police officers, probation officers and people of those professions to take advantage of, and if the legislation does pass, much of their work would be based on the legislation. So that is part of my interest.

Madam President, harassing people, intimidating people and threatening people do set up a climate of fear and if not physically attacked, such people really have a great concern for their safety. It immobilizes them, there are economic costs, and there are also social costs in terms of the quality of life as to where you can take your family; at what time of the night or day you wish to go out.

So for those reasons, I looked upon the Bill with some favour. In other words, threatening people through the telephone or in written form or loitering near their premises, sending faxes to them of an intimidating nature in this age of electronic transmission, is really second-hand terrorism, because it creates fear and

uneasiness. It amounts, in my view, to second-hand terrorism. In fact, electronic terrorism through the telephones, through the email, Internet—and I was happy when I saw in the Bill computers and telephones being some of the means that are included in the provision. In fact, these days I have seen the equipment where people usually suspect governments of tapping people's telephones for various reasons, but it is much more advanced than that.

I am not saying this allegation is for this Government. I am saying people usually have the suspicion that it is the government but it is more advanced than that. People can buy equipment now to tap into telephones, outside the legal telephone circuitry. People can intervene in other people's telephone calls using equipment they have bought abroad, so advanced is the technology. That is why I say we are living in a very dangerous age. I think that a bill like this should help us disempower those who seek to harass or threaten us.

3.00 p.m.

There are many people who have been threatened, especially in the context of domestic violence to which the Minister alluded. Many people have been provoked and insulted, but they have not made a report to the authorities or even to their own families. It is a cultural issue because many of the offences bring embarrassment. We know the story about rape and incest, which, really, as the Minister explained, falls under the ambit of this legislation, to some extent, because in many cases seeking justice for the offender is sometimes less burdensome for the victim than exposing himself or herself to public shame. So there is a lot of silent suffering under intimidation, harassment and threat.

Sometimes if you tell people that you are threatened, insulted or intimidated, Madam President, you would be surprised to know that there are some people who would say that it is "good" for you or that you looked for that. That is a community habit that some of us know only too well. When some of us, especially those of us in high office, face misfortune, other people, for different reasons—some, very bizarre reasons—find amusement in that, especially the way it is published. We have a very healthy appetite for enjoying the misfortunes of other people. We need to stop it. That is why I hope that the Bill and its provisions would empower victims and potential victims of harassment and intimidation to rise up in the confidence that the criminal justice system is now in a position to serve and protect them.

Madam President, from what I know and from the data we have at the Centre for Criminology, I can tell you that harassment, threats and intimidation are

spreading across the country in many different forms. It exists in the schools. I am happy to know that the Ministry of Education is taking this issue very seriously. For many years now, there have been students taking advantage of others—intimidating them, threatening them, taking their books and lunches—so when the habits begin there, you would expect the psychopathic syndrome to develop in later years, as has happened.

If we read the literature—and I do not want to be too pedantic about it—there is a connection between those who bully at schools and what they do in their adult years. I am very happy to know that the Ministry is taking a frontal attack in dealing with the problem of bullying, which has relevance to this particular Bill. I would give one piece of data, taken from the work by the Ministry, because I feel proud to say it is a problem we all should join in reducing, if not totally removing. I believe that the whole country has a duty to join together to see what we can do in our different ways to alleviate the problems our young people face—delinquency, being taken advantage of and violence.

I have, to some extent, joined with the Ministry for this exercise. I can tell you, for example, that the challenge is very serious. I do not think that there should be any politics in this. I think that as long as we have the competence to help, from whatever side of the arena we live, we should all join to help the next generation develop a sense of civility and purpose. For example, they were asked the question—it was two months into the term: For this term, how often have you been threatened with violence by another student? Over 30 per cent of them said they had been over five, six, seven and eight times.

There is a lot more data that justifies the Ministry's sustained attempt to deal with these problems in the school. It is not only a problem facing the adult, it is a problem germinating in the schools, with implications for later life. Perhaps the Ministry of National Security should join with the Ministry of Education to have a coordinated attempt to control this, both at the early and later stages.

It is perhaps appropriate that this Bill comes at the Carnival season because with the way people “ram and jam”, “wine” and dance, it would be very easy for people to mistake what is an expression of healthy fun for a vulgar invitation, where they would want to touch, bounce, squeeze, rub, as if they were playing with a grapefruit. People object to this.

The Bill has a strong feminist component in that harassment throughout the ages has been generally directed against the female of our population, not only within domestic violence, but outside of that—threats, spousal abuse, intimidation

of different kinds and ultimatums to women. So, the Bill has, by implication, a strong gender consequence. I also welcome that.

It could be a message to our Carnival players to cease and desist from touching what is not theirs, squeezing, bouncing, jamming; where there should be a line of civility for all to enjoy the fun without undue embarrassment. Connected to that, I am trying to restrain myself. My occupation is reading, writing, studying and running public opinion polls sometimes.

There is a book which gives evidence from around the world. The Minister might be happy to know that linked to violence of the kind we are talking about—threats and intimidation—is alcohol consumption. He would be surprised to know the percentage of such acts as described in the Bill that is related to the abuse of alcohol. It sends us back a step further to find out, if we want to deal with threats and intimidation, the causal factor, not only in the adult community, but also, as I have said before, far too often there are many young people drinking rum and smoking weed in this country.

There is a provision in the Bill that talks about “knowingly” and “a reasonable person” and all that. I will come to that just now in terms of trying to prove that the offence took place.

There are one or two things that worry me in the Bill. I would be very happy to get some guidance on what these sections mean or why the clauses were put in. For example, the Minister said, more than once, something that is in the preamble to the Bill. Let us say that a layman reads this Bill, there is nowhere in the Bill itself where it says—I am sorry it is on page 7, 30A(b):

“a ‘course of conduct’ involves conduct of the kind referred to in paragraph (a) carried out on at least two occasions.”

Be that as it may. As some of us here will know, when it comes to proving discrimination, the courts meander between two positions—whether one instance of discrimination is enough for someone to suffer economic and social consequences or whether there is need for a pattern of discriminatory acts to establish the case. Madam President, sometimes one act of discrimination can cause a business to collapse at the hands of a public officer, depending on the amount of money and the issue at hand.

I am saying, therefore, that no matter what the United Kingdom, Canada and others say, from my point of view—and since the Minister spoke about our peculiar values, in that context—I am not sure we should have the test of having two occasions at least. One occasion is enough if it is very hurtful and injurious and brings psychological stress to the person.

Would you wait another time? Will the Minister see whether this is a matter worth considering? Sometimes once is enough. Sometimes once is too much, in such instances, where injury and fear is the consequence.

The other issue on page 7 is subsection (2):

“A person who pursues a course of conduct which amounts to harassment of another and which he knows or ought reasonably to know amounts to harassment of the other is guilty...”

We have “he knows or ought reasonably to know”. I would prefer “and which he ought reasonably to know” as the sufficient standard, without having “he knows or ought reasonably to know”. I think it is enough for anybody to know in a reasonable way whether he is causing injury, offence or fear. If you put a parallel condition that he knows, he ought to know, I do not see the need for having both. Perhaps the Minister can enlighten me on the necessity for having both these conditions.

My reasoning goes as follows: this Act is not only to find guilty those who have offended, but as a deterrent to those who might think about offending. I would not want to see too many escape clauses that the offender can have at his disposal. It is enough of a defence if it can be shown that he should have known what he was doing as a reasonable person, especially as we have subsection (3). I am merely asking. I do not intend to formalize it with an amendment. I raise this for the Minister’s consideration, as I believe the Act ought to serve as a deterrent.

It brings me to a point that I have raised in this Parliament several times. I take the opportunity to raise it again. These issues are psychologically loaded issues—reasonable, the perception of harassment, subjective conditions. If a person does not feel he or she is harassed, there is no further action. Harassment can vary from one person to another, depending on your sex, your social standing, your professional standing or where you live. Some people are accustomed to being harassed every day. It is a common event in their community. Other people, if they see someone strange in their district passing twice up and down, become unnerved. There is a great amount of subjectivity in the definition or the conditions both for harassment or threat of violence.

Why am I saying so? I am saying so because it is time—and I wish that the hon. Minister of National Security could recommend to his Cabinet, possibly the Attorney General too, a change in the composition of the Law Reform Commission. Rather than having 12 lawyers talking to one another—and you know what that means, Madam President—have some competent persons who can help address the issues within the Law Reform Commission.

About seven or eight years ago, I wrote the Attorney General and made the suggestion—as a professional from the university having some idea about social legislation and the need for the legal mind to be informed about social issues and to have a healthy reciprocity between the two fields of competence—and the Chairman of the Law Reform Commission wrote back to me and said that it was a good idea and that they would keep my application on file. Madam President, it was one of the most insulting letters I have ever gotten from a public officer. I was not applying for a job. I want to say quite clearly that I need not apply for any job right now. I have had enough jobs in my life and I think it is time to take a little rest.

The gentleman wrote me and told me that he had my application on file. When I make the point now, I want to give the Government the assurance that I am not applying for a job. I am willing to help, as some of these Ministers know. My fees are nowhere near millions of dollars. I give you that assurance, too.

I am willing to help. In fact, on Carnival Monday and Tuesday, I will be working on data for the Ministry of Education on the question of school violence. I say so because I need to reinforce what I said earlier and what I keep saying in this Parliament. This question of crime, kidnapping and drug trafficking will never receive a big dent unless we have political bipartisanship and coordination between the different political and social agencies in the country. They can spend millions of dollars if they want.

For example, in terms of detecting kidnapping, they would have to rely precisely and fundamentally on information from citizens. They can have all the forensic tools and squad cars they want, if the public does not have confidence in the police and the willingness to give that information across all political party lines; if there is no sense of community life and the need to preserve law, order and peace in the different communities; if that civic value is not spread efficiently, widely and deeply, all the crimes we speak about day after day, speaking against one another and about one another, there will be little or no significant reduction in them. As my mother might tell me, “You preach because that is the truth”.

I am waiting for the day when this consensus would be established, either through constitutional review or through some restructuring of Parliament. We cannot really hold the Opposition responsible for the way it has to behave because it has an obligation within the Constitution. To some extent we cannot hold the Government at bay for their not reaching out far enough because they too have a responsibility, under section 75, to manage and run the country. Until such time, this idea of kidnapping, robbery, drug trafficking, intimidation, harassment and whatever will not be significantly reduced.

Having said that, I refer now to page 6, 30A(a)(iii);

“entering property or interfering with property in the possession of the person;”

That is an offence, but I have found, in talking to people who have suffered such consequences, that they feel helpless when a trespasser is on their land, whether it is praedial larceny or burglary. Do you know why they feel helpless? Because they are afraid if they do—this intruder, who may or may not be armed, but especially if he or she is armed—they would be a victim before the court, even if they are the rightful owners of the place.

This is an issue that this country, especially faced with the kind of terror that we have been faced with, should look at in terms of giving property owners, people in their private dwellings, some more rights. In fact, as we speak, many countries are thinking about it, not because it is a popular initiative, but to give people further rights to defend themselves and their properties.

Since mention was made of the United Kingdom—I am sure the hon. Attorney General would know; he reads his law books—the British Parliament now has a paper before itself and before the public, raising the bar from a defence being the “use of reasonable force” to “grossly disproportionate force”. In other words, the British citizen will now get, in order to preserve his property and private rights, more force to use against an intruder or someone armed with a weapon on his premises. He can only commit an offence if it is seen that he has used force grossly disproportionate; not just the lower bar, unreasonable force.

Do you know why? It is not just people being attacked in their homes; it is not just people being intimidated. A person cannot sit in his gallery peacefully. Persons are afraid to go into their backyard in the evening. People are just afraid, so as an obligation to the need of a population, I think it is time that Government, especially this one, pays attention to a possible reform of the relevant laws.

I listened to the Minister and my friend, Sen. R. Montano, quite intently and I realized that what is happening here is that they are taking certain rights away from citizens. For example, the person who walks up and down his house has a right to freedom of movement. That is in the Constitution. But they are taking away his freedom because it could be seen as violating someone else's sense of security. We realize the very grey line on which we are walking. Someone is free to write something. That is freedom of thought and expression, but this freedom becomes in question if it is offensive to someone else's freedom to the right to privacy and security of person.

Madam President, I anticipate that if things are not really clear in this legislation; if things are not very precise without losing balance, it will be confusion in the court in arriving at where one right ends and the other begins. There are other rights implicated in this Bill, but the point is sufficiently made.

What is intimidation really? When we look at this Bill, some of us might remember our young days. When we were courting, we had passed up and down the house. I am not referring to you, Madam President. I am speaking generally. We had to send letters. We had to peep. We had to do all different things—dodge, hide and seek, for example. If this Bill were in force in the days of Romeo and Juliet, I think Romeo might have been in prison for harassment.

Hon. Senators: Unwanted. It must be unwanted.

Sen. Prof. R. Deosaran: Madam President, I am sorry for the extra drama.

When we look at the parent Act, Madam President, something caught my attention in sections 27 and 28. I am not debating the sections. I am merely making reference to it. It says:

“Any person who by threats or force, obstructs or prevents, or endeavours to obstruct or prevent, any clergyman or other minister...”

from carrying out his duty. The minister is really a minister of the church.

I will tell you something, Madam President. A Member of Parliament told me once that after giving a speech here, as he was going outside to his car, a citizen came pulling at his jacket, expressing anger at what he had said in the House. I think that that Member of Parliament was obviously in fear of his person.

I think, as another issue, we have come to the stage where we should put some provision to safeguard Members of Parliament from such intimidation. Some of us receive phone calls. I have received phone calls that were very threatening in nature about what I said. I spoke here two or three weeks ago about air conditioning. But that goes with the duty. At the same time, we would expect some protection to be given to Members of Parliament, who would like to express their views, as you say in the opening prayer, fearlessly, without unwholesome prejudices and without personal affections.

3.30 p.m.

We in the Parliament cannot do our job if there is the potential of being threatened on the streets, through telephones or fax messages and so forth. I am

very concerned with the experience of that particular Member of Parliament who told me others have endured similar experiences. So, we are moving. I think we ought to move with the times and bring the legislation to accommodate that.

Madam President, there is something more relevant than all of this. If you want an example of how a threat can be laid out in the context of the Bill, this is a particular case; this is real electronic terrorism. I have a faxed letter here from a doctor, who sent it to the Parliament, and Parliament then faxed it to my home. This matter relates to the intention of the Bill and the implication of the provisions and the protection it seeks to offer people.

Madam President, do you remember a few weeks ago I made mention of the medical profession? Briefly, I said that I found some doctors were not living up to their oath. I made a case for the poor sick people who are lining up and not receiving due care and attention. I was taken up for this by one particular medical group. I called no names; I called no associations; and I called no particular institution in my contribution, except when it was quoted in the press. I thought I was enjoying a right given by Parliament and I was fulfilling my duty.

I must tell you that I gave the information to the police, because of what I am going to read to you. The police are enquiring into the matter. After my contribution in Parliament—the acting Medical Chief of Staff at the San Fernando General Hospital has been a friend of mine for many years. He invited me to visit the hospital just before Christmas. I told him to wait until the New Year starts for different reasons and so forth. I also thought that it was not judicious at that period. So, he gave me a written invitation and I put it on hold. I explained to Sen. Mary King why, because the Senator heads a committee that looks into the health institutions. The matter then reached the press and it became a little untidy and so forth.

