

Mr. Winston Budhram (Death of)

Tuesday, May 13, 2008

SENATE

Tuesday, May 13, 2008

The Senate met at 1.30 p.m.

PRAYERS

[MR. PRESIDENT *in the Chair*]

**MR. WINSTON BUDHRAM
(DEATH OF)**

Mr. President: Hon. Senators, I have the unpleasant task to inform you this afternoon of the unfortunate death of one of the members of staff of the Parliament, Mr. Winston Budhram, who was killed late Sunday evening in an incident in Arima involving the theft of his car.

In the incident also, was a member of the Hansard staff who apparently was unhurt. This is just for your information. Your personal expressions of sympathy should be directed directly to the members of the family and not at this time.

Thank you.

PAPERS LAID

1. Annual audited financial statements of Trinidad and Tobago Mortgage Finance Company Limited for the financial year ended December 31, 2006. [*The Minister in the Ministry of Finance (Sen. The Hon. Mariano Browne)*]
2. Annual audited financial statements of Taurus Services Limited for the financial year ended September 30, 2007. [*Sen. The Hon. M. Browne*]

**ACTING HIGH COMMISSIONER OF CANADA
(MR. JOHN MAUNDY)**

Mr. President: Before we go to the questions, I was just advised by the Clerk of the Senate that I have a guest, the Acting High Commissioner of Canada, Mr. John Maundy. I would just like you to recognize him. [*Desk thumping*]

ORAL ANSWERS TO QUESTIONS

**Tertiary Education
(Grant of Financial Assistance/Scholarships)**

11. Sen. Wade Mark asked the hon. Minister of Community Development, Culture and Gender Affairs:

- A. Could the Minister inform the Senate whether her Ministry has provided financial assistance or awarded scholarships to persons desirous of

pursuing studies at universities in Trinidad and Tobago, the Caribbean region and/or internationally?

- B. If the answer is in the affirmative, will the Minister provide this Senate with the following information:
- i) a list of the names of persons who have benefited from such assistance for the period 2002 to December 2007;
 - ii) the amount of financial assistance provided to each person; and
 - iii) the names of the institutions involved?

The Minister of Energy and Energy Industries (Sen. The Hon. Conrad Enill): Mr. President, the answer to question No. 11 is not ready.

Sen. Mark: Mr. President, could the hon. Minister indicate to us when this question would be ready given the commitment we got the last time, that it would have been ready today?

Sen. The Hon. C. Enill: According to the information that was available to me, Mr. President, the question went to the PQC and it was deferred for an amendment. In the normal course of our activities, if that amendment is available this week, then it would be ready next week. That is what I have.

Question, by leave, deferred.

**Mr. Douglas Mendes SC
(Details of Retention of Services)**

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

Could the Attorney General provide the Senate with:

- A. A detailed list of the matters in which Mr. Douglas Mendes SC has been retained by:
- i) the Government of Trinidad and Tobago;
 - ii) the Integrity Commission;
 - iii) the National Lotteries Control Board;
 - iv) the Telecommunications Authority of Trinidad and Tobago; and
 - v) any other state enterprise and/or statutory authority during the period January 01, 2002 and December 31, 2007?
- B. Could the Attorney General also provide a detailed breakdown of the fees paid to the said Senior Counsel during the same period?

The Minister of Energy and Energy Industries (Sen. The Hon. Conrad Enill): Mr. President, question No. 12 suffers the same fate as question No. 11. It is deferred for an amendment.

Question, by leave, deferred.

**Granting of Scholarships/Funding
(Committee Members)**

15. Sen. Wade Mark asked the hon. Minister of Community Development, Culture and Gender Affairs:

- A. Could the Minister provide the Senate with a list of the Members who comprise the committee in the Ministry of Community Development, Culture and Gender Affairs charged with the responsibility for determining the grant of scholarships/funding to needy individuals?
- B. Could the Minister provide the Senate with copies of the brochures/pamphlets containing the procedure and criteria adopted by the committee for determining the eligibility for scholarships/funding?

The Minister of Energy and Energy Industries (Sen. The Hon. Conrad Enill): Mr. President, question No. 15, likewise.

Question, by leave, deferred.

**Official Residence
(Details of Payments)**

26. Sen. Wade Mark asked the hon. Minister of Finance:

- A. Could the Minister provide the Senate with the details of the final cost of the construction of the Prime Minister's residence and Diplomatic Centre?
- B. Could the Minister also provide the Senate with the details of payments of value added tax, income and corporation taxes, and all other corporate taxes by the Shanghai Construction Corporation of China during the period of construction of the said Prime Minister's residence and Diplomatic Centre?