Madam President, this doctor, whom we shall call “Dr. X”, wrote this fax. After some thoughtful days, I did not want to make something out of what may be nothing, but I was advised that I should take the steps that I took. He talked about being a soldier; he is up for hire and about killing and so on. He used some very vulgar language. He said that the English language—I did not understand that; maybe this is a mental health act issue here—is crap. He used a four letter word “SH...” I will not tell you the other two letters, and then he signed his name underneath.

Madam President, I am concerned with this: “I will certainly make any visit by yourself most unwelcome without parliamentary privileges and in public, so to prevent any embarrassment to yourself, I strongly advise you not to come to San

Offences Against the Person (Amdt.) Bill
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Fernando General Hospital, or if you do choose a day when I am not in the compound, you will be presented with my full wrath and rot” and it went on. Madam President, if this is not a threat in the context of the Bill, I do not know what is.

Madam President, let me give you the assurance that I wanted to keep this matter silent. As I said, sometimes people laugh at you. In my case, they will say: “It is good for Deosaran.” That happens and we are accustomed to that. At the beginning of my contribution this afternoon, I told you that there are many times when a person may be victimized or threatened and that person remains silent, and that silence empowers the attacker, because the attacker feels that he can do this again and again. I am bringing up this issue, not necessarily on my own behalf, but I hope the Minister of National Security and persons like the Attorney General and other parliamentarians here will take the matter seriously, because this is collective attack on this honourable Senate. I have taken the matter to the police but, at the same time, I hope that the hon. gentlemen, especially opposite, will take this matter very seriously. It is not that I am trembling in my boots, but this is out of precaution.

Madam President, as you know, I am from San Juan and that means that you must have a stout heart, and being from Barataria you will know the battles that I have been engaged in. Some people call me “Ram the tiger” because of whom I have stood up against. This does not change things. I expressed my sentiments here so that there will be collective wisdom and response on this matter. It has been said that when they came for the Jews you did nothing; when they came for the unionists, you did nothing; when they came for the Catholics, you did nothing; and when they came for you, there was no one else left.

Sen. R. Montano: Madam President, I have been listening with great concern to what my friend, Sen. Prof. Deosaran just said and what he has just described is contempt of this Parliament. I was trying to look at the Standing Orders before he sat down, but all I could get to was Standing Order 67. I did not have the time to look up the Mays. Whatever is the procedure, I would like this matter with the doctor be referred to the Committee of Privileges.

Sen. Mark: I agree. [*Desk thumping*]

Sen. R. Montano: This is contempt of this Parliament and the doctor should be brought before the Privileges Committee. Last week, I made the point in a different way when I was dealing with the privileges of being a Member of Parliament. If we do not obey the rules then the rules will consume us. What my

friend has alluded to is a serious contempt of this Parliament, and the population must know that is not acceptable.

Madam President: Senator, I will look at this matter and I will make a decision on the matter. If it is necessary, I will get the details from the Senator. [*Desk thumping*]

Sen. Prof. R. Deosaran: Madam President, I will pass the letter to you.

Madam President: Senator, your speaking time has expired.

Motion made, That the hon. Senator's speaking time be extended by 15 minutes. [*Sen. Dr. E. McKenzie*]

Question put and agreed to.

Sen. Prof. R. Deosaran: Madam President, I was wrapping up. Thank you for the extra time. I think that if we want to show some conviction about this Bill, that conviction could be manifested by the way we handle such a matter.

Madam President, Sen. R. Montano raised another issue and, in wrapping up, I want to allude to it and that has to do with the confidence in the police. As you know, the Senator and I say things differently, but the substance of what he said is quite noteworthy. If people feel intimidated or threatened, even with this legislation being enforced, we would need the police to respond very quickly otherwise, like so many other pieces of legislation, without law enforcement, there will be no effect. We know the story about that. I do not want to beat a dead horse. I think the Minister knows about that, and knowing him as I do, this is a great worry for him. So, what I am going to say in the next few minutes is certainly not an attack on the police, but to make the management of the police aware of the kind of vigilance that they have to invoke when dealing with those lower on the ground. Perhaps, more particular, those on the ground level operating as officers must also know that they have to account for their day-to-day service to citizens of this country. So, if I make reference to an incident it is just to help strengthen the work of the police service and to encourage the police service to do what it is supposed to do.

Madam President, on January 02, 2005 an incident took place in El Dorado. I was present when that incident took place. A complaint was made to the commissioner and the Tunapuna Police Station. What was this complaint about? At about 7 o'clock, a man, apparently intoxicated, walked onto the street with a piece of iron and started smashing cars along the road. He mashed up a windshield, damaged a fender and threatened everybody by telling them if they come out he is going to do so and so.

In the context of the Bill before us, you will see the relevance. Why am I bringing this matter to the attention of this honourable Senate? Well, there are several reasons. I called E999 myself when I realized that the affected residents were not getting through. We talked to one—I took his name and, with due respect, I told him that all I wanted was for him to send someone to ease the tension, because this gentleman, intoxicated as he is, may inflict further damage on people, so as a preventive measure, to send someone quickly.

Well, I called Mr. Gonzales twice, who was on the other end—and knowing how these things operate, it would be a tape recording of the call. The police came an hour afterward. There were two officers, and I went up to them politely. I want to emphasize that point. This is not about pulling rank. I went up to them very politely and decently, because I know my place. The Minister of National Security could tell you that I know my place, as far as lines of jurisdiction are concerned. When I am in the university, that is a different story, but you move to suit. Well, two officers came in PBT 1576. They were officers Harper and Lokai and they said they knew the man and they have been looking for him a long time now. I was happy. I said today they are going to catch him almost in the act. Do you know that up to now there has been no news of catching that man? [*Laughter*] The gentleman is still walking on the street and brandishing his iron and threatening everybody.

Now, in light of what Sen. R. Montano said—we say things differently—this should not happen. When the affected parties went into the Tunapuna Police Station to make the report and to photograph the cars that were damaged, we saw five PBT vehicles parked in the station. So, Minister, this is not a criticism of the police. I do not want you to take it as if I was undermining your authority, but if you do not have these pieces of information—the police should know that they ought to do better and, I think, we ought to encourage them to do better. I am not castigating the whole service. I am just showing you that when there are instances like this, the public would want to have confidence in the police because they are there to protect and serve. This was an hour of need.

To be fair, I talked to the Commissioner of Police. He is a gentleman. I have put this on the record and I am going to put it again. I have great respect for him for different reasons, which I need not enunciate here. He is a gentleman of the highest caliber. I will always say that until further notice. I explained to him what was happening and he promised to get back to me. When someone tells you that they will get back to you, or a public officer tells you that he is looking into the matter, or you will hear from him, or do not call me I will call you; I hope this is

certainly not one of those cases, because this matter deals with life and limb and public confidence in the police service.

So, the Commissioner of Police has a copy of this report. I told him that any help he wants, I am willing to give it to him. The residents keep asking me what is happening, because this occurred since January 02, 2005, and the gentleman is apparently roaming the streets after all those investigations. There is much more to this in terms of drug trafficking; what he has done before; the alleged relationship between the police and let us say, others in the community.

Madam President, I have tried to bring some life to the legislation, because this Bill deals with the theory of the law. What I have pointed out to you has to do with the empirical evidence; the empirical reality of how the law can deal with people's problems, and how the law can fulfill its mission through this Parliament.

Madam President, thank you very much. I also want to thank Senators for expressing their sentiments on the matter I raised with respect to the medical profession. [*Desk thumping*]

Madam President: Minister Kangaloo, before I call on you, the Attorney General was asked to bring some information, and he did say that he would bring it at the next sitting. He has informed me that he has the information now. I will give him a few minutes to give the information quickly to the House. [*Desk thumping*]

**RE: QUESTION NO. 25
(INFORMATION ON)**

The Attorney General (Sen. The Hon. John Jeremie): Madam President, thank you. The question posed by Sen. Mark related to the authority which I had at my disposal under the Freedom of Information Act, to resist the disclosure of the information in the question directed to the hon. Prime Minister. We had some advice on this matter. The starting point was Standing Order 84(1), because our Standing Orders are silent on the question of what happens when a matter is not expressly provided for in the Standing Orders occurs.

Standing Order 84(1) says:

“In any matter not herein provided for, resort shall be had to the usage and practice of the House of Commons of the Parliament of the United Kingdom, which shall be followed as far as the same may be applicable to this Senate, and not inconsistent with these Standing Orders nor with the practice of this Senate.”

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Now, there are no provisions or practices governing the basis upon which a Minister, including the Prime Minister, should refuse to answer a question, but the point is that the usages and practices of the House of Commons should be followed under Standing Order 84(1).

A Minister, in refusing to answer questions here, on the grounds of the public interests in Trinidad and Tobago, should be guided by the Freedom of Information Act, No. 26 of 1999. [*Interruption*] Madam President, may I continue? In the United Kingdom, the relevant provision is contained in the Code of Practice on Access to Government Information which is to be replaced by the Freedom of Information Act, United Kingdom, when fully implemented.

Sen. R. Montano: What?

Sen. The Hon. J. Jeremie: Should I repeat?

Sen. R. Montano: Yes.

Sen. The Hon. J. Jeremie: The point is that in refusing to answer a question, the basis ought to be the same as that which occurs in the United Kingdom. At present, the provisions are contained in an established Code of Practice on Access to Government Information, which is used by the British House of Commons. That Code of Practice, which is at present in force, is due to be replaced by the Freedom of Information Act of 2000, the United Kingdom, when it is fully implemented. It is not yet fully implemented.

Now, section 3(1)(b) of the Freedom of Information Act creates a general right to access information in documentary form in the possession of public authorities, but that right is limited, except exceptions and exemptions which are necessary for the protection of essential public interest.

The Executive hears claims of privilege, and that is what I sought to claim in refusing to answer the question.

Madam President, thank you.

Sen. R. Montano: Madam President, you did say that you will allow some questions.

Madam President: I did?

Hon. Senators: No.

Madam President: Senator, you asked for some information and, I think, we got the information.

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Sen. R. Montano: No.

Madam President: Senator R. Montano, you cannot tell me no.

Sen. R. Montano: Madam President, you said that we could ask questions.

Hon. Senators: No.

Sen. R. Montano: Madam President, yes, you did.

Madam President: I will allow Sen. Mark one question.

Sen. Mark: Madam President, the Attorney General made reference to the public interests. We would like the hon. Attorney General to explain to this Senate, based on the question that has been put, what is there in that question that violates the public's interest that would not allow him to answer the question on behalf of the Prime Minister? Could the Attorney General explain to us: what is the public interest in this matter?

Sen. The Hon. J. Jeremie: Madam President, I am going to answer this question. Under the Constitution, the Prime Minister consults with a number of persons including the President. The Cabinet sought advice on this matter, and our advice was that if we begin to divulge information relevant to the Prime Minister's consultations with the President and other bodies established by the Constitution that will be a slippery slope. Madam President, that is as far as I can assist this honourable Senate.

OFFENCES AGAINST THE PERSON (AMDT.) (HARASSMENT) BILL

The Minister in the Office of the Prime Minister (Social Services Delivery) (Sen. The Hon. Christine Kangaloo): Madam President, I rise to lend my support to the Bill which is currently before this Senate this afternoon, and to simply say that this Bill is a very sound piece of legislation for five main reasons:

- (1) it seeks to close a gap in the law with respect to assault;
- (2) it is expanding the reach of the Domestic Violence Act;
- (3) it is a modern piece of legislation which is seeking to incorporate harassment by computer and telephone;
- (4) it safeguards police investigations; and
- (5) it seeks to embrace the modern approach to restorative justice.

Madam President, with respect to closing the gap, in relation to criminal matters dealing with assault, I want to just tell this Senate that in dealing with

cases of assault in the criminal arena, the crime always centered on an immediate threat of violence. There was a very old case where the words were used: “Were it not that it were assize time, I will run this sword through you.” In that particular case, what the court held was that was not an assault, because there was no immediate threat of violence.

If I were to say to Sen. Mark, my good friend, that were it not for tea time, I would pelt this fork at him, and I would run this knife through him, that would not constitute assault. [*Laughter*] [*Interruption*] This piece of legislation seeks to close that gap by creating this offence of harassment.

The second reason that I said that this is a good piece of legislation is because it is expanding the reach of the Domestic Violence Act. Under that Act, there must be some sort of familial relationship existing, to come under the ambit of that Act. What this Bill is now doing is allowing a general group of persons to access the courts.

Madam President, I followed Sen. Seepersad-Bachan’s practice and I went on the Internet. I looked up the issue of harassment in other jurisdictions. In Canada, the information that was available was that the crime of harassment is primarily a crime against women.

In 1999, females accounted for three-quarters of all victims of criminal harassment. Most of the victims of criminal harassment knew their accused and, in many instances, the stalker and the victim were involved in a previous relationship. Slightly more than half of all the female victims were stalked by a current or former partner; and a further 25 per cent were stalked by a casual acquaintance. Madam President, right away, you see how legislation of this sort will impact on our population. Therefore, I feel this is legislation that is sound and legislation that is needed in our current environment.

Apart from that, by establishing a course of conduct on at least two occasions—which is what the Act says—then you can prevent it from going further. Someone can act immediately and seek the sanction of the courts and put an end to the matter. That has very good consequences, because what the learning and reading in these areas show is that victims of stalking could suffer from depression and anxiety, so that you need to get to these situations fairly quickly and do not wait for a prolonged period of constant harassment. So if you were able to step in then you can resolve those issues faster, and the emotional anxiety will be lessened. I do not have to stand here and talk about the effects of mental depression and anxiety, and what it can do to a society and the social ills which are consequences of these behaviours.

Madam President, it is also a fact that stalking can progress to more serious crime, and if we can deal with this matter quickly then, of course, it is preventive in nature. I think Sen. Prof. Deosaran alluded to that matter. Again, the fact can lead us to say that this is legislation that should be supported.

I talked about the fact that this is modern legislation. When we talk about making contact with a person by telephone, by computer, by post or any other way, we are dealing with the modern day era, and you immediately think of text messaging, and what that can do; you immediately think of the Internet and the threatening emails that you can receive; and you see that we are moving into modern times with this legislation.

A modern day stalker does not necessarily have to stand up outside your home or your workplace and harass someone. You can be harassed in your home through your telephone and through your computer. This piece of legislation is seeking to address that matter. The issue of pornography on the Internet and sending it to harass are issues that this piece of legislation is addressing. Once again, I say that it should be supported for that reason.

The issue of police investigations and the safeguarding of police investigations which is contained in new section 30C is essential. There are certain activities like surveillance by police officers for drug activities, and those activities are necessary, and you cannot seek to hamper a policeman's performance of his duties by invoking this Bill and saying that you are being harassed. So by putting in this clause, it is seeking to protect the police investigation. This is very necessary.

Madam President, Sen. R. Montano talked about the powers that we are giving to the police, and we are letting the police off by this clause, but this is very necessary. If we are to allow the police to do what they have to do, then we must invoke this as a defence so that it will not be an abuse of the Bill. In safeguarding the police investigations, we are preventing persons from abusing the Bill by preventing police officers from doing what they should be doing.

Finally, I said that the Bill embraces the modern day approach to restorative justice. When I said that, I was referring to the Bill allowing for compensation for the victims. We all know that restorative justice focuses on healing the wounds of victims, offenders and communities. This involves and embraces support for victims. So the compensation under this Bill lends to that concept. The fact that a victim can receive compensation lends to that whole modern day approach of restorative justice in our system.