The Minister in the Ministry of Finance (Sen. The Hon. Mariano Browne): Mr. President, this answer is not approved in the final form.

Thank you.

Question, by leave, deferred.

**Conduct of the Chief Justice
(Legal Advice Offered on)**

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

- A. Could the Prime Minister make available the official legal advice offered to him by Dr. Lloyd Barnett, QC and Mr. Mark Strachan, QC from Jamaica and the United Kingdom respectively on which his decision to have the President of the Republic establish a tribunal to investigate the conduct of the Chief Justice?
- B. Could the Prime Minister also provide the Senate with details of the legal costs and fees paid to both Dr. Lloyd Barnett, QC and Mr. Mark Strachan, QC for the said advice?

The Minister of Energy and Energy Industries (Sen. The Hon. Conrad Enill): Mr. President, question No. 28 is not yet available. It was in fact submitted and deferred for an amendment.

Question, by leave, deferred.

**Todd's Road
(Status of Land Distribution)**

34. Sen. Wade Mark asked the hon. Minister of Agriculture, Land and Marine Resources:

- A. Could the Minister provide the Senate with the rationale, if any, for the allocation and distribution of the 3,000 acres of land cultivated with citrus located at Todd's Road?
- B. Could the Minister also state whether these lands were subdivided and if so, by whom?
- C. Could the Minister further inform the Senate whether the final distribution and allocation exercise was approved by Cabinet and if so, when?

The Minister of Agriculture, Land and Marine Resources (Sen. The Hon. Arnold Piggott): Mr. President, I propose to bring the response to that question within two weeks as it is not now ready.

Question, by leave, deferred.

**Securities and Exchange Commission
(Government's Measures to Strengthen)**

42. Sen. Wade Mark asked the hon. Minister of Finance:

Could the Minister state the measures, legislative or otherwise, the Government intends to take to strengthen and support the Securities and Exchange Commission in its efforts to ensure that companies listed on the Trinidad and Tobago Stock Exchange submit annual reports on a timely basis to allow shareholders to be better able to monitor and protect their investment?

The Minister in the Ministry of Finance (Sen. The Hon. Mariano Browne): Mr. President, this question will be answered on the following Tuesday.

Question, by leave, deferred

**Ongoing United Nations Development Project
(Computerization of the Licensing Office)**

45. Sen. Wade Mark asked the hon. Minister of Works and Transport:

With respect to the ongoing United Nations Development Project for the computerization of the Licensing Office, could the Minister advise the Senate:

- (i) what is the status of this project;
- (ii) what was the sum of money allocated for this project;
- (iii) how much money, if any, has been spent on this project so far; and
- (iv) whether the project has been abandoned or is there a new completion date?

The Minister of Energy and Energy Industries (Sen. The Hon. Conrad Enill): Mr. President, question No. 45 is not ready.

Question, by leave, deferred.

**Public Transport Service Corporation
(Status of Local Agents for Volvo Buses)**

46. Sen. Wade Mark asked the hon. Minister of Works and Transport:

- (a) With respect to the Volvo manufactured articulated buses owned by the Public Transport Service Corporation, could the Minister inform the Senate who are the local agents for these buses?

- (b) Could the Minister also inform the Senate whether those agents have a workshop and spare parts facility in Trinidad?
- (c) If the answer to (b) is in the affirmative, could the Minister state where this workshop and spare parts facility is located?

The Minister of Energy and Energy Industries (Sen. The Hon. Conrad Enill): Mr. President, question No. 46 is similar to question No. 45, it is not now ready.

Question, by leave, deferred.

**United Nations Development Programme
(Status Report of Funding)**

47. Sen. Wade Mark asked the hon. Minister of Planning, Housing and the Environment:

- (a) Could the Minister inform the Senate whether the Government of the Republic of Trinidad and Tobago has been able to access funding from the UNDP's programme for critical development and technical projects?
- (b) If the answer to (a) is in the affirmative, could the Minister provide the Senate with a status report on the funding accessed from the programme during the last three (3) years?
- (c) If the answer to (a) is in the negative, could the Minister inform the Senate:
 - (i) whether Trinidad and Tobago has graduated out of the programme; and
 - (ii) whether projects that could have been funded by the UNDP must now be financed by the Government?

The Minister of Planning, Housing and the Environment (Sen. The Hon. Dr. Emily Gaynor Dick-Forde): Thank you, Mr. President. The question requires research to get information from persons external to the ministry. We are now collating that information and we need about two weeks before we can come back to the Senate.

Question, by leave, deferred.

**Judges of the Industrial Court
(Disparity in Retirement Benefits)**

53. Sen. Mohammed Faisal Rahman asked the hon. Attorney General:

- A. Could the Attorney General please inform this Senate whether there is a disparity in retirement benefits between judges of the Industrial Court and that of similar officers of the regular Judiciary?

- B. If the answer is in the affirmative, could the Attorney General state what steps are being taken to rectify this discrepancy?

The Minister of Energy and Energy Industries (Sen. The Hon. Conrad Enill): Mr. President, we have the answer to this question. We could answer it, or defer it for the Attorney General.

Mr. President: Let us just wait till the end of question time and see.

Question, by leave, deferred.

**Air Pollution Rules and Hazardous Waste Rules
(Time Frame for)**

55. Sen. Dr. Adesh Nanan asked the hon. Minister of Planning, Housing and the Environment:

Would the Minister indicate a time frame for the Air Pollution Rules and the Hazardous Waste Rules to be laid in Parliament?

The Minister of Planning, Housing and the Environment (Sen. The Hon. Emily Gaynor Dick-Forde): Thank you, Mr. President. The Air Pollution Rules are currently being considered by the Legislative Review Committee which is a subcommittee of Cabinet and are expected to be submitted for the consideration of Cabinet shortly.

Following the approval of Cabinet, the rules will be laid in Parliament at the earliest opportunity.

With respect to the Hazardous Waste Rules, a draft is expected to be considered by the Legislative Review Committee within the next three months and will be submitted to Cabinet thereafter. Following the approval of Cabinet, the rules will be laid in Parliament at the earliest convenience.

**Employee Injury and Disability Compensation
(Delay of)**

58. Could the hon. Minister of Labour and Small and Micro Enterprise Development state:

What is the reason for the delay in bringing legislation for the Employee Injury and Disability Compensation before Parliament?

Mr. President: This question is by Sen. Annisette who is not here, perhaps we can leave that until later because there is no one to put the question.

**Beverage containers
(Legislation)**

61. Sen. Dr. Adesh Nanan asked the hon. Minister of Planning, Housing and the Environment:

- (i) Would the Minister inform this Senate whether legislation dealing with beverage containers is on the Government's legislative agenda?
- (ii) If the answer to (i) is in the affirmative would the Minister indicate a time frame for the said legislation to be introduced in Parliament?

The Minister of Planning, Housing and the Environment (Sen. The Hon. Dr. Emily Gaynor Dick-Forde): Thank you, Mr. President. The legislation relating to beverage containers is on the Government's legislative agenda. It is anticipated that this legislation will be laid in Parliament before the end of 2008.

**National Insurance Board
(Actuarial Review Team)**

64. Sen. Wade Mark asked the hon. Minister of Finance:

- A. Could the Minister inform the Senate whether the National Insurance Board has commenced a special actuarial review to amend the earning class system to increase the number of contributions required to qualify for a retirement pension as well as to reform measures aimed at introducing a single national pension system?
- B. If the answer is in the affirmative, could the Minister inform the Senate when the actuarial review was commissioned and who comprise the membership of that Actuarial Review Team?
- C. Could the Minister further state when the Review Team would complete and submit its report to the Government and to the Parliament?

The Minister in the Ministry of Finance (Sen. The Hon. Mariano Browne): Thank you, Mr. President. The National Insurance Board of Trinidad and Tobago normally conducts actuarial reviews every five years as required by section 70 of the National Insurance Act, Chap. 32:01.

The last actuarial review was done in June 2005 and laid in the Senate in January 2007. In the course of the Statutory Actuarial Review, the actuaries may be asked to pay special attention to a particular matter deemed urgent by the board.

In the context of this question, the National Insurance Board of Trinidad and Tobago intends to ask the actuaries during the course of the next general review which is scheduled for 2010 to pay special attention to certain matters. These matters will include a review of the earning class system and the number of contributions to qualify for retirement pension and other reform matters that may be required to ensure long-term sustainability of the National Insurance Fund. As a result Parts B and C of this question are not applicable.

**Solicitor General
(Application for position)**

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

- A. Could the Attorney General provide the Senate with the number of candidates who have applied for the position or office of Solicitor General over the past three (3) years?
- B. Could the Attorney General further state whether her office endorsed or supported the application of any of the candidates and the reason, if any, for such endorsement and/or support?
- C. Could the Attorney General further state when the Office of Solicitor General will be permanently filled?

The Minister of Energy and Energy Industries (Sen. The Hon. Conrad Enill): Mr. President, question No. 65 is not now ready.

Question, by leave, deferred.

Mr. President: With respect to question No. 53, the Attorney General is still not here, but I do see that the Minister of Labour and Small and Micro Enterprise Development is here, and this is the second time that he has been called. Apparently his answer is ready so I would ask the hon. Minister if his answer is in fact, in a form that can be circulated, I shall ask him to circulate it and we shall not summon you again on this matter.