Further, the fact that the court has the power to allow for the Mental Health Order to be made is also part of restorative justice, because it seeks to help the offender get past the issue. So, if there is a mental health issue, the legislation is seeking to help an offender get past that issue by getting the proper attention. So, in essence, this is part of the whole restorative justice concept. I think this is a very positive thing in this Bill. Ultimately, you are empowering the victim in a certain way; you are giving the victim support; and you are ensuring that there is a better outcome for the victim, but you have not abandoned the offender.

In certain cases, the Minister of National Security talked about the statistics, and he said that a large percentage of the offenders have mental problems and, therefore, we are not abandoning the offender here, because we can invoke the section of the Mental Health Act. This is also a very positive aspect of this piece of legislation.

Madam President, with those few words, I hope that I have helped somewhat in showing the positive effects that this piece of legislation can bring. I just want to say in response to what Sen. R. Montano said when he said that this would be a good piece of legislation, and it will work for a First World country, and we are not there yet.

If we were to adopt that reasoning, then we would be in a state of paralysis and we would get nothing done. We would simply be saying to wait until we fix this or until we fix that and all the other jurisdictions would be adopting modern legislation, and we would be staying with what we have. There could never be proper development if we adopt that attitude.

Madam President, I say that this is a Bill that will do a lot of good, and for that reason I lend my support. I thank you. [*Desk thumping*]

Sen. Roy Augustus: Madam President, thank you for giving me the opportunity to address a few remarks to this honorable Senate on the Bill before us. However, permit me the opportunity to make one or two opening remarks based on three points that were raised earlier on that were not really particularly related to the Bill, but those matters were raised.

First of all, I refer to the matter that was raised by my good friend and colleague, Sen. Prof. Deosaran, and the fact that the matter is now coming to the correct quarters and the correct authority, so that it will be dealt with. I am going to look at this matter with interest.

One of the things that worries me all the time is that there seems to be a continued erosion of respect for authority in this country; respect for all

representations of authority. I think the Parliament is one of the supreme authorities and if someone has to be taken care of, then we should do so. I will be looking with close interest at that matter because it ties in with some of the things that I am going to say later on.

I also worried a bit over a remark—I hope I heard correctly; I do not want to misquote anyone—made by the Attorney General, when he said that in many jurisdictions the Government has “control”—that is the word I think I heard—over the police service. I thought I heard that.

Sen. Jeremie: I said that in civilian societies, the civilians have oversight. The police manage themselves. There is a structure ending with the commissioner of police who has operational day-to-day control over the affairs of the police service. If you need resources over and above that to combat transnational crime, the police service is not equipped to fly to Liechtenstein tomorrow morning. So they require assistance.

Sen. R. Augustus: I just wanted to be very clear that this is not where we are heading. I wanted to be very clear on that matter.

The third point that I want to raise, very respectfully, concerns your investigations of something that I alluded to in my opening remarks in the last sitting. This had to do with a performance by the Minister of National Security which I mentioned. You have indicated that you did some investigations and that the “steups” did not come from that quarter. Since we are alone in this Chamber, I would suspect that it came from another quarter on that side. I would hope that your investigations would be pursued.

Madam President: Senator, as I said, “steupsing” will not be tolerated in the future. Let us leave the matter there.

Sen. R. Augustus: I do not want to deviate from the point that I am making, because I want to end on a particular note. If it is that it came from another quarter, then the persons whom you questioned should tell you where it came from, and you could ask for the respect of the authority of this Senate and your authority.

More than that, I want to tell you that I am sorry that you did not ask me, because I heard the Minister of National Security “steups”. In fact, I saw him. I am not politicking here.

Madam President: Senator, could we move on from this topic. I have already said that it will not be tolerated. If it happens in the future then we will just have to deal with it. Please, get back to the Bill.

Sen. R. Augustus: I have not even gone to the Bill, but I just wanted to underscore that I am very disappointed in those who would promulgate that kind of falsehood to you. [*Desk thumping*] Later on, I will tie that into this debate.

Madam President, first of all, I have absolutely no problems with any law or any system that is going to deal with people who harass; people who intimidate; and people who strike fear into the hearts of the citizens of this country, or in any other country for that matter. In that respect, I feel certain that this Bill has to head somewhere.

There were some issues that were raised by my colleagues which I feel we must address in some detail—maybe when we go into the committee stage. The question was raised by Sen. R. Montano and was bolstered by Sen. Prof. Deosaran—the question of the press. We have to be clear in our minds that what we are putting here cannot be used in later years by another government, 15 or 20 years down the road, to suppress the press. [*Desk thumping*] We have to ensure that what we put here could stand the test of time, justice and freedom of expression; freedom of reporting; and freedom of investigating. That is what I will be very interested in seeing happen as we go along.

Madam President, some of the things that I always look at is how we can do things to make our society a better place. There are some related incidents that occurred recently which we could fit into this. I want to go back to Friday, January 28, 2005 when hordes of school children were harassing the public. Madam President, I fear for what I saw.

Earlier on, the question of a bully was raised and bullies evolved into harassers, so we have to look at what is happening in the schools. What kind of citizens are we producing in the schools? We have to look at all of our systems; how they are operating; whether they are operating; and whether there is need for other systems or methods. [*Desk thumping*]

Madam President, I happened to be driving across the Brian Lara Promenade on Friday afternoon, and I saw these large groups of children. I know children's behaviour, and I am certain that all of us here do. I wondered how this matter would be controlled. I then saw appearing in the streets—very quietly and very controlled, members of the police service. In spite of what people say about the police service, I am one of those persons who have confidence in the police, not absolute confidence. Do you know why? They are Trinidadians, and I have confidence in Trinidadians—all Trinidadians, even my friends across there. So, I felt good that they were there and they were going to take care of things.

4.15 p.m.

I went to St. Paul Street where I usually get my hair cut. I was sitting on a sweet drink box cutting my hair when I saw this young girl in school uniform coming up the road with handcuffs and I said: “Heavens”. Then I said, I would go across there when I am finished, but then I heard sirens. By this time the crowd was gathering and I saw a bus coming up, loaded with school children. I said, this has to be crazy. I happened to know that in the area there was a school supervisor, I sent to call him; I said there is a problem in the station, go check it, and I will join you in a while. Then I saw another bus with school children and I want to say from the outset, I have heard people talking, I heard the President of the PTA—who was not there, she never showed up—talking about how the police should have dealt with it. And that is what erodes the authority of the police, when people who are supposed to be in responsible positions, do not provide them with the support that they need when they are doing the work that they are supposed to be doing. The President of the PTA was not there.

I went into the station. What I saw there was professionalism at work. I spoke with the Assistant Superintendent; I spoke with a couple of officers; I went into the charge room; I saw those who were to be charged, inclusive of a lady who was not handling it very well. Believe you me, the adult was not handling it well, but the two other children, one in handcuffs and the other one, they were nonchalant and that is what scares me, they do not care. Those children, it did not matter to them that they were in Besson Street Police Station, the baddest police station in Trinidad. It did not matter to them. What are we doing? How do we prevent them from being those who will be tagged under this law ten years from now or less? I went to that side where they had the fifty or sixty of them who were not to be charged, and I discussed with the ASP, that even though you are releasing them, do not just release them like that, call their parents, let their parents come for them. She told me she already had that in train and she had the community officer upstairs, so whenever the parents come, they would go upstairs and talk to the community officer. Everything was well organized. Why were we criticizing them for a job that they were doing well? If we criticize them and demoralize them, this will have absolutely no value. But what scares me is the attitude of the children.

Sen. Mark: Take the praise, you do not get it often.

Sen. R. Augustus: I am not praising the Minister here; I am praising the police who performed well that afternoon. When it is time to praise a Minister I will do so. Whenever there is time to praise the Minister, I will do so. They do not give me much opportunity to do it, but whenever I have the opportunity, I will

praise them. I am talking about the police, they were performing well. While I am talking about the police, I am talking about the children, the attitude of the children. The only thing those children in that 50 or 60 man group were not doing was giving high five, because they were relaxed and enjoying themselves in B Street Station—that is how you call it—totally relaxed.

When I thought that the parents would have been ashamed, I saw one or two parents come for their children, and the boy or the girl swagger across. Their parent did not even utter a word of reprimand. Well, if you make a child and you cannot control them, do not make any more, please. We are in trouble you know, Madam President, not only the Minister of National Security and the Minister of Education, all of us are in trouble. We have to deal with it. We have to deal with it in a number of ways.

First of all, why did we provide them with this environment of Junior Soca Monarch? Is that Caribbean Prestige, that we give so much money for Carnival? Is that the organization that ran that Junior Soca Monarch up there, without the necessary child management tools in place? Was it correct? Are we doing this still, after Soca Storm two years ago that took place in an Excellent Centre somewhere in Tunapuna, under the purview of the Ministry of Education or in consultation or in conjunction with? I have to be careful of how I am talking because people “duz” charge me with bringing false information. All my information is always correct, as far as I am aware.

Yesterday there was a Junior Calypso Monarch competition, did we have any problems? You know one of the reasons we did not have problems there? Because the teachers are in charge of that programme and when the children leave the school to go to that programme, they leave the school under the charge of their teachers in something called a field trip, where all the parents have signed that you are going with your teacher and every principal understands that his teachers are responsible for those children and anything happens could reflect or redound not to his benefit.

Therefore, if it is that our culture, our society suggests that we should have our children exposed to calypso and pan at carnival time—and I am all for that—then let us do it in a controlled environment. Let us stop Caribbean Prestige from making money with the connivance of others, using our children and then going home counting the money while the children are “wining” their way down Frederick Street and eventually to the police station. You know something, we are stretching our police to the point—I am not a PRO for the police right now—but

we are stretching them to the point. That afternoon, when those children left the Savannah coming down the road, there was also a motorcade to promote the adult soca monarch that is coming up on Friday. So bacchanal! Bacchanal! They join the thing, truck blaring, the police had to stop the music. They would have had the alcohol, because nobody stops the alcohol now, I do not know why. None of the booths could have been opened in the old days; I hope it is the same now. But then you have the illegal vendors who are doing their thing and you must have people ensuring that it does not happen. You must have people roving to ensure it does not happen.

So you move from the Junior Soca Monarch into the adult soca monarch parade coming down the road, the police had to stop the truck from playing, and so on. Then they come to the promenade and some programme is being taped, more bacchanal, a programme for TV6. So they join the thing there, the police realizing what was happening—and I told you I saw them at that point—asked the announcer, please ask those children to go home. When I passed there it was about 5.15 p.m., so maybe 15 minutes after they asked to make an announcement for the children to go home. That is when the thing erupted, the police “farse”. In uniform, children no longer have respect for their school uniform. What are we doing? We have to do something. We all have to be part of it, we have to do something.

I pick up the editorial in the *Newsday*, February 01, I cannot believe it. The editorial is asking under what law is the police asking these children to go home? The editorial, people in authority, people whom you look up to as opinion leaders. Under what law the police asking these children to go home? These children who should have been home long time under the purview of their parents, and they are in uniform, the editorial is asking this. The editorial goes on:

“Was his warning couched in a friendly suggestion or as an aggressive threat?”

This is what the *Newsday* is saying. We are up against it, we are really up against it.

“If it was the latter—

that is the aggressive threat,

“and, given the reputation the Police Service has acquired, most citizens would really believe this—”

In other words, the editor condemned the police already, without investigating and we talk about wanting to motivate the police, these are leaders in authority. Madam President, we have a lot of work to do. I spent sometime in the station;

there was no reportage in the press because when the reporters who were there came to me, I said, I am here as a citizen of the area, I live in the area, I did not want the thing politicized. I was just looking at what was happening, hurting inside and wondering how I could help. That is what I was doing, so I did not want it politicized. Minister, I want to tell you, while there I observed a lot of things and I saw a slight altercation between a couple of your forces. Because remember, those who brought the children there were not really officers of the B Street Station. It was a task force. There was a little—nothing to worry about, but you know small streams grow into rivers, according to the “fella” from Castara, so we have to be careful, we have to be very careful. Look at all those units that you have and balance your act to make sure that there is not conflict, which is going to redound, not to the benefit of our society or to the police service.

I go home and it is Carnival, but I said I could not go out Friday night; I decided to stay home because I am pained and somebody calls me and asks me: Have you seen the *Trinidad Express* of Thursday 27, an ad by the Ministry of Education? I am already in a state where we are saying, we have a lot of work to do and we have to help. So I am beginning to read the ad and I am saying, this is a Sonny Ramadhin ad. It is an ad that has to do with the update on de-linking and unification of the teaching service. If we are too young to know about Sonny Ramadhin, then it is a Shane Warne ad.

Madam President: Senator, I am really sorry to have to interrupt your very interesting contribution, but we have to take the tea break now. You have had 25 minutes, so when you come back you will have the next 20 minutes.

Hon. Members, this House is now suspended for tea and we will return at 5.00 p.m.

4.30 p.m.: *Sitting suspended.*

5.00 p.m.: *Sitting resumed.*

Sen. R. Augustus: Thank you very much, Madam President. I did not have much longer to go, I normally am not very long in anything I do. However, I was coming to the end of this particular segment. I was on a cricket analogy when I was talking about the Sonny Ramadhin or the Shane Warne spin on a particular advertisement that I saw in the newspaper of Thursday 27, and let me continue on the cricket, because sometimes when you go for tea the captain changes his strategy. So, the manner in which I had intended to go on this particular issue, I have decided to hold for the time being. I just want to suggest to you, Minister, that you ask your technocrats to be very, very careful in the information they

provide you with for some of these things. I do not know who wrote the article but there were a couple errors. I am sure by now you would have picked them up and I want to suggest that you are very, very careful with them and I think in the spirit of our talking about working with the children, I would not go into the political direction I was going earlier on.

On the other hand, I just wanted to spend a short time on the second part of the Bill. That part of the Bill which talks about intimidation. Actions which cause people to fear that violence will be meted out to them and here I want to be brief, very brief, but seriously political, because I want to know whether it is the intention of the Minister of National Security and the Attorney General to use this particular new section, it is 30B:

“A person who is accused of conduct which would constitute an offence...which causes the other person to fear that violence will be used against him...”

I am wondering whether the Minister of National Security and the Attorney General will, particularly, want to use this clause to strengthen some of the provisions of the ROP, because it has been well documented and well known that there is a political party which uses community leaders to intimidate, to harass, to strike fear into the hearts, of not only activists, but also voters—and I am seeing some quizzical looks coming from my friends and I want to tell them that we have been through it all. It has happened and there is the possibility that it could happen again. I could quote incidents, but I want to ensure that as we go into future elections, this clause—I always argue that we put a lot of laws in place and we do not implement them and we do not let the police ensure that they are implemented. I am asking that once this Bill becomes law that this particular section will be used to strengthen some of the provisions of the ROP to ensure that violence will not be part of political campaigns. But more so, Mr. Minister of National Security, when you have marginal seats that thugs, hooligans, bandits, community leaders will not be used to intimidate the voter, to prevent people from having an opportunity—and I am going to remember this particular contribution as we go closer to other elections, and I will quote from it on platforms, God willing, if I am still alive—to ensure that the provisions of this Bill when it becomes law, are followed to the hilt. Thank you very much, Madam President.

Sen. Dana Seetahal: Thank you very much, Madam President. Let me say at the outset that I support this Bill and it is my understanding that this Bill was in the making as far back as 1999, when our Law Revision Commission put out a paper on the benefits of stalking legislation. This was in recognition that there was

a need for this legislation, because stalking and harassment are real issues affecting many women in the world. At that time, legislation had been passed in most States in the United States and I believe as we speak, there might be only one or two States in which specific legislation is not yet enacted; legislation for harassment of which stalking is one type. Stalking is merely one type of harassment. As we have heard, legislation exists in Canada, United Kingdom, New Zealand and recently in St. Lucia as well. In the new St. Lucia Criminal Code, which was passed and proclaimed in January of this year, it is an offence to stalk or otherwise harass someone, not as extensive terms as our legislation, but that is the law.