Vide end of sitting for circulated reply to Question No. 58.

**STATEMENT BY MINISTER
Allegations of Corruption
(UDeCott)**

The Prime Minister (Hon. Patrick Manning): Thank you very much, Mr. President. Permit me to thank you for allowing me the opportunity to address this august Chamber on a matter of national interest.

Allegations of Corruption
[HON. P. MANNING]

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At the post-Cabinet press briefing held at Whitehall on Thursday, May 08, 2008 it was announced that the Government of Trinidad and Tobago would make a statement on the issue of the recent comments widely ventilated in the media on the activities of UDeCott.

Mr. President, four Government Ministers with varying responsibilities made themselves available to the national media for questioning and sought to clarify matters on the particular areas raised with them.

With your leave now, I wish to advise this honourable Senate that there have been no specific areas of corruption that have been brought to the attention of the Government. Indeed, Mr. President, there have been wild allegations in vague terms of the amount of money that is being handled by the company—that is UDeCott, lack of supervision, proceeding without the knowledge and approval of the Cabinet and similar broad statements.

Mr. President, let me attempt to synthesize the reports reaching us as best as I can:

- (a) The company is in charge of billions of dollars.
- (b) One man is more powerful than the Prime Minister.
- (c) There is no transparency.
- (d) There is no accountability.
- (e) There is nonconformity to statutory regulations.
- (f) The company is unsupervised.

More latterly, in a press report, an Opposition Member adverted to a shady deal involving UDeCott in the purchase of an unnamed, unlocated property in Port of Spain allegedly at an inflated price.

Mr. President, UDeCott has been playing a significant role in advancing the Government's agenda, especially in terms of development of the country's infrastructure base in keeping with our vision for obtaining developed country status not later than the year 2020.

1.45 p.m.

This institution, as a consequence, has been given a heavy responsibility and is entrusted with sizeable portions of public funds in achieving the Government's goals. It follows then, that there must be accountability on its part and a rigorous process to safeguard the disbursement of such funds.

I am absolutely satisfied that the board of directors of UDeCott who are responsible for policy and its Chief Executive Officer, can deal adequately with details of the company's affairs. Nevertheless, I am bound to advise this honourable Senate and the national community, of the measures taken by the Cabinet to ensure proper corporate governance. In the circumstances and conscious of the Government's sacred responsibility, we have been particularly meticulous and circumspect with regard to the process employed by this company. In this respect, the Cabinet has ensured that:

1. There are presentations to Cabinet by the relevant boards and technical personnel at the initial stages of major projects.
2. A Finance Committee of Cabinet was established to review the financial implications of projects.
3. A committee of Cabinet has been put in charge of monitoring construction.
4. This committee reports to the full Cabinet.
5. A system for the implementation of Cabinet decisions is established.
6. Monthly reporting by the board of directors of state companies to the Ministry of Finance is a routine process.
7. Monthly meetings are held with the line Minister or more frequently as the Minister may desire, to address issues of concern as they arise.
8. Quarterly reports are submitted to the Minister on all projects.
9. Audited annual accounts are prepared and laid in Parliament.

In addition, UDeCott has attended meetings of the Public Accounts (Enterprises) Committee, a committee of this Parliament, upon demand. Hon. Members will appreciate that this committee is charged with the responsibility of overseeing the operations of state enterprises in the context of Parliament's role as watchdog. These robust arrangements have been clearly established to buttress our strong and unchallenged record of accountability and have been quite successful.

In view of the recent allegations circulated in the media and comments from certain other quarters, it is absolutely necessary for me to indicate that the Government wishes to establish beyond any doubt, the truth as it relates to the process and procedures of this company, lest the population be further misled by loud voices and uninformed conclusions by some who have political agendas and a few others who have economic agendas.

The hon. Minister of Works and Transport was at pains to give an example of the challenges faced by the Government. He indicated that there was an instance of a nine-month delay from the first call for prequalification for the interchange project—this is the interchange at the intersection of the Churchill Roosevelt and Uriah Butler Highways—and the actual submission of tenders for that same project, all at the request of the local contractors involved. Despite this long extension, they never submitted a tender. This information is a good example of important information which has not been highlighted to the national community.

One Member of the Opposition in the other place hammered last Friday that the Government has something to hide. We do not. We think things through, seek appropriate technical advice and take courageous decisions. That is our approach as we work sedulously to protect and preserve the integrity of the Government and at the same time, continue to expand our delivery system of important projects.

Let me turn to our available options. The Constitution is very clear on the role and function of the Auditor General who cannot be instructed to perform any function by the Executive. It is an impartial office. Section 116 is unequivocal and states that:

“In the exercise of his functions under this Constitution the Auditor General shall not be subject to the direction or control of any other person or authority.”

The Government of Trinidad and Tobago cannot, therefore, direct the Auditor General, I am advised. And even now, the Auditor General, if she so wishes, can constitute a special audit of any state enterprise.

In the event that you are asking yourself why a commission of enquiry has not been appointed, let me advise you that to date, the Government has not received a single—and I repeat, not a single—serious, substantial allegation or complaint that would give such a commission specific direction upon which to adjudicate and investigate. In the case of the Landate affair, a Member on the other side of the other place in the Opposition, made specific allegations in the Parliament which gave rise to an immediate response from the Government by an establishment of an enquiry—our announcement that we would have done it.

I must emphasize that those who purport to know of instances of impropriety by public officials are free to send such information to the Integrity Commission, if they so desire. As a result of this approach, I have been investigated on five separate occasions by the Integrity Commission. Under the law, the Integrity Commission has its clear responsibility.

The Exchequer and Audit Act, Chap. 69:01, section 4(2), enables the Minister of Finance to institute a special audit of any state exercise and this may be an effective mechanism to get at the truth of this matter. We know, however, that some will argue, that if we took this route, it would be a case of himself to himself. We have nothing, whatever, to hide, but we are resolved not to be deflected from our pursuits of development by wild, reckless, uninformed statements by certain persons.

As a result, I wish to announce that the Government proposes the appointment of a joint select committee of both Houses of the Parliament, comprised of six Members as follows: From this honourable Senate, one Independent Senator, one Member from the Opposition and one from the Government Benches; From the other place, two Members of the Government and one from the Opposition. We propose that the committee be chaired by the Independent Senator. The sittings should be held in public and should be televised for the benefit of the national community, with transparency and openness to satisfy all those who have genuine concerns. This approach allows any member of the public to come forward and make a complaint if he or she wishes to do so.

I must repeat that this Government is resolved to ensure the highest standards of conduct, propriety and accountability in all areas of the governmental process. At the same time, we must resolutely stand firm against the growing propensity of some who keep screaming about corruption without a scintilla of evidence in support thereof. The people have entrusted us with a heavy and serious remit which we shall discharge in a responsible manner in their interest.

Thank you very much, Mr. President. [*Desk thumping*]

IMMIGRATION (ADVANCE PASSENGER INFORMATION) BILL

[Second Day]

Order read for resuming adjourned debate on question [May 06, 2008]:

That the Bill be now read a second time.

Question again proposed.

Mr. President: Hon. Senators, those who spoke were: The Hon. Martin Joseph, Sen. Wade Mark, Sen. Basharat Ali, Sen. The Hon. Jerry Narace, Sen. Mohammed Faisal Rahman, Sen. Dana Seetahal SC, and Sen. Dr. Jennifer Kernahan, who spoke for 35 minutes and has 10 minutes of original speaking time left.

Sen. Dr. J. Kernahan: Mr. President, when we adjourned on the last day, I was saying that the Ministry of National Security, in collaboration with the Government of the United States, is establishing, actually, under our very noses,

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our own version of, an appendage to Homeland Security. Sen. Seetahal SC made the observation that the advance passenger information is simply for us to understand who is coming into our country for your information and it does not have anything to do with sharing or with third parties, and so on. But I was quoting the CARINET document and I want to quote a summary which says: "Where does APIS fit?" And I quote:

"Generally speaking, APIS enhances our capability to screen/process traveler information and disseminate alert information to border security agencies for appropriate action."

So they are saying here that as soon as this information is gathered in the API process, it is to be disseminated to border security agencies, and these border security agencies are not even a part of any regulation that is before us. We do not know which border security agencies. I think Sen. Mark raised those questions. At least we have some idea from the history that it could get much worse. What is the appropriate action that would be appropriate, in cases that the API transmits this information?

Secondly, it says:

"Integration/data collaboration with:

- Border control systems
- Global databases
- Regional watch list information"

So, clearly, as I was making the point, this is a summary of what is the purpose of API. It is to disseminate information to border control systems, over which we have no control; it is to be part of global databases, regional watch list information, and it is to be integrated with regional intelligence at an operational level. Clearly, API, given the context in which it fits into CARINET, there is a lot more to it than meets the eye.

I would like to look at this Bill before us in the context of other countries which have enacted legislation to deal with the issue of API and other issues. But before I go into that, I would like to, actually, quote a summary from the International Civil Aviation Organization of what API really entails. I quote:

"API involves the electronic interchange of a limited number of data elements, identification details from the passport and basic flight information between the computer system of the airline or origin state and the computer system of the destination state."