Much has been said of the benefits of this legislation and something has been said of how this legislation could deal with certain problems that currently exist. Let me say if it is not clearly understood, that this legislation has no place when we are talking about sexual offences for instance. This is not harassment. People call rape sexual harassment. It is not sexual harassment, it is rape. If we are talking about indecent assault, this legislation has no place; we already have legislation for all of that. I think I heard Sen. Prof. Deosaran mention, if somebody causes some serious injury, whether it is psychological or otherwise, he was saying that maybe the legislation could provide for that, rather than requiring two Acts. Let me say that if that were to happen, the current law already takes care of that. Under the current law, a person who causes psychological injury to a victim so that it amounts to grievous bodily harm can be prosecuted for Causing Grievous Bodily Harm. That legislation, it is my contention, makes provision for a one-off kind of situation.

This legislation is dealing with normal, so-called everyday situations, where people make repetitive phone calls; where you follow somebody around; you go to their workplace; you try to stop them from going out with a new person; to have a girlfriend if you break up; a girl breaks up with a man, you call up his potential girlfriend and you say things, you call him up and you scream at him over the phone and say, why are you doing this to me and you make hundreds of phone calls to his cell so he has to change phones. Those things would be provided for under this legislation. May I just refer to at least four case scenarios that I know for which this legislation would provide, which are not covered under the current law.

A friend of mine—and I use the word loosely here—told me about a situation where a neighbour of hers was constantly coming outside her home ringing her bell; he would leave poems for her in her mail box; he would stare at her as she

passed by every day; he would come by her office and ask to speak to her, he would insist that he must speak to her, several times a day; and he would otherwise make a general nuisance of himself. He lived in the same street, he had a wife and children and she attempted to deal with them, he came all the time and insisted that he must speak to her. She went to the police about this, especially when she saw him outside her home in her porch at 2 o'clock in the morning. But she was told that since it was an open porch, that there was really nothing that could be done. When he came by her office over the weekends when she was working, she made a call again, they came and arrested him, but they said that there was no known offence, so they had to release him. It turned out that this man had a mental problem. He was supposed to be under psychiatric treatment but he was not following it. There was nothing that she could do or could be done unless two doctors agreed under the Mental Health Act that he was insane and committed him, and that is a very difficult thing to achieve.

The second scenario, which now has resulted in an injunction being granted. It relates to a male person. I know a very good looking young man who broke up with his past girlfriend; she did not take it too well, and as a result of that she called his home, all of his family and insisted that they speak to him about making up with her. She made threats that if he did not make up with her she would kill herself. She called his workplace persistently, she caused him to have to change his cell phone number, she would call all hours of the night to see where he had gone and with whom, and why he was not there to take her calls. Eventually, he got injunctive relief against her and that took some months—as indicated by the Minister—you had to go to the High Court, pay a set of money to get that. That is a situation which is not covered under the current law.

A third situation I know from a relative of mine. Late night calls, up to now she does not know who the person was, sent her cards saying, “from an unknown admirer” and only when the police said that they would tap the phones and so on, and because of my intervention, it was said—I was not going to intervene—but they said I could bring the police and do this, that the calls stopped.

Another situation I know of, where a man whose wife had left him and was beginning to engage in a relationship with another man, he followed that man to his workplace to where he used to be; he would stare at him; he would send letters to his colleagues; he would say that this man had taken away his wife; he would go to places they would be and he would let down the tyres of his car and in general make a nuisance of himself; he would threaten to go to the media. That is a situation not covered under the current law.

And of course, the fifth kind of scenario would be where we are talking about peeping Toms who would come and look through your windows. This happened to a friend of mine who lives in St. Augustine. She lives alone, the person would come and peep at her when she was leaving and going every day and the police again said that they could do nothing.

The current law provides for that in two ways. It provides for that by defining a simple offence of harassment and by defining a greater offence of putting a person in fear of violence by virtue of the harassment, and it seems to me that we need both offences. Because you might have a situation where the simple calls and all of that, and then you might have a situation where it escalates if you do not take the person on, if you do not heed them like Jodie Foster, like many of these high profile people we hear about many times, then they go further and they threaten you and they put you in fear.

5.15 p.m.

Madam President, for all those reasons, I clearly support this Bill. I think it is a good piece of legislation. I think we should have it, not just because most other countries in the world have it, but because it is good for our society. There is something that needs to be plugged and this legislation can do it.

There are two issues I want to raise, however. Something was said about the question of the media and when you have photographers following people, so to speak, to take photographs, whether or not this legislation can be used against them. In most countries of the world that I know of, when you talk about stalking legislation, a media person never fits the bill as a stalker, by reason of the definition of the Bill, since the attention must be unwanted, persistent and unlawful, in general. However, if that is not sufficiently clear, it seems to me that new section 30C of the Bill clearly makes provision for that:

“It is a defence for a person charged with an offence under section 30A or 30B to show that—

- (a) his course of conduct was pursued for the purpose of preventing or detecting crime;”

That would be police officers and other persons who fall within that. The second defence is:

- “(b) his course of conduct was pursued under any written or unwritten law or to comply with any condition or requirement imposed under any written or unwritten law;”

It may not be a written law, in the sense that there is a whole Act providing for freedom of the press, but it is established by the common law that the press has certain freedoms contained in our Constitution and we know from the common law what the press can or cannot do in pursuit of the occupation of freedom of expression. It is clear to me that under 30C(b) their actions will be protected.

It is a defence; it does not mean that they have to be charged and then raise it; it means that before a charge is preferred this will be taken into account and no charge will be preferred. It is not that you are going to be charged and say, “A-a now I have to raise a defence.” That is not how it works. I think this is a commonly accepted exception to the question of persistent calls. For instance, the persistent calls of a media person would be in the pursuit of his occupation, in terms of freedom of the press and getting news. It would be a lawful occupation, freedom of the press, numerous cases, case law, which is unwritten law, but the common law, as part of our law, would provide for that protection so they would not be caught. It is not like someone who is an unknown admirer, who calls you all hours of the night and tells you what he or she wants or not want to do, or like a person who latches on to somebody and decides that he cannot let go, “If you leave me, nobody else can have you,” that kind of expression. It is not just a Trinidadian expression, but all over the world that you may hear, “It is me or nobody else,” that kind of person who feels he owns someone else.

The third exception is, of course, where the pursuit of the course of conduct, that is, the calls or the taking of photographs—which is what people seem to be concerned about—is reasonable, if you are a photo-journalist and practising your occupation and, clearly, it is a lawful occupation. Unless you hide inside somebody’s home and take pictures of them in their toilet or something like that, then that is unlawful, but, otherwise, once your actions are reasonable, you will not be caught. You would not be a stalker or considered to be harassing or accosting someone under this Bill. It will not be harassment, because you are pursuing your occupation. You will not be considered to be preventing a person’s access to and from his home, because he feels that if he comes out the press would get a picture, because you would be there doing your lawful job. It would be the other people there for their other purposes, because they have mental problems and this attachment to you, for whatever reason. Some of them have delusions, fantasies maybe and they want to ensure that you are theirs alone.

For all these reasons and the fact that the current law does not protect citizens from that kind of person and because civil remedies, such as we have, take too long, are time consuming and costly, we need this piece of legislation. We need

the convenience of this legislation. We need to have legislation that combines both criminal and civil procedures. In other words, we are criminalizing the act and ensuring that you get injunctive relief right away, and that is okay.

The concern I have is, one, with respect to the Protection Order. Under this Bill, we have dealing with harassment; B, where you harass and put in fear; C, the defences and D, the protection order. If the police bring somebody to court for one of these actions, you can get a protection order which is supposed to ensure that they do not repeat. If there is a breach of the protection order, what is the penalty? According to this piece of legislation, in 30D it says that a person who fails to comply with an order is liable to imprisonment for six months; that means that the maximum penalty is six months. Even though the legislation does not say “or a fine of a thousand dollars”, there is provision under the Summary Courts Act that says where there is a penalty for summary conviction of a certain number of months, there is always an alternative of that; so there is to be read into that clause the alternative of a fine. That is not bad, because you still want to give the option.

Madam President, my concern is because of the seemingly trivial nature of this penalty, this being the maximum sentence, people will breach these protection orders. Right now under the domestic violence legislation, there are daily breaches of the protection order. It seems to me that the domestic violence legislation deals with more serious situations, because a person might be right there in your home coming at you with a knife or whatever and you have these orders, but people still breach them. Here we are talking about strangers who have less to fear, so we have to look at that issue and what we can do.

It is my understanding that there were, at least, two recommendations one of which was that the legislation should mandate psychiatric evaluation and treatment of offenders. It states in 30F:

“In addition to an Order for protection...the Court may, where the circumstances require, make an Order under...the Mental Health Act.”

I know that these courts are very reluctant to do those things. Every single magistrate who will be enforcing this Bill through the courts would be afraid that somebody would challenge it and appeal. People do not like their orders to be appealed and then they would have to explain why and all of that. It seems to me that there should be a provision somewhere in this Bill to mandate a psychiatric evaluation, to give the magistrate the power to then make the order. There should also be some provision for counselling, because you are going from one extreme to the end. [*Sen. Seetahal motions with hands*] It is either here you have the

protection order or here you will probably get a fine and then if you do not go to St. Ann's or somewhere else, you just go home. So what about the other steps: psychiatric evaluation and counselling? We need it for drug offences, I have said time and again; we do not get it there. Now that we are talking about 2005 new legislation, let us put that in place.

It also states:

“This treatment should not be restricted to repeat offenders, but should be one of the initial steps taken in matters involving stalking.”

If we are talking about harassment, we are talking about persistent phone calls; we are talking about a young person who might engage in that behaviour; he has fallen for a girl and wants her for his own. We need to put a stop to that right now. Somebody spoke about preventing the escalation in crime, here is one of the things we can do: get that evaluation and counselling. An evaluation may say that the person needs to go to St. Ann's or that he needs this or that. It should not be a problem, because right now we have all these probation officers attending the Magistrates' Courts and it takes about three weeks to get a report from them. They would have access to a psychiatrist. I understand that we have a panel of these people who do it for drug cases, on a personal basis, one-to-one basis, so they can do it in this circumstance. That is one of the things I suggest.

I am looking at some of what I understand were the recommendations made in 1999. I see a recommendation here that law enforcement officials should undergo specialized training to recognize and evaluate stalking cases. I know that there was some training for domestic violence cases, but we can see a situation where someone calls a police station and says that a man is calling them up and a police officer says, “So what, you should be so lucky,” or some kind of attitude like that. To recognize the behaviour is important. I am not saying that we should have a unit; we have too many units. Soon we will have no regular police if we continue with these units, but we need to have a couple of police officers or more, eventually all of them, trained to recognize this behaviour. In developed countries—and we are going there we say—all their officers undergo this type of training. That should not be a legislative measure, but a parallel measure.

In some countries, there is a record of offenders; so we can keep a record of offenders with the treatment they have received. You can then have a look at it and update it, because if a person stalks here and he does not succeed, he might stalk elsewhere. We are not that small to prevent that kind of movement, because if a person has a problem, he can latch on to somebody. If she does not take him

on, he may get to dislike that person. If it does not escalate into serious crime, then he may latch on to another person. It is possible that could be prevented, if we keep a record. Of course, we should keep a record of all sexual offenders too, which is another point. That could be a measure in the police station, but that is for another time.

I see there is provision for what could be called “cyber stalking”. That is a definition in other countries. I am glad to see that under the provisions of this Bill, at 30A(iv) it provides for someone making contact with a person whether by telephone or computer. A computer is a basic way of putting it, but I think that is what we are talking about, cyber stalking. You open your email and instead of seeing what you are supposed to see, you see a big picture with things that you do not want to see or people send you regular emails. Actually, I could consider some of the emails I get, in response to some of the articles I write, harassment, but I do not bother with them. I write back some rude message and I delete, so I might be harassing them back. I am glad to see that we have that and I think it is a very progressive step. Having said that, we should avoid looking at the question of those omissions, as I call it.

My final point is that the Minister did say at the beginning of his presentation that in some jurisdictions this legislation is contained in a separate Act and he talked about England and so on. In Canada, it is contained as an example in their criminal code. What we are doing is inserting it in our Offences Against the Person Act. My concern is that the Offences Against the Person Act contains offences against the person. If we look at its many sections we will see that each one deals with an offence. It seems to me, with due respect to the Minister and anyone else who drafted this Bill, that with the question of civil protection, I would think, protection orders ought not to have a place in an Offences Against the Person Act. If you are saying it is a civil remedy, I do not know that it should be in here.

In the Canadian legislation, where the Minister referred to the amendment to the code, he talked about the punishment for that offence. I have not seen the Canadian legislation. I have had a look at some of the United States legislation where there are some separate stalking laws or they put it in different codes, but they separate the different things. In England, it is a separate piece of legislation. My concern is that sometimes you are looking for pieces of legislation, amendments and things like that and you see them somewhere far-flung all over the place and you do not know where they are. Here you are talking about a civil or criminal remedy to deal with a social criminal problem. Should we not put it in,

just rename it, instead of what I think is a clumsy way of saying 30A, 30B, 30C, 30D, 30E, 30F? We could have, Stalking Act, sections 1, 2 or 3. Then you can eventually put that in with other pieces of legislation. There might be reasons why the Government side prefers it like this, but civil remedies, to my mind, should not be included in criminal law and it generally is not.

All the definitions that we have in our Act are consistent with the definitions in other legislation internationally, such as course of conduct. I know some people are worried about that. What the protective order should contain and matters of that kind is not and ought not to be an issue. The question of compensation is another reason I think this should be put in a separate piece of legislation. I think that is a good idea, because some people only feel things when it hurts their pocket. It is all right to pick up a phone and harass a man or woman, make obscene phone calls or whatever, but when you have to pay money then you might be inclined to think twice. That compensation is a good idea. I do not see it in many countries. Maybe it is in more countries than I have noticed. It is not that common, but it does exist and I think it is a very good idea for some of these people who have no respect for the privacy of others.

The only other comment I have to make is in terms of general drafting. For example, it is usual to put the fine before the alternative of a penalty of a term of imprisonment, because the imprisonment is usually more serious. It depends on how you draft it, but that is something we can deal with in the committee stage, when we get there. I do not think that ought to hold back any other person's contribution. Those would be my comments on this Bill, which I said, at the outset, is timely.

Thank you.

Sen. Brother Noble S. A. Khan: Thank you, Madam President, for allowing me to share my two cents on what is before us. I will be touching on some points which create, in my mind, some area for sharing.

My first point is on the need for this Bill. We have heard quite a bit about that and even our hon. Minister of National Security has given his reasons for it. There is the question of the relevancy as against placing certain powers in the hands of the police or part of our community.

I must confess that it did remind me of animal and, particularly, the book *Animal Farm* by George Orwell where, to some extent, a cadre of animals was established to keep people in check and they were an elitist group. As a people,

what are we giving away, as far as our freedom of rights are concerned, as what exist at the moment, for what we may look at as what we are sacrificing? We have heard much. Even in my own simple mind, much of what we are addressing here refers, basically, to social problems. We have heard questions of mental and psychological problems which have an effect on the behaviour of people. We are now addressing that with a police solution. It is not clear in my mind and, perhaps, that is my own fault, when we take into consideration what it seeks to address. We have heard much about the United Kingdom and mental disorders by a criminal approach, which I have just touched on and, basically, what some of our more enlightened commentators, my colleagues, have mentioned. That is, to some extent, a whole baggage just placed with us. I have very strong concerns about that, particularly where we are adopting wholesale, at least, what has been said. I strongly suspect that may not be so. Our legislative draftsmen, our thinkers, would have addressed this question and put it against a background.