2.00 p.m.

I wanted to quote that definition of advance passenger information (API) because it is relevant to clause 3 of this Bill which says that the master of the vessel is responsible for transmitting this advance passenger information, when the definition of API as given by the International Civil Aviation Organization involves electronic interchange between the computer systems of destination States and receiving States.

Clearly, we have a sort of convoluted or very strange interpretation of API in our legislation. I will look at the Canadian legislation. Section 30 reinforces the definition from the International Civil Aviation Organization. Their legislation is called the Preclearance Act of 1999. I will come back to that. For the purpose of clause 3, I would compare the Canadian legislation with our legislation. In their legislation under Passenger Information section 30 says:

- “(1) A transportation company that operates an aircraft carrying passengers described in section 29 must, before the arrival of the aircraft in Canada, provide a preclearance officer with specified passenger information for those passengers.
- (2) If a transportation company fails to provide the information required under subsection (1), the preclearance officer may refuse to preclear the passengers or their goods in an intransit area.”

Clearly, the Canadian legislation is not talking about masters of vessels having the responsibility of transmitting API. It is the responsibility of the transportation company.

I do not know why in our legislation, in the face of the basic definition of API and other more advanced legislation concerning API, the Minister of National Security has chosen to leave all the responsibility on the master of the vessel with horrendous fines.

To go back to the Canadian legislation in a broader sense and compare it with the legislation before us—any legislation that comes to Parliament must be in the spirit of sovereignty and reciprocity. It must give the population some comfort that we are in control of our destiny and we are an independent country and that we would enter into agreement on our terms. This is the basis of the agreement between Canada and the United States. I will look at the concepts of the Preamble of this Bill which we find lacking. It says:

“AND WHEREAS the administration of any provision of American law in Canada is subject to Canadian law, including the Canadian Charter of Rights and Freedoms, the Canadian Bill of Rights and the Canadian Human Rights Act;”

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This agreement between the United States of America and Canada was not done in a vacuum or outside of every other statute or law in either country. It was done in the context of the Canadian Charter of Rights and Freedoms; the Canadian Bill of Rights and the Canadian Human Rights Act. Sen. Mark spoke about this when he made his contribution. This is important because if you have any issues coming out of the administration of the Act, then you would go back to the Preamble.

Mr. President: Hon. Senators, the speaking time of the Senator has expired.

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

Question put and agreed to.

Sen. Dr. J. Kernahan: Thank you, Mr. President. The question of reciprocity, sovereignty and safeguards included in the Act is very clear in the Canadian legislation and totally absent in our legislation. One of the issues that was raised by other Senators in this debate was the question of the use of advance passenger information. Section 32 of the Canadian legislation speaks to that specifically, in terms of the use and destruction of passenger information. It says:

- “(1) A preclearance officer must
- (a) use any specified passenger information only in the administration and enforcement of this Act and preclearance laws; and
 - (b) destroy specified passenger information within 24 hours after the officer obtains it, unless the information is reasonably required for the administration or enforcement of Canadian law or preclearance laws.”

Section 32(2) goes on to say:

“A preclearance officer must take reasonable measures to protect specified passenger information that is under the officer's control from unauthorized use and disclosure.”

The Canadians did not go into this willy-nilly. They took every precaution to ensure their sovereignty and rights over information. It is written specifically in their Act. There is nothing like this in our Bill; it is open to all kinds of abuse.

With respect to this Bill, the other issue that I find deficient when compared to the Canadian Act is that regulations were outlined clearly. The Act came with regulations which were very clear in terms of the definitions. They had a regulatory impact analysis statement, benefits and costs. They were very clear in

their regulations in terms of consultations. They defined what the Governor in Council may do with respect to regulations. Some of the things excluded anything from the definition of goods; designated to persons or categories of persons who may enter a preclearance area; prescribing specified passenger information; the manner of providing it and the manner in which a preclearance officer may use and communicate that information. That is very interesting.

Clause 2 of the Bill before us says:

“In this Act—

‘advance passenger information’ means the information in respect of a passenger, crew member or other occupant transported in the vessel;”

There is no regulation before us and based on the Bill before us, there is no further information on what is advance passenger information. The Bill gives an indication, passenger data. Without the regulations, we do not know under what circumstances the regulations may make provisions for changing the Schedule which defines passenger information. This Bill is very open. The Minister may come at any point in time and advance regulations which will require much more information than is in the Schedule before us. There is nothing to stop him. In the Canadian legislation it is clear what the Governor may or may not do with respect to the regulations and how it should be done. We do not have those safeguards in our Bill.

In our Schedule, Advance Passenger Information Data, Part I may consist of certain things. Certain issues are identified here as traveller status; flight identification; vessel identification; scheduled departure date; scheduled departure time; scheduled arrival date; scheduled arrival time; last place or port of call of vessel; initial arrival and subsequent place or port of call within the country and number of passengers. At any point in time, without the regulations before us and this open definition of advance passenger information this can be changed by the Minister and more information can be required or included.

The Bill is quite broad and open: “Advance passenger information means the information in respect of a passenger, crew member or other occupant”. It is very vague. Today or tomorrow, if the Minister comes and says that they need more details, the Bill allows for that. This is our concern with respect to the openness and vagueness of this Bill. Legislation is available to the Government from advanced countries that take their sovereignty and independence seriously. They have taken steps even in the context of agreements with foreign powers to define and protect their sovereignty and rights of their people.

As we are saying, we are not prepared to support this Government in its apparent race to be the cat's paw on the question of this API. We are concerned that since September 2001, all over the world many erstwhile sovereign States are being terrorized into acquiescing to all sorts of demands presumably on the pretext of fighting this "war on terror". We must distinguish genuine security concerns and the pretext that the United States may use to do all kinds of things that are in their interest and not necessarily in ours.

We are questioning the fact that we will be setting up the CARINET system. As was said, this was being paid for by the Government of Trinidad and Tobago. It costs millions of dollars as outlined in this document with a very elaborate database system and the latest in technology for instant transmission of information. We are setting up these systems and I believe that it is not in our interest. Why are we spending so much money to track persons as the document says and disseminate information to border control systems of persons of interest and we do not know them?

We had a horrendous experience in 2003, when a number of BWIA pilots were detained by the FBI. I am reading from the *Newsday* 2003. It says:

"Captain Anthony Wight, one of two BWIA pilots detained by the FBI last week, returned home last night...the Ministry of Foreign Affairs yesterday called for an apology from the US Government."

2.15 p.m.

"The Ministry also called for the clearing of the two pilots' names which appeared on the US terrorist "no fly" list. Captain Wight was detained in Miami, while Joseph is still detained in New York."

Further, in the article, it says:

"A statement from the Ministry of Foreign Affairs yesterday said that Captain Wight arrived in Miami on BWIA 484, which he piloted on Christmas Eve, but was 'arbitrarily detained' by FBI agents and Immigration officials at Miami International airport. The ministry said that Wight was interrogated for almost 12 hours, but although it was 'quickly apparent that a serious error of identity had been made, and when it became clear that Wight's character was spotless, the Immigration authorities in an act that can only be described as arrogantly vindictive, cancelled Captain Wight's crew and US passenger visas.' Wight was then released into Bwee's custody with an accompanying armed escort."

This happened to one of our nationals, someone of spotless character, a pilot, no less, and it begs the question: What will happen to ordinary citizens based on

identity mix-up or error, based on the fact that they are named Ali or Seetahal? This is frightening. It is our money that will pay to set up these global databases, watch lists and border control systems. We will pay for our own citizens to be targeted.

We understand that API could be an instrument to determine a higher level of border security, but it has to be done in a particular manner; it has to be done with some degree of pride. We cannot just attach ourselves to someone else's system and be at their service and put whatever persons of interest they want on our watch list.

We have to understand what is happening after September 2001. Many countries have been designated part of an axis of evil. Cuba is a Caribbean nation with which we have strong ties. We have ties with Venezuela, Bolivia, Ecuador, and we are deepening relations with our South American neighbours. Many of these people will be on this watch list. Are we going to be used as the cat's paws to terrorize, target and track people from South America because our US neighbours from the North say we should? I do not think that the people of Trinidad and Tobago have signed on to that. I do not believe that the people agree with that approach to development and the independence they always talk about. The real problems we have are not being addressed.

I saw an article in the *TNT Mirror*—I do not know if it was meant to prove that we need API or to be an appendage of the US Homeland—on Friday, May 09, 2008, “Abdullah holed up with Central Organization,” in which it says:

“After it was discovered he was in Trinidad through the Advance Passenger Information System, (APIS), the American has been under surveillance by Special Branch Officers.”

It says:

“A Black American Muslim, who is alleged to have international terrorists links managed to slip into Trinidad a week ago through Piarco International Airport...”

I do not know if the writer of this story got his information wrong, but he said that APIS is in operation and that the information that this person was in Trinidad came from the APIS listing, but he still managed to slip through. The point I made in my last contribution is that if we do not have the proper systems in place, we will spend millions of dollars and people like that will still slip through.

So, Mr. President, I commend this Bill for revision by this administration because it is defective and is not in keeping with our ideas of sovereignty and nationality.