There might be need for legislation for what has been referred to as “tabanca”. It was said here that, sometimes, much of this stalking comes through family problems. We know this is a very trying situation, insofar as these problems could arise. One would think in terms of the Family Act and the Marriage Act; that these would have been able to bring to bear and not a real juxtaposition of putting this issue against a criminal activity. Many of these problems are very deep-seated and hidden; these negatives continue to emerge at different times. Can we address this by law? Would it really be helpful? Other speakers mentioned that many of the problems that arise in our community should be dealt with or headed off in other areas. What is before me seems to be at the end of where we have failed in so many different ways. The contribution by Sen. Augustus was very enlightening in this area.

Some mention was made with respect to Carnival as a behavioural pattern. Even as Carnival is, there are other festivities and behaviours that take place and you see negatives emerging from them. Very often one of the major occasions in our land that identifies us, no matter where our culture or religion may be—and that is a fact of life—is the area of Carnival. When you think in terms of mobilizing a whole nation, you are thinking in terms of half of the people involved and the half who, because of Carnival, are not involved; so you are dealing with the whole nation. At the end of it, there are many negatives, but these are in very small numbers. It does afford an opportunity for people to interact and this may not necessarily be bad, insofar as what health, leisure and creativity may be like.

Let me also mention that I know of a particular organization in which none of its affairs start without a prayer. Even on Carnival Tuesday mornings, on the stage, a prayer is given before it is launched. So one wonders, at that stage, what would have happened had there not been prayer.

If you really gave a course of conduct in the true sense of it and we share the same, we might head off the outcome of any course of conduct which we might find ourselves in. When I speak of a course of conduct, it is in terms of simplifying the question of how we should behave ourselves, what we should have between our children and what we should have in our homes; we should have more of this. Perhaps, when we establish this and it echoes within the family, we might not have any use for this law.

On the question of the law, one wonders about this tightening of reposing more power in people. I am sure some of us may be able to remember that time. My memory goes back to the days when I would pass through Memorial Park, as a young “fella” and there were people in the park. There would be policemen and ladies in blue outfits with some high prams with children. Some mention was made of the United Kingdom law. The policeman and these ladies would run you out of the park, because you were in an area where you were creating a harassment then. I do not know if this law might reappear. This is my fear; it is an important fear, because we had it already and we got rid of it.

From a practical point of view, I am sure the majority of us, if not all of us, know the corner of Park and Frederick Streets. Very often when we go down there we look forward to someone waiting there. He might not be in the best economic position, but for my own self—I have dogs by me and sometimes you hear them echoing, because they know somebody is there. I do not know if when this law comes to bear, they might stop coming, because that might be the first time they might be interacting at the corner to get something to make their day. Even at home, personally, with them having to get something, I do not know if this will be viewed as harassment as well.

These are some of the things that come to my mind. I get a feeling of helplessness in addressing the question. When we take the example of what obtains in our country, what are the results of the laws we have, which seem to address certain problems? What hope? What are the expectations, if we were to use those examples, as against this Bill before us? This is the major point that I have mentioned in the past and not only in the particular instant before us, the question of implementation and participation. I strongly feel that what is before us will bring an area of alienation. Though there may be need for it in certain areas

mentioned before, much of it has emerged because of mental and psychological problem and a host of other things that could derive from it. Why this, some may even say, rude entrance of this Bill, at this time?

Against that background, I would say that if you want to bring something to me that takes away and imposes rights on other people and on my rights, what am I getting for that? Who is benefiting? This is already in place for certain areas. If you go into some more of the salubrious areas you will not find anybody harassing people on the road or other areas or maybe, as we said, on the computer. There might be need with regard to the computer, but one wonders about putting it against that for the people whom this law can really act against, being taken out in a context which does not exist here and of which we have heard so much. Like many things, it might appear to be sophisticated, but there will be consternation and a big question mark in the minds of many of our people, insofar as this law is concerned. We have heard it said that there is need for it: change, efficiency, modernity and the host of other things that seem to bring to bear on what is before us, but, to my humble mind, seems to be so farfetched insofar as to its implementation. If it is going to affect the simple man, in what way will he benefit?

These are some of the things I share with you, Madam President, and my colleagues. When I was a young person in elementary school, I got a prize of a book called *Oliver Twist*. This book spoke of the law and Mr. Bumble, if my memory serves me right, made reference to what the law is. That may have been the law then, but one wonders if you can apply it, when it comes to this, if we were not in the position to which Mr. Bumble referred?

Thank you, My Lady.

Sen. Dr. Jennifer Kernahan: Madam President, allow me to say a few words on this Bill before us.

Madam President, I am certain that, as a woman, it is of utmost importance to you as well as to me and all women in Trinidad and Tobago, that we face, very squarely today, the issues of stalking and harassment. Our society has become frightening to men, who have traditionally protected their womenfolk.

When I was growing up it was always impressed upon us the necessity of going out in groups and having young men in the groups. Under those circumstances, you felt safer walking the streets and, maybe, going to social functions and parties. We are at the stage now in our society, a little more than three years after this regime hijacked this Government, that our menfolk are

unable to protect our womenfolk and their families and our men now are as much at risk of rape, abduction and violence as women are. So you find that whole families are fleeing this country.

In this week's *Probe* I read the case of a poplar Chaguanas entrepreneur, Roopnarine, whose matriarch was almost abducted outside their home. The whole family, including extended members of the family, have had to flee literally for their lives; this is the situation that we face. I am totally in agreement with the fact that our women need protection from all forms of violence, harassment, stalking and domestic violence. The UNC recognized this when, for the first time, the Domestic Violence Act was passed in Trinidad and Tobago to criminalize domestic violence against women.

This question of the protection of women has always been very high on the agenda of the UNC. I am sure you would have been traumatized, as was the whole country, at the recent brutal killing of a young woman in Arima who was apparently stalked by someone she knew, dragged into an alleyway and battered to death. Therefore, I know for a fact that we all have an interest in legislation which would help. Legislation does not protect women, but it lays the groundwork for the punishment of those who perpetrate these crimes against women. It is also important that we are also aware of the context in which all this violence takes place; that we are aware of the fact that our country is being overrun by a tide of violence as a consequence of the deteriorating social, economic and political environment engendered by this regime. We have to be aware that legislation is not going to protect us. It is merely going to allow the law to punish the people who perpetrate the violence, but that is after the fact. A lot of times it is after the fact.

I believe it was mentioned here this afternoon that many times, even though there is legislation which purportedly protects women against stalkers and so on, we know of cases where women have taken out protection orders against abusive relatives and, in fact, this seemed to enrage the men and they perpetrated even more violence. So we are very clear that legislation is not going to protect us. It is, really, going to punish after the fact. What we have to do, as women in this society, is to work to ensure that the policies and programmes imposed on the society that have generated this tide of violence which engulfs us all, is rolled back and we go back to a safer place and time when the PNM Government was in Opposition.

Our country's development is being thwarted, stymied and held back by the naked fear that people experience in their everyday lives; unable to move freely,

unable to invest freely and to have the kind of confidence necessary to plan for a future in this country and to see their lives, and the lives of their children here. When we have a situation where Government policies and programmes have put millions of dollars, drugs and guns in the hands of criminal elements, these same elements in the communities are allowed free rein to corrupt young minds, to lead young people astray and to carry the young, innocent among us along the path of criminal activities, this is the fundamental problem. This whole question was mentioned here today of children not caring any more. They are not afraid of the police, of being locked up, nor are they afraid of the law. The general “*bravé dangé*” attitude they have is part of the culture that is seeping into our society that is so very dangerous.

I agree with my colleague, Sen. Augustus, that this is what is frightening about the whole situation. Because the young men and women who do not care about the police or the law, also do not care if there is legislation to lock them up or fine them for stalking, harassment and related crimes. They do not care. They will do it in any case.

In my home I have a situation where my young daughter is continually harassed by a young woman in the streets wherever she meets her, in conjunction with gangs of girls. My daughter has come home crying to me dozens of time, because of this constant harassment by this girl and her gang in Arima, Cumuto and these areas. She has made several reports to the police station and we have had to go to the Justice of the Peace in Sangre Grande to obtain some sort of restraining order against this activity. So I personally know what harassment is. When you get that sort of activity being perpetrated on a constant basis by young girls—we are not even talking about boys; girls have incorporated that culture of violence and harassment and they beat each other. They are forming gangs; they have this gang culture. If they do not like your braids, your sneakers or if they do not like how you look or if they feel you like their boyfriend, they form gangs and beat you up. This is the culture being engendered in our society among young people.

This legislation is the punishment part of it, but as Sen. Augustus asked, what are we doing in this society to change the whole culture that is propelling these young people along that path? These young people have seen that, from the top there is disrespect for law and authority. They know that these are the same people who come into their communities and hand over guns to be rented and cocaine to be sold. They are not fooled by the uniform. They know that there are many corrupt and hypocritical elements in the so-called law enforcement agencies

that are part of the criminal elements. This is why they would not have any respect for the law enforcement officers, because they see them as hypocritical, as part of the criminal activities. What can we tell them? What can you tell somebody who knows for a fact that corrupt elements in the police service are involved in gun and drug activities and nothing is being done to punish these people, who are given free rein in their communities? This is part of the problem that we have to look at.

Therefore, sometimes when you look at the behaviour, the unruliness and the lack of respect for authority of these young people, we have to look at the root of the problem and what is going to happen if we continue along this path. This Government talks about developed country status by 2020, but I put them on the alert that we are on the wrong road. This is not the road to developed country status. [*Interruption*]

Sen. Dr. Saith: Madam President, just on a point of relevance, perhaps if the hon. Senator could indicate what clause she is talking about in the Bill.

Sen. Dr. J. Kernahan: I believe the hon. Senator is very well aware of the fact that these young people, if they are allowed to not have respect for authority and law enforcement figures in this society, if the criminal gangs and elements are closely aligned to the law enforcement agencies in this country and they are not afraid of them, with the whole question of harassment, stalking and the activities that they, themselves, are engaged in, in their streets, communities and schools, this legislation will not stop them, because they are already hardened into this kind of activity and culture. We have to change the policies and programmes that carry these children along this road and, therefore, this legislation can come at the end to help this situation. This is not primarily going to stop this situation, as it were.

This Bill purportedly seeks to protect women against harassment and violence, but for me it is couched in such vague, ambiguous and generalized terms, it is my humble opinion that certain classes of people are not protected in their lawful activities, even given section 30C. With all due respect to Sen. Seetahal, even without this legislation, we have had several cases during the last few weeks in which members of the media have been brutalized and attacked by elements of the police service. So when you have legislation that says as in 30A:

“(1) For the purpose of this section—

- (a) ‘harassment’ of a person includes alarming the person or causing the person distress by engaging in a course of conduct such as—

- (i) following, making visual recordings of, stopping or accosting the person;”

when you have such vague, generalized legislation such as this, even with 30C, it is very alarming, to say the least. Apart from other laws, such as common law, which Sen. Seetahal mentioned, which are supposed to protect the journalists, where was the protection of journalists in an incident of Monday, January 31, 2005? A reporter, Edwards-Lewis, was literally, dragged through Port of Spain and beaten, in full view of a number of citizens, by a policeman. I quote the report in the *Trinidad Guardian* of the same date given by this particular journalist:

“We saw a police(man) who had a schoolgirl in handcuffs so we followed to see where they were taking her. I came to the forefront and took out my camera to take some photos and this policeman, in black, came up to me with a baton and he was like ‘Move from here, gone, gone,’ like if I am a dog.’

‘He just started dragging me through the streets, rip off my jersey, burst up all my pants. It was real humiliating, it was horrifying...’

‘I kept saying I’m a reporter, I have my badge, I am just doing my job, but he continued hitting me until I dropped the camera.’”

Madam President, as a woman, I feel horrified that this could happen to a woman in Trinidad in 2005.

She continued:

“She said the manner which she was treated, as a woman, has also left her feeling humiliated. ‘What was more hurtful is not the fact that I am a journalist, but that I am a woman,’...

‘As a man, he just dragged without consideration...a grown woman...half naked.’”

Even without this legislation, which clearly says that there is a fall back position that police officers could take who are upset about journalists doing their lawful duties: making visual recordings of their activities, the police do not care about legislation. We have to make them care. The public opinion and public pressure have to make this Government and the Minister of National Security impress upon the police service that they are not a law unto themselves, and that journalists and media personnel have rights. Nothing in this first part of new section 30A gives me any sort of comfort that this is what obtains in Trinidad and Tobago at present. The Association of Media Photographers has listed a number of cases in the last year or so, of *Guardian* photographers who were assaulted by

policemen on separate occasions. The issue is that no prosecutions have been successfully conducted against the policemen who are accused of these assaults. This is part of our concern with this particular Bill.

Although in theory our media personnel are supposed to be protected, even without this Bill, they are treated like criminals, while in the conduct of their lawful activity.

Sen. Prof. Deosaran mentioned that the term “harassment” had a high degree of subjectivity. Looking at the legislation, this was also my observation, the degree of subjectivity in the definition of “harassment” in this Bill. Because of that degree of subjectivity, in the UK legislation, the Protection From Harassment Act, 1997, they did not attempt to define harassment. I quote from a general note on the UK legislation with respect to this:

“In recognition of the problem of describing the variety of conduct which may be employed by stalkers and others to harass their victims, this Act does not provide a definition of the term harassment. Prior to...”

I would like to stop there.

“The approach taken in this Act to describing harassment is to focus upon the effect of harassment upon the victim. It is not necessary to prove that the defendant intended to cause harassment; it is sufficient that the defendant knew or ought to have known that his actions would amount to harassment. The question of whether the person ought to know that his conduct constitutes harassment is determined by whether a reasonable person in possession of the same information would think the course of conduct taken by the defendant amounted to harassment.”

They are saying in their Act that harassment is such a broad, vague, generalized term. If you try to define and pin it down to a few items, as done in this Bill, then the perpetrator would take the opportunity to go outside of what is actually mentioned in the legislation and so evade the Act. In their legislation they dealt with the whole question of what a reasonable person, in possession of the information, would think about the course of conduct by the defendant.

This brings us to the question of norms and cultures in different societies. What will constitute harassment in one society, will not necessarily constitute harassment in another. So we have to think about different cultures, religions, norms and so on. In Trinidad and Tobago, for example, I am not sure that what is popularly known as “souting” somebody on the street, some people consider it

harassment and some people do not. There are other types of activities that we can say are part of our culture, like the way young people “lime” on the streets and make remarks to people walking the streets, that could be considered as harassment. Some people will not consider it harassment, but take it as compliments. There is a very highly subjective factor when you talk about this whole question of harassment.

With the UK legislation, in the context of the norms, values and cultures of that particular society, what would constitute harassment there would not constitute harassment here or in Italy, where the national pastime, I understand, is pinching women’s bottoms. So in the context of any particular country and its culture, history and so on, this would allow any reasonable person, in those circumstances to come to a conclusion about what would constitute harassment. What I find disturbing about this Bill is that in defining very closely a number of issues that constitute harassment, it narrows the scope and allows other activities which may constitute harassment, that other people will, certainly, consider harassment, is not in the Bill and would allow perpetrators to be exempted.

In this Bill we have two issues, one of harassment and the other of stalking. Even when the Minister introduced the Bill, he started talking about stalking and not harassment, to the extent that my colleague, Sen. Mark, asked where were the stalking issues, because this was not presented in the Bill. I believe what has happened with this particular Bill is that the issue of harassment and stalking have been intertwined and they are not necessarily the same thing. Stalking is a very specific act. According to the Canadian legislation when you are talking about stalking, while harassment has a whole range of issues involved, according to the particular circumstance. Stalking is very specific in that it introduces the element of fear of violence into the activities.

The Canadian legislation defines stalking as:

“Stalking occurs when a person, without lawful excuse and authority and knowing that another person is harassed or recklessly as to whether the other person is harassed, repeatedly engages in conduct that causes the other person reasonably, in all the circumstances, to fear for his or her own safety.”

It goes on to itemize a number of activities that constitute stalking, which are brought into this legislation under harassment. In this piece of legislation they pointedly define the issue of stalking and bring the different activities as specific to stalking which, ultimately, result in the person feeling fear or having a fear of violence. This includes:

- “(a) following from place to place the other person or anyone known to the other person;
- (b) communicating directly or indirectly with or contacting the other person or anyone known to the other person;
- (c) besetting or watching any place where the other person, or anyone known to the other person, resides, works, carries on business or happens to be; or
- (d) engaging in threatening conduct directed at the other person or anyone known to the other person.”

Some of these elements are mixed in this Bill under the whole general heading of harassment. This is where I have a problem; I think they should be separated. They should be made very clear. In this Bill, harassment is a wide net and it does not protect a number of classes of people, explicitly, that it needs to protect, notwithstanding section 30C.

The United Kingdom Act recognizes that certain types of occupations lend themselves to activities which may be construed as harassment. Activities such as journalists, salesmen, religious activists, debt collectors, private investigators, political canvassers, all these are classes of persons whose activities may be construed as harassment under this Bill. These people are not protected under 30C. Which subsection under 30C protects these classes of people? If this Bill is passed as is, then the police will have cause, at one point or another, to lock up half of Trinidad and Tobago, if you are talking about harassment being defined as watching, loitering near or hindering or preventing access to a person's place of residence, workplace or business.

Madam President, many times debt collectors and private investigators would fall under the ambit of this subclause. Religious activists who come calling every Saturday or Sunday to your house and insist on calling until somebody comes out. When you do come out and try to shift away from them, they insist on raising a conversation; they are very persistent. A lot of people admire their persistence, because they say, “Those fellas do not make joke; when they come, they must get you to buy a booklet or get you to read something; they get you to commit even without your being willing to commit to a little meeting with them to discuss the Bible.” This is what happens because they are persistent and they want to get their message across. Will this constitute harassment on the part of these people? I do not see any protection for these people in this new section.

6.15 p.m.

Madam President, even salesmen, and there are many young boys who are now walking around with dry goods and they do not move until you buy something from them. This is their trade and it is what they are taught when they are being trained. They are told to go out and sell and do not give up, they have to persist, they are told to go out and sell yourself and ensure that the customer listens to you and that they buy something. This is how they are trained; this is how salesmen do their job and how the religious people approach their job.

Debt collectors call you on your telephone, they leave messages, they fax, they accost you outside your home, and at your places of work and so forth. All these people can then be charged under this Bill for harassment. Debt collectors also enter your property. What is the situation here? This is why I am saying that this section that comes under the heading of harassment is too wide and vague, it encompasses too many persons.

The United Kingdom law specifically provides to the fact that these particular classes of people would be exempt from that which defines harassment, but we have no such section in our Bill which would protect those classes of people.

Madam President, I believe that legislation is part of what women need to punish offenders and so on. I am saying it is not the whole story, it is just part of the story after the act and although many people want to support this Bill because it brings in the question of harassment and stalking into legislation which is necessary now, we must not be seduced by the fact that this legislation is here and we would just take it as it is.

We as Senators and legislators also have to be very vigilant that the legislation is not presented in a way in which it could be abused by the political directorate and other elements, or by any institution in the society in a way that the legislators do not intend, and this is why when I look at the legislation by other advanced countries, I see they are very precise and clear on what is stalking and what constitutes stalking.

The question of violence is implied in stalking, while harassment does not necessarily imply violence, which this Bill seems to imply, the sort of implication that harassment necessarily includes violence.

There is a section under “harassment” which prescribes it as follows:

“30A(1)(v) giving offensive material to the person, or leaving it where it will be found by, given to, or brought to the attention of, the person;”

What is offensive material? This is the sort of sloppy legislation that we are being asked to pass today. For instance, what is offensive to me may not be necessarily offensive to you and vice versa. For example, if I give out literature: pamphlets, and leaflets on what is happening in countries like Cuba or Venezuela, or any communist or socialist country in a public place and somebody who is violently anti-Cuba, anti-Venezuela or anti-socialist finds this particular—

PROCEDURAL MOTION

The Minister of Public Administration and Information (Sen. The Hon. Dr. Lenny Saith): Madam President, in accordance with Standing Order 9(8), I beg to move that the Senate continue in session until the conclusion of the debate on this Bill.

Question put and agreed to.

OFFENCES AGAINST THE PERSON (AMDT.) (HARASSMENT) BILL

Sen. Dr. J. Kernahan: Madam President, unfortunately I might give this piece of information, pamphlet, or document to somebody who considers it offensive. This is quite possible, so does this mean that I can be charged for harassment? This vague wording in this very important legislation is very subjective and I do not believe it gets the job done which it is supposed to do.

Madam President, am I going to be dragged before the court to determine if I am harassing the person because I dare to give them a piece of information which they found offensive? What is offensive? All these are vague, generalized terms that have no place in legislation and I believe it is precisely couched in this way and in years to come, people are going to recognize the value of legislation that is so sloppily drafted.

That people can be hauled before the courts on any pretext based on this vague, generalized, and loose definition of harassment is very frightening. It may seem trivial now, you talk about going before the court, but this is wrong, you have to define what you are talking about in a very precise way. If you are talking about stalking, you talk about stalking.

The UK legislation is based on the cultural norms and in particular, circumstances of culture. If the person is supposed to understand that his acts constitute harassment, I believe it is a more logical way to deal with these questions. This is basically my take on this Bill. As a layperson—and I am not in any way legally inclined—reading this legislation, I found it vague and I could not understand what it is supposed to accomplish.

Offences Against the Person (Amdt.) Bill
[SEN. DR. KERNAHAN]

Tuesday, February 01, 2005

It also says that harassment constitutes:

“(iv) making contact with the person, whether by gesture, directly verbally, by telephone, computer, post or in any other way;”

After talking about including alarming the person or causing them distress.

Madam President, what would not cause alarm or distress to a mature person would definitely cause alarm or distress to a younger person as somebody who will take certain remarks in a different context. Therefore, it is very unclear what one person would consider alarming or distressing and what another person would consider not to be so, given the circumstances.

I understand and totally agree with the need for legislation of this type, I am saying that it does not go to the root of the problem, but merely reflects the magnitude of the problem that has been created in the society over the last three years given the social and economic policies of this Government. I am saying that women need to feel there is some level of protection and if you are going to bring legislation that is going to bring that sort of comfort to women, it must be precise, it must be focused and let us get legislation that is going to be clear about what the issues are. Let us not send this wide net that can incorporate any ordinary citizen, especially the classes that I have outlined that could be caught as part of this net in any given circumstance if someone in authority were to use the opportunity to do so using this Bill.

Thank you.

Sen. Prof. Kenneth Ramchand: Madam President, thank you for the opportunity to make a very brief contribution. I welcome this legislation, and I am going to support it.

Madam President, do you know how often these people come by my gate in the morning interrupting my puja and trying to sell me religious books and to tell me religious things, and I say listen, this is a Sunday morning and you are harassing me? That was just a joke in my trying to chase them away, but now I can say: I want your name, which I would write in a book. I would jot down the date, the time, and the place and tell them; “If you come back next week, you will be making a jail.” So I welcome this legislation.

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

I remember an incident from when I was a small fellow. One morning I ran down my steps which shook, Mr. Vice-President. And when I looked under them,

I saw red cloth, a bottle with something smelling bad, some bones, some chicken feathers and I said to myself, it looks as if somebody working obehah on me, and I did not know what to do about it. Now, I look at the Bill, and I see that if a man tries to work obehah on me I can charge him for harassment.

It says in 30A.(1)

“(v) giving offensive material to the person, or leaving it where it will be found by, given to, or brought to the attention of, the person;”

The incident caused me great alarm and distress. I really do welcome this legislation if it will help me to fix up a few persons who trouble me a lot. I am making the point that it is not only aimed at supporting women, but all of us get harassed.

The legislation covers all kinds of harassment but it includes quite centrally the kind of harassment called stalking and the form of the legislation is influenced by some of the thinking about stalking. I do not know if it is tangled up with stalking, what I would say is that it has been influenced by stalking, and we know that the British Protection from Harassment Act, 1997 which we are adopting, was stimulated by a Private Member's Motion in the British Parliament that was brought against stalking. A year and a half after that Motion was brought, the government came with their Harassment Act. So even in the genesis of the legislation we are adopting, stalking is connected.

There is one consequence of this link with stalking and the definition of it that I have some misgivings about even though my colleague, Sen. Seetahal, does not think it is a problem. I am referring to the phrase “a course of conduct” which is explained later on as meaning at least twice. I am not too happy about that in the sense that if it has to happen twice I would have to do what I said I would do with the “Watchtower people”. I would have to get a notebook and keep records. It might be even harder to prove harassment than firing a secretary or a civil servant. We would have to build the case against harassers, build a file.

The fact that it has to be more than once may give me some problems in keeping records to prove that it happened before, because there are so many clever lawyers around that I may always lose on a technicality because I may not remember exactly the time, date and place and I cannot take a picture of the person, so I am a bit worried about it having to be twice or more than twice.

I can think of a very important illustration. Just think of a woman leaving a building and meeting a bunch of “limers” or workers and they start to tell her

things and she moves on. That woman has been harassed, but I presume she cannot do anything about it because it just happened once. So unless there is a police officer standing there—because this gang is harassing everybody who passes—a police there may tell them they are indulging in harassing behaviour if the policeman stays one place long enough. But consider the poor woman who has been harassed and has moved on. It is a one-time thing, and I do not think she can do anything about it. If she goes to a police officer and says that the men on the block have harassed her, he would ask: “Did it happen twice? Is it the first time? Pass again tomorrow and then you can report it.” But the gang may change tomorrow. Madam President, so you can understand why I have problems with the phrase “course of conduct”.

I do not think there can be anything lost if wherever the phrase “course of conduct” appears, we substitute “conduct, or a course of conduct”. I can see why we need “course of conduct”, but I think we need “conduct” too. A course of conduct allows you to discern patterns. A person may do three different things but when you think about them together they make up a pattern of harassment. Each by itself may not be harassment, but the pattern makes it so. So I understand very well why we need the words “course of conduct” but I do not think it would do any harm to say “conduct, or a course of conduct”.

Mr. Vice-President, there are two other suggestions I would like to make about this piece of legislation which, as I said, I consider very important and timely. I can approach it by referring to something I took off the Internet where the British bill was discussed under the heading, “Malicious Communications”. The first paragraph reads:

“A common and particularly unpleasant form of harassment is that involving malicious communications either through the post, the telephone, Fax, by cyberstalking through the Internet or, an increasing problem, by the use of Text or SMS messages sent to mobile phones.”

We do attempt in our legislation to cover that, and the list defends itself by saying “any other way”. But I feel that we can beef up our list and try to cover all the forms of malicious communication that would constitute harassment. We can put a fuller list, then add the words “in any other way” to defend against offences committed with the use of new technologies. I think it helps to have the matter spelt out if it can be done. That is one suggestion I have concerning 30A.(1)(a)(iv) which only says:

“(iv) making contact with the person, whether by gesture, directly verbally, by telephone, computer, post or in any other way;”

The legislation has the principle and covers itself with “in any other way”, but I feel we can add some more details.

The other point I wanted to suggest can be approached by pointing to a whole set of terms that seem to be related to harassment and some of them may be covered by other legislation but you will see from where I am coming after I list them: “to bully, to intimidate, to menace, to threaten, to obstruct, to surround, et cetera.”

When I think about those behaviours I locate them immediately in school. It has happened to me and I have done it to other students in my time. You form a group and stand up, trapping a fellow in the middle, and you are not telling him anything, or doing him anything, you just stand there. Or, a fellow is passing and you walk across his path and obstruct him. All these things take place in school and I think young people ought to be brought within the net.

I know this legislation will apply to them but we have a particular problem about our schools, the kinds of harassment and violence that take place there, and sometimes it is the behaviour of some parents to teachers. If you upbraid a child, the parents will come to beat you up and you get menacing and threatening behaviour there which may only happen once. If you wait for a second time, you might end up dead. Teachers to pupils, pupils to pupils, and pupils to teachers. So I think we need to direct some of this legislation specifically to the schools. And again, checking the Internet, there are many States in the United States of America which have directed harassment legislation specifically to the schools. There is one whose first paragraph I would like to look at and it is: Federal Way Public Schools Prohibition of Harassment, Intimidation and Bullying—Procedure 3207:

“Harassment, intimidation or bullying means any intentional written, verbal, or physical act, including but not limited to one shown to be motivated by any characteristic of race, colour, religion, ancestry, national origin...”

The amount of fatigue children give to one another about race, colour and poverty in schools, I really feel that they must know that it is against the law and every school must have this package of legislation where the teachers and parents know about it. It goes on:

“...or other distinguishing characteristic, when the intentional written, verbal or physical act:

- Physically harms a student or damages the student’s property; or
- Has the effect of substantially interfering with a student’s education; or

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[SEN. PROF. RAMCHAND]

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- Is so severe, persistent, or pervasive that it creates an intimidating or threatening educational environment; or
- Has the effect of substantially disrupting the orderly operation of the school.”

I am suggesting that this is a very important piece of legislation and I agree with Sen. Seetahal—she was not adamant about it, and I take the hint from her. I really would have preferred this piece of legislation not to be tucked into the Offences Against the Person (Amdt.) Bill, but set out by itself. We should take time and elaborate certain sections to make sure we deal with the type of harassment that has to do with the communications revolution and we should deal with the kind of harassment and bullying and intimidating that takes place in our schools.

I really wish that we had separate legislation which takes into account all the realities by which we are surrounded and which many of the speakers before me have referred to without necessarily saying the legislation should include it. I think they took the opportunity to deal with these matters without necessarily saying the Bill should cover them, and we should take this back and work out a more extended, detailed and relevant piece of harassment legislation that speaks to all the disturbing realities that have been mentioned here today.

Thank you, Mr. Vice-President.

Sen. Sadiq Baksh: Mr. Vice-President, I join the debate on the Offences Against the Person (Amdt.) (Harassment) Bill, 2004.

Mr. Vice-President, any legislation that will further assist in strengthening violent acts against women, assist in reducing harassment and in generally promoting public safety is something that must be encouraged, although we need to look at the safeguards and what it will promote. Public safety, traditionally, was the most local of all issues, in that entire communities assisted with public order whether it was with children or adults. If, in the early days a child displayed any deviant behaviour, either the neighbour, pastor or someone in the community would be able to assist. If there was an adult problem whether it was the panchayat or whether it was the pastor, pundit, imam or the priest, they would have assisted, so public order became a local community issue. However, over the last 15 years, crime rates and steadily mounting disorder in our country, Trinidad and Tobago forced lawmakers and politicians to make public safety the number one national issue.

Mr. Vice-President, the subject of crime and public order routinely appears at the top of every public opinion survey of national problems. That was so at least from 1990 and 1991. Internal tracking polls conducted by our party, the United

National Congress, in 2002, 2003 and 2004 showed that crime was the issue in which respondents displayed the most pessimistic response of all with 89 per cent of respondents saying that our country was losing ground as far as crime was concerned, and only 9 per cent agreeing with the government that our country, Trinidad and Tobago, was in fact making progress.

Last week when we saw the survey conducted by an international organization on behalf of the Government in which 88 per cent of the respondents—and I saw the methodology and I have no doubt with it, because I believe in polls—felt safe at home—

Sen. Dr. Saith: I welcome the opportunity given to me by the Senator to clarify. The question asked was: Do you feel safe in your community during the day? And 88 per cent said yes. There were other questions which asked what they felt was the number one problem in the country and the majority said crime. I think you are right, Senator, different questions give you different answers. When we asked the question: Do you know of anybody? The percentages varied again. So it was that particular question: Do you feel safe during the day in your community which showed an 88 per cent response.

Sen. S. Baksh: Mr. Vice-President, I interpreted that the same way and when we did our tracking poll, it was not to knock the Government, it was intended to assist us in crafting a message that the electorate would have been able to understand and we would be able to relate to them in the right way.

It was not intended in any way to show it contrary or to put the Government in a bad light or anything. It was mainly intended to show how people look at crime, what they thought would solve crime in terms of the community's response to it, and how we would develop a strategy utilizing the statistics that we have on the type of violent crimes created over a period of time and how to begin to engender some sort of confidence in the law enforcement agency to get the population to understand that we can really deal with this problem, and get communities to take the responsibility for their own improvement, policing and to give them the resources.

6.45 p.m.

You would be surprised with the types of responses and suggestions that people gave and the things they want to see, and if this Government really wants to deal with crime, it will begin by utilizing the local knowledge from the respondents, from the wealth of abilities that we have in criminology. We should begin by utilizing this local knowledge to promote a local solution that will promote the type of confidence that is necessary. Because we cannot only

improve crime fighting and crime fighters, you know, we need to improve the confidence of a public to believe that it is possible.

I know it is possible. I am certain that we would be able to craft the right strategies to assist in crime reduction because it would redound to the benefit of us all. If we do not do that, then not only the rich would want to migrate, we would all be looking for ways to get out of here. I have no intention of leaving and I do not think that the vast majority of the people in Trinidad and Tobago want to leave, because I do not just believe Trinidad and Tobago is paradise; I believe that Trinidad and Tobago could be a paradise within paradise. I do not have any doubts about that.

In dealing with harassment, we must also not bury our heads in the sand and not recognize how harassment could come about innocently either, because of political activities or because of sheer hate, spite or malice. I cite a case of which I have extreme knowledge. This is the worrying part, to me, in terms of harassment, because I look at the immunity to be granted under section 30C which states:

“For agencies, agents or persons who, if they could prove by some reasonable doubt that it was within the conduct of their responsibility for the reduction of crime, the investigation of crime or the solution to a crime, that you could promote, unwittingly, state-sponsored harassment.”

I want to make it absolutely clear that in sharing the intimate knowledge that I have on this particular case, it is not to cast aspersions or to lay blame on anyone, but I share it for us to understand the great pain that people could go through because of what is possible. I cite my own experience, in that, as early as the year 2000, rumours began spreading that Sadiq had a team of people who were, in fact, planning to voter pad. From that rumour, we had a situation that involved—to the point where you actually had a commission of enquiry and we all know the contents of that enquiry so I would not go back into it. It is public record.

At the end of the day, that went by as if nothing occurred in terms of voter padding in Trinidad and Tobago. In my own case, my house was searched, and the saddest part of that was that the police officers took the monitor and left everything else. It left me to wonder what they really wanted, because the officers who took what they had to take did not even know that if there was information, it would not be stored in the monitor. That was the sad part.

It did not help me, or anyone else, to get any additional confidence that the people who were entrusted to do the task really knew it, so I had to put it down

only to harassment. [*Interruption*] That is not the issue. This is why I said initially it is not to lay blame on anyone. I am only telling you of how the harassment could come about. Now, in politics I learnt that you could choose how much of the truth you want to say. Never lie, but always choose how much of the truth you want to tell. But I took it back so that you would understand that I am not about to try to lay blame; I just want to show how it is possible.

It went further than that. My daughter was questioned at her workplace; my niece was actually charged for voter padding; handcuffed and paraded up and down Harris Promenade in San Fernando. But the worst was, after the harassment and embarrassment, nothing happened. The State never produced any evidence. The matters just kept calling and calling, like all the other matters, until they were actually thrown out one after the other. There are a few still pending, leaving me with the only interpretation that it was harassment.

Again, it did not stop there. That is why I am happy that this legislation would be able to solve some of those problems, and I have no doubt that it is the intention of the Government that it would solve some of those problems. By 2001, after the voter padding did not work, you had a situation in which allegations and rumours began to spread again, that Sadiq was responsible for bringing guns and cocaine into the northern parts of Trinidad and Tobago—in Laventille, in particular—and in charge of the gangs, and all sorts of things. I place on the record that I have never seen cocaine in my life; I have never used cocaine and I have never distributed cocaine to anyone.

To make it even worse—[*Interruption*] I cannot imagine I am hearing that from the other side. But like everything else, we would leave it at that. In addition to that, I do not believe in violence and I have never applied for a gun in my life. I do not walk around with a gun. I do not have one. All I needed to do was apply for one and if I applied for one now it would be available. I have never applied for a gun during any period in my life, because I do not believe in violence. But the rumours started and as if to bring the harassment and rumours to reality—and I want to show how this is connected—they found a foreign substance in my water tank, together with two missiles.

Luckily, I was out of the country at the time and I now see it as a joke, in that when the questions arose, the officers wanted to know what kind of house I have, if I had a tank and two missiles and cocaine. They wanted to know the make of the tank. I told them “Tuff Tank”. They wanted to know whether Abraham’s made the tank. In the United States they do not know about water tanks. They take it for granted that you open your tap 24 hours a day and you have water.

That was the situation. What happened was that to this day no one has said whether it was really cocaine or what percentage it was; whether it was baking soda, soap powder or white lime. So it remained as cocaine up to today, without any proof. Whether the Forensic Science Centre produced a report is not public knowledge, so it remained as missiles and cocaine in Sadiq's water tank.

So it linked with the initial rumour and harassment, to being involved in cocaine and gun running, and then you have these things appearing. I have heard people suggest and make allegations—the same way it was alleged I did all those things—that there were law enforcement agents involved. I cast no aspersions; I have no evidence of that, but there are people who keep on saying and sending letters, and that sort of thing. But what I am saying is, if that is the type of harassment that we are going to solve with this type of legislation, then, again, it is a step in the right direction, but whether the officers—if officers were involved—can now say that that was part of their own surveillance—

It did not stop there. During 2002, I had reason to see two vehicles—and I had the number of the plates—following me around. That was the time of the commencement of kidnapping as a natural occurrence in Trinidad and Tobago. I got wind of it and I started to allow myself to be followed and, in fact, corralled both vehicles at 11 Charles Street in Port of Spain. I gave advance warning to our security advisor, Captain Gary Griffith, and while I was at the Leader of the Opposition's office, he was able to confront the persons in both vehicles. At that time I thought they were ordinary citizens possibly looking to set up a kidnap, or something, only to realize that they were Special Branch Officers and when we traced the cars that were rented, we found they were rented by the Office of the Prime Minister.

Sen. Dr. Saith: We were trying to protect you.

Sen. S. Baksh: I appreciate that. Again, I have no problem with that. If that is the explanation, I am happy with it. But the point I am making is, these are real live issues. This is not hearsay; it is not made up. The vehicle numbers are there. We checked them; we followed them.

That is the kind of harassment that we would not want to continue. I would not want that to be perpetrated on any other citizen. I have been able to withstand that harassment and that type of thing, but I do not believe that it could be as easy as in section 30C, so that some group of people, whether they are law enforcement agents or not, could cite that as a legitimate reason for harassing a citizen. If it is for protection, I welcome it and have no problem with it. That is part of it.

Another issue is that with modern technology, you now have cell phones with which you could take photographs without anyone being aware, whether constantly, periodically or otherwise, and even have them transmitted with DSL at the same time. We have the Bluetooth technology now available, and it is a source of modern-day activity in the European Union. I have no doubt that with the technological wizards that we have in Trinidad and Tobago, Bluetoothing will become part of the local landscape, if we do not have it already.

I just wanted to share this experience and to say that we must put in place, safeguards, from people being harassed, safeguards in terms of state sponsored or sometimes organization sponsored—it might not necessarily be under the direction of the political directorate. There are certain agencies and organizations that believe it is the wish of the political directorate to do that and they do it on their own. Many times I am aware that people go out there and do things and believe that it would make the masters happy, when the masters do not promote that; they do not encourage that and they, in fact, are opposed to that.

With these few words, Mr. Vice-President, I thank you very much. [*Desk thumping*]

Sen. Parvatee Anmolsingh-Mahabir: Mr. Vice-President, I congratulate the Minister of National Security for bringing forward this piece of legislation to amend the Offences Against the Person Act, Chap. 11:08, section A.

This Bill has my full support. My only area of concern with this Bill lies in section 30D(1) and (2). I note that the court grants a protection order but it does not state the duration of the protection order. The Domestic Violence Act clearly spells out the duration of the protection orders, if you may recall. I believe it is up to about three years but not beyond that. The duration is not spelt out in this Bill and this may or may not be a good thing. So perhaps the hon. Minister may wish to clarify why the duration was not spelt out. After all, it is an injunctive remedy and perhaps it needs to be spelt out. This is my main concern.

I thank you.

Sen. Angela Cropper: [*Desk thumping*] Mr. Vice-President, thank you very much for indulging me because I had earlier communicated that I would not be speaking on this Bill. May I also take this opportunity to say, through you, Mr. Vice-President, how much I appreciate the very gracious welcome that has been accorded me from Senators on being installed in this Chamber.

In making some few comments on this Bill to amend the Offences Against the Person Act, Chap. 11:08, I would like, first of all, to say how much I appreciated

the introduction of the second reading of this Bill by the hon. Minister of National Security. I must say I was a little surprised, but pleasantly so, to hear the Minister volunteering, without any pressures from any need to respond to oral questions and so on, a wide range of statistics that established without a doubt the very serious situation relating to crime and violence in the society, to which this Bill is one response. I was reassured to hear his voluntary acknowledgment of the very high level of incidence of violence and crime. I welcome the opportunity to comment on this Bill as my first contribution to this Chamber.

On the first reading of this Bill—my reading that is—I was struck by the wide range of circumstances which could give rise to an offence under this Bill, and I must say that did give me some concern. However, having listened to the points made by Sen. The Hon. Kangaloo, and then elaborated in the very learned contribution of Sen. Seetahal, I am persuaded by their explanations about the way in which this Bill seeks to fill gaps in the existing body of related legislation. I am particularly grateful to Sen. Seetahal for pointing out the nuances in terms of a course of conduct being required and also the way in which defences are also inscribed in the Bill for some of the concerns that had been expressed earlier by other Speakers, especially Sen. Robin Montano, in his earlier contribution.

I am satisfied that defences in terms of the concerns about the police service and the media are sufficiently provided for in the Bill. I note also the several concerns expressed by other Senators about particular instances, situations and scenarios that may be problematic, given their own experience and particular set of circumstances. But as with every piece of legislation, it is impossible for it to encompass every possible situation that could arise, and we know that we are required to address the circumstances and the issues that constitute the rule rather than the exception. I have no doubt—and would hope that no one in this Chamber does—that the rule, if you wish, in this society right now, is an order of violence and crime of a level that has been unprecedented in our own experience and, therefore, I think that this Bill is worthy of my support.

Having said that, though, I would like to express some points of view about, not the provisions of the Bill itself, but some of the larger context in which this Bill and the provisions in it, and the issues which it seeks to address, need to play themselves out. The first thing that I am concerned about is the implication of this legislation for the Magistrates' Courts. I say that even though I do not have a lot of experience in the Magistrates' Courts, either as a defendant or a litigant, but I am appalled at the conditions that prevail in the Magistrates' Courts: the overcrowding, the very, very heavy agenda and the very backward set of

arrangements that exist in terms of the processing of the public's business. I think that we can expect from a Bill like this a very high incidence of actions that can be brought under it, and we need to take account of the way in which our administrative systems are geared to be able to address the fallout.

The second point I wish to make is to recognize that we already have a heavily burdened police service. The society keeps our police service very busy, indeed. We have had several comments made about the police service and Sen. R. Montano, in his contribution made the point that this legislation, taken from a context of a developed country, is, in a way, predicated upon a high level of trust and confidence by the population in the police service. We know that our police service comes in for a lot of blows in the country and I think we have to also examine the sources of that and the reasons for that and pay a lot of attention to it.

Again, I might say that I do not have great personal experience of engagement with the police service, but from what little I have had, I am very impressed by their professionalism in their own relations with me, and I wish to put that on record and commend them for that. I do believe that it is possible for us to have in the country, a police service that could operate at a very high level of professionalism and efficiency; but I think that it may need a whole lot of more supports than are available to it at the present time. I believe that we need to also look at this in terms of making sure that this Bill is able to work with efficiency in order to address the issues that are inherent in it.

The third point I want to make is to refer to the point made by the hon. Minister in introducing the Bill, which relates to the culture and behaviour of Trinidad and Tobago society. In fact, he suggested that in some ways the Bill is intended to respond to some of the seamier side of our culture and behaviour. We also have had that elaborated a little later on by Sen. Prof. Deosaran, especially in the ways that were given as examples by Sen. Prof. Deosaran, of how our culture and behaviour and the seamier side of that manifests itself, especially at Carnival time. Because of this, I think we can expect a very high number of actions to flow from this Bill. Therefore, I think that we need to be prepared for that and to see what kind of programmes might be actually put in place. Sen. Bro. Noble Khan also spoke about some of those issues and the need for programmes to try and address some of the cultural and behavioural patterns of the society in relation to the potential offences under this Bill.

All of that leads me to make my fourth point which is that we need to recognize that there is need for a wide range of parallel actions in order to make

the Bill work properly and efficiently. Sen. Seetahal has already drawn attention to the need for police training, and I would like to endorse that; but I would like to add several elements of parallel actions that may be required. One of them relates to a more preventative approach to crime and violence. Sen. Augustus has already discussed that and I am not going to go over the details of that, but I think it is very important that we look at ways in which we can address these same issues through a more preventative approach.

That brings into play, of course, the education system that he has alluded to; it brings into play the kind of family supports that are required in a society where the family system is breaking down around us. I think these are ways in which we can put in place the societal supports that would help to make this Bill work better.

Finally, I think that one of the supports we need to look at is public education. I think that we pass a lot of bills in this country but there is no parallel system of educating the public about what these bills signify. Here I think there is great need for educating the public, not only about the provisions of the Bill but also about the rights of citizens, in order to take account of some of the concerns that have been expressed in previous contributions. We need to make a balance here between penalizing actions such as those that are provided for in this Bill, but also balancing those with the need to respect the fundamental rights of citizens.

Thank you very much. [*Desk thumping*]

Sen. Wade Mark: Mr. Vice-President, I rise to make a couple comments and express our party's concerns as they relate to this Bill to amend the Offences Against the Person Act.

I will place my contribution in a framework that will take into consideration, credibility, trust and the whole absence of accountability by the current administration. The first question that I would like to address, through you, to the hon. Minister of National Security, is, why the haste? What level of consultation did the Minister of National Security facilitate with the various stakeholders who are to benefit, supposedly, from this piece of legislation? What are some of the factors that have given rise to this piecemeal—as they are accustomed to—legislation?

The Minister of National Security has not told us whether he had any consultation with the national community on this piece of legislation; if this legislation is going to help the women of our society—because we are told by the hon. Minister in his presentation that, looking at the various statistics that he

advanced, he could not establish a causal link, but there was some element that he was trying to drive us towards addressing when he rolled out his various statistical tables and information on crime: gangsterism, kidnapping, domestic violence. Why put into legislation at this time such broad and, ambiguous at times, provisions when the whole issue of public trust in this administration leaves a lot to be desired? In fact, it is waning at a rapid pace.

When I read an affidavit which was presented to the courts of this country and which is now in the public domain, by a senior police officer who is an assistant commissioner—like the journalist writing in the *Los Angeles Times*—it sent a chilly feeling down my system. I am saying that on the surface, this piece of legislation might appear to be very innocent and could be, at the end of the day in the interest of the national community, but the movers—the person who has piloted this Bill on behalf of the Government, and the Government as a whole, its tenure in office to date—have left a lot to be desired, and their campaign of harassment put to rest some of their new concerns as contained in the legislation.

I want to draw your attention to the Domestic Violence Act and what was described in that Act, which covers some of the very provisions that are contained in this piece of legislation. On page 292 of the Domestic Violence Act, under the definition section, there is “emotional and psychological abuse”. That is a term. And it goes on to identify exactly what that means. Everything, or 90 per cent of what has been outlined here, is contained in this piece of legislation. So whilst they may argue that it is a Domestic Violence Act and it deals with family relations and this one is outside the family framework, well, why not come with a more comprehensive piece of legislation as was outlined by my colleague earlier? Why this limited interpretation of the term, harassment? Why not provide us with a distinction between harassment and stalking in the legislation? But these are times that we have to be very, very careful. This Government that has piloted this legislation continues to harass the population and there are manifestations of that harassment in many fields in this land.

When we look, as I said, at this legislation and we look at, for instance, the history of this regime in terms of its campaign of harassment, it is not only public officers who are being harassed by this regime. I would like to know when is the Minister of National Security, or the Attorney General, bringing legislation to this Parliament to deal with official harassment of citizens in this country, whether they be public officers, officers in quasi-public service bodies. It is the first time in the history of this country that a senior public officer has been openly harassed—a permanent secretary. Does this legislation take into account the

harassment of party supporters? I do not see it. I am not seeing anything in this legislation that would protect our supporters from the harassment of the opposing party, and that occurs on a daily basis. You know, that is very dangerous and serious, because it can lead to all kinds of consequences if it is not arrested.

Not only are public officers being harassed, but you also have trade unionists being harassed, teachers and doctors, by this ruling party, because the name of the game is total, absolute and complete control of all the institutions of this country by the Prime Minister who is the head of the Cabinet and head of Government. Information has reached me that in terms of harassment, it has not been only journalists, teachers, professionals, police officers, but the latest intrusion is into the Judiciary of the country, and I would like the Attorney General to tell this Parliament this evening if he is aware that there are moves afoot by this ruling party to have the Chief Justice of this country removed as Chief Justice. I want him to tell the country if he is aware of a sinister plan to remove the Chief Justice of Trinidad and Tobago. We understand there is such a plan. But I will say more about that later. We have a long evening.

I am concerned, like your good self and like my colleagues here, how section 30A could be abused and misused. Could you tell me, under section 30C of the legislation—this now is not confined to domestic violence, you know, because if it were, the Minister of National Security would have put this amendment into the Domestic Violence Act. He has not done that. So this does not deal with wife, husband and children stalking each other or having difficulties and problems, you know; this goes beyond the family. These provisions here deal with the society, and that is what is alarming about this particular piece of legislation. This is a recipe for permanent and continuous harassment of persons, organizations and individuals in this society, who are either in opposition to the PNM or whom the PNM may see as being opposed to their policy.

So persons in this society, according to this provision, can be followed. Anyone can now be followed because there is a definition in the law. You can be stopped and accosted by whom? However, in section 30C it is said that a defence for stopping you and me and accosting me and you could be made because the person who does that to you and me could now come with a cover—fig leaf—before a court and say, “You know, the reason they stop Wade Mark, or the Vice-President, is because they were seeking to prevent or detect a crime”.

This is hot stuff, and I always look at the bigger picture. I am not looking at this piece of legislation innocently, because we have a history of a government

that has used every possible means to humiliate, discredit, attack, intimidate, harass and victimize the official Opposition in this country! The Minister of National Security and hon. Dr. Lenny Saith should be aware that a person by the name of Richard Bickram who was the State's star witness in terms of voter padding, has an affidavit which is now public in which he accused Dr. Lenny Saith, the Minister of National Security, the Prime Minister and senior police officers of being involved in a conspiracy against the Opposition UNC. I have never heard the Minister of National Security or the Minister of Public Administration and Information deny that.

Sen. Dr. Saith: First of all, Mr. Vice-President, I am not aware of the contents of the affidavit, but whether that is so or not, I deny here that I was involved in any conspiracy to do what you say was done. Like Sen. Baksh, perhaps I am taking blame for somebody else, as he is taking for somebody else.

Sen. W. Mark: Mr. Vice-President, you know, I would make this particular document available to you, Sen. Dr. Lenny Saith and the hon. Martin Joseph. I would have thought that if a person could go on public record and accuse certain top-ranking officials of a party that is now in government, and Dr. Lenny Saith and the hon. Martin Joseph have not seen that document, or have not referred this document to the police—because that was the same individual who accused our party of voter padding, and accused certain members of our party of being involved in that kind of activity. That person went subsequently on public record and said he was used and abused and he called names of people.

I am dealing with this thing in terms of how forces can be used in an effort to undermine the legitimate Opposition and other individuals carrying out their public duties in this country.

Sen. Dr. Saith: Again, I want to repeat what I said, and to say that I have not seen the affidavit; I do not know where the affidavit is. I am saying, on record, that I was not involved in any such thing. While I am on my feet, perhaps the Senator could explain to me if we are able to do all this without this piece of legislation, why do we need this legislation to harass him?

Sen. W. Mark: What I am saying, you see, fascism is a dangerous kind of social and political order. It comes in small pieces. You harass me openly and naturally and then when you find, for instance, there is no organized resistance, you now tend to bring it into law. In other words, there are phases and stages to your conspiracy. I am not saying that Dr. Lenny Saith will be engaged in any campaign of harassment—I want him to rest assured and sleep well tonight—I am

saying that these provisions can be utilized by forces. Mr. Vice-President, if you give me a chance I would read an affidavit I have here in terms of Dennis Graham, you know, which talks about what is taking place in the police service. I could do that, you know! So do not harass me at this time of the evening, otherwise I will have to go on public record.

If you look under section 30A(ii) and you look at the way the provisions of harassment are interpreted—you can watch or you can loiter, you can hinder or you can prevent access to and from a person's place of residence and workplace—Sen. Sadiq Baksh has indicated to you how these things have happened already, and many citizens of this country are victims of this particular arrangement. Although Independent Sen. Dana Seetahal made the point that members of the media have nothing to worry about because under section 30C there is a defence for that in section 30A, but that would come after the fact.

Do you know that if you are following someone and taking photographs of someone in terms of the Government Ministers or officials, any minister of government could utilize this particular provision now; they can do it once it becomes law and they can charge through the police service that journalists are either following them, watching them, hindering them, entering their property and interfering with their property—all these things are possible. I am not putting that beyond this regime. Then they go on now to say you could use that as a defence. Yes, you can use it as a defence, but if in a court of law—let us assume but not admit—it is not entertained as a defence, you are jailed or fined.

So what I am saying is that the Government has brought a piece of legislation in which—

Sen. Dr. Saith: To harass you.

Sen. W. Mark: You cannot harass me. I am beyond harassment from you.

That is an area about which we have some concern. The other area that we would like to address is—let us go to section 30B(2) which reads as follows:

“For the purpose of this section, the person whose course of conduct is in question is deemed to know that it will cause another person to fear that violence will be used against him if a reasonable person in possession of the same information...”

I would like the hon. Attorney General to tell us whether the burden of proof has now shifted, when we say that “for the purpose of this section, the person whose course of conduct is in question is deemed to know that it will cause another

person to fear that violence will be used against him”. And it goes on to talk about on trial on indictment, a person charged with such an offence if found guilty, the court would find this an offence under section 30A. We are seeking clarification of this clause, whether we are shifting, based on this particular provision, from what is contained in our Constitution, that is, a person is presumed innocent until proven guilty.

Another area of concern is section 30B(3):

“If on trial on indictment, a person charged with an offence under this section is found not guilty, the Court may find him guilty of an offence under section 30A.”

So we are being told to pass legislation where, if someone is taken to court for these offences under the context or pretext of harassment, you are charged with an offence under this section. But do you know what? If you are not found guilty, we are being told as parliamentarians and lawmakers that the court could now find you guilty of an offence under another section. I do not understand this particular clause and I would like the Attorney General to clear the air on this matter. We are not happy with this clause, whatsoever.

I continue. I would like to know whether this Bill would legitimize in some way or the other vigilante justice in our country, because we know that this Government is in criminal complicity with certain forces in this country! We know that!

Sen. Yuille-Williams: The gallery is empty.

Sen. W. Mark: Well, I will keep you here. I am not concerned about the gallery; I am concerned about dealing with the provisions in this Bill. Whilst, for instance, the hon. Minister of Community Development and Gender Affairs, whom I like and admire a lot—I had to warn her today—

Sen. Yuille-Williams: You warned me already—

Sen. W. Mark: You see, I am a very kind “fella”. I warned her.

Sen. Yuille-Williams: And I said thanks.

Sen. W. Mark: “Doh leh meh warn you again, eh”, because I could warn you once, but not twice, “eh”.

Sen. Dr. McKenzie: That is intimidation, you know.

Sen. W. Mark: No, I am not intimidating her at all, otherwise I think she might use the provisions of this section and accuse the hon. Senator of harassment and I do not want to be caught in that net, whatsoever.

What is the ceiling? If we go to the compensation ordered by a court of summary jurisdiction, at section 30E(2) it states:

“...shall not exceed the statutory maximum amount that such a Court has jurisdiction to award.”

Are we going to have regulations governing these provisions? Where are the regulations to govern these provisions? This particular provision is very broad and the Minister of National Security has not provided any kind of ceiling as it relates to the amount of compensation that you can derive in this. Not only this. Could the Minister of National Security tell us what is the statutory maximum amount that this Magistrate’s Court would allow? We need to know, given, for instance, the extent of the injury to the party involved, whether that amount is adequate. Therefore, if it is inadequate, what are we going to do to address that?

Section 30F states:

“In addition to an Order for protection or compensation made under section 30D, the Court may, where the circumstances require, make an Order under section 6 of the Mental Health Act.”

I thought the Government was viewing this thing with some degree of seriousness, but in that particular context I would have suggested to the hon. Minister that instead of using “may”, he should at least be very firm on this matter. So I wanted to raise this matter and bring it to the attention of the hon. Minister of National Security.

Now that you are back and well seated, I want you to tell this honourable Senate this evening whether you are aware, as Attorney General, that there are moves afoot in this country—[*Interruption*] No, I am speaking through the hon. Vice-President to the Attorney General of the country. He was not here when I addressed the matter and now that he is here, I would like the hon. Attorney General to tell this Senate whether he is aware that moves are afoot to have the Chief Justice of this country removed from office.

We would like you to come on record tonight because information has reached us that there are moves afoot to remove the Chief Justice of this country. I say this in all seriousness.

7.45 p.m.

I saw in today’s *Newsday* on page 3, an article entitled, “TOP OFFICIAL FACES DISCIPLINARY ACTION”. In that article they talked about interference in court cases. When I enquired into that matter in a more detailed way, I understood that

the Government of this country is now involved in a plot to remove the Chief Justice from office. I am calling on the Attorney General to tell the country tonight, whether there is any such move.

Sen. Jeremie: Mr. Vice-President, this is entirely out of order. The Constitution does not allow a Government to remove a Chief Justice. It is not possible. An Executive cannot remove a Chief Justice from office. It is ignorance of the highest order and highly inflammatory language.

Sen. W. Mark: I understand my colleague's alarm and concern. I am very serious about what I have said. He can attempt to cover up or use language to fool you, but where I stand, I am very clear about what I am saying. If I am wrong in the next few days we will see and, if I am right, in the next few days, we will also see. I am fully aware that no government can remove a Chief Justice, but a government can put a motion or machinery to do so. *[Interruption]* You know it is the truth that is why you are so jittery.

I want to warn the regime tonight. They have already begun to dismantle our country by their reckless policies and behaviour. If they continue how they are going, then the whole country would be faced with—all right. Although the Attorney General did not say anything as usual—you rose and said nothing.

We have reservation about this piece of legislation and we have said so. *[Interruption]* Do not disturb me. I want to know if you have shares in Caribbean Prestige International, or I95.5 or Hilton Hotel. Well, allow me to speak. Good.

Mr. Vice-President: Sen. Mark, please get back to the Bill.

Sen. W. Mark: Mr. Vice-President, I seek your protection from that lady who is harassing me. I will like to wind up. *[Desk thumping]* You are going too long. I am now getting the encouragement from my colleagues to press on. I thank them very much.

We have a few concerns. My colleagues have sought to record our concerns. We hope that when the Minister of National Security addresses the Senate those concerns will be addressed. If they are not addressed to our satisfaction, we reserve our rights. I hope that at the end of the day my fear in terms of matters that I have raised with the Attorney General does not materialize in the final analysis. I know the consequences of that action. I pause and allow the Minister of National Security.

Thank you.

Offences Against the Person (Amdt.) Bill
[SEN. MARK]

Tuesday, February 01, 2005

The Minister of National Security (Sen. The Hon. Martin Joseph): Mr. Vice-President, let me express our appreciation for the contribution made by every Senator on the other side. I am sure that we can find some grounds in terms of the comments made. Let me also take the opportunity to congratulate our new Sen. Cropper on her maiden contribution which was an excellent one.

ADJOURNMENT

The Minister of Public Administration and Information (Sen. The Hon. Dr. Lenny Saith): Mr. Vice-President, the hour is late and a number of people have indicated to me that they have commitments elsewhere. In the circumstances, I wish to move the adjournment now and have the Minister continue his contribution at the next sitting, before we go into committee.

In the circumstances, I beg to move that the Senate do now adjourn to—I thought of February 08, but they said that I will be the only one here—Tuesday, February 15, 2005, at 1.30 p.m. We will finish this and then move on to the Functions of the Director of Surveys (Validation) Bill.

Sen. Mark: What will happen to the National Lotteries (Amdt.) Bill?

Sen. The Hon. Dr. L. Saith: It will come under the Finance Bill.

Mr. Vice-President: Hon. Senators, before I put the question on the adjournment, I compliment Sen. Cropper for her contribution today and join Sen. The Hon. Joseph in expressing how good it was. [*Desk thumping*]

There was a Motion on the Adjournment that Sen. Mark has decided to forego for tonight. [*Desk thumping*] That Motion would come up at a later stage.

Question put and agreed to.

Senate adjourned accordingly.

Adjourned at 7.55 p.m.