Sen. Subhas Ramkhelawan: Mr. President, I rise to address very briefly this matter of advance passenger information. The real issue before us is one of the trade-off between national security and the privacy of the person. In a time where there is need for ever more vigilance, national security should take precedence to any issues that may arise in the context of privacy of the person.

The Bill does not appear to me, in terms of the various clauses, to have any matter that is extremely invidious, particularly as we have the undertaking of the Minister that these requirements were there previously and there is no new information.

There are two areas of enquiry. Firstly, is it the intention that this Bill becomes the precursor for free movement of persons within CSME as was the case with the World Cup 2007? I hope that the hon. Minister will answer that question. Secondly, I am concerned, with respect to a purported Memorandum of Intent, which suggests that there will be the sharing of information between jurisdictions of the Caricom and United States. I thought I heard from the Minister that the information that would be received under this Bill would not be shared with any other third party. I hope he will clarify this matter in due course.

Having made those comments, I believe that we ought to be as vigilant as possible because the Caribbean still remains an idyllic place, but there have been other idyllic places that have been subject to terrorism. I recall the case of Bali, an idyllic place which was devastated by acts of terrorism.

I support this Bill in the form it is in, simply to ensure vigilance as to our national security. I think to be forewarned is to be forearmed. It gives our security personnel an opportunity to review who is coming into our country and to take the necessary measures appropriate in the support of our national security.

This is my contribution and I thank you for the time allowed me.

Sen. Linus Rogers: I thank you, Mr. President, for the opportunity to speak this afternoon on what I consider a progressive piece of legislation. I add my voice in support of the Bill presented to this Senate by the hon. Minister of National Security, a Bill known as the Immigration (Advance Passenger Information) Bill. This Bill seeks to make provision for the transmission of advance passenger information of persons travelling to Trinidad and Tobago.

Before I go on, I would like to make some comments on some of the previous submissions. Sen. Dana Seetahal SC dealt with most of the issues raised by Sen. Mark in a very comprehensive manner; therefore I would not comment

extensively on any of this, simply to thank Sen. Seetahal SC for properly informing this Senate and the people of Trinidad and Tobago.

If I may, I would just like, for emphasis, to quote something that Sen. Seetahal SC shared with us:

“There is nothing in the Bill about providing information outside. People should read that Bill again if there is any doubt, it says:

‘The master of every vessel destined for Trinidad and Tobago,’—meaning you are coming to Trinidad and Tobago—‘prior to departure of the vessel from the last port of call before Trinidad and Tobago, shall provide to the Chief Immigration Officer the advance passenger information data detailed in the Schedule.’

So, Mr. Vice-President, Trinidad and Tobago is really gaining information under this Bill. Somewhere else there might be some practice where we give information, but certainly not under this Bill. If we are gaining information about people coming into this country, how can there be a breach of the rights of the citizens of Trinidad and Tobago?”

That was the response of Sen. Seetahal SC to some of the information shared by Sen. Mark.

In Sen. Mark's submission, he also indicated that in 2003, and I will quote from his submission:

“We heard some of the success stories outlined by the Minister during the period. In 2003, an Al Qaeda operative passed through this country with a Trinidad and Tobago passport and remained for a few days and we did not know we had an Al Qaeda operative in Trinidad and Tobago. Therefore, as far as we are concerned this Bill before us ought to be looked at again by the Government.”

Mr. President, I submit that is exactly why we need this Bill. If this Bill was in place in 2003, we would have known the person coming into Trinidad and Tobago and we would have been able to take appropriate steps rather than have them leave and then find out the kind of person who was in this country. [*Desk thumping*]

In her submission, Sen. Dr. Jones-Kernahan quoted extensively from the Caricom Intelligence Sharing Network (CISNET). However, I would like to inform the honourable Senate that what is before us is the Immigration (Advance Passenger Information) Bill, not the Caricom Intelligence Sharing Network and

all its capabilities. It is simply the Immigration (Advance Passenger Information) Bill. While we note that APIS can be incorporated into CISNet, based on the technology available today, CISNet is not before this honourable Senate. It is advance passenger information.

If I may look at what we have in terms of the information for the advance passenger information—again it was quoted in terms of the kind of information we heard from people—if we look at the information declared in our immigration laws, Chap. 18:01, it is entitled “Welcome, The Republic of Trinidad and Tobago, Passenger Declaration Form”. If I compare that with what the Minister of National Security declared, I will go through each of them by comparison, it says surname and first name, date of birth, sex: male, female; country of birth, nationality, passport number, date of issue, character ID and some other information.

I go now to what the Minister of National Security said. It is contained in terms of what the passenger data includes.

“the core data elements of the official travel documents, such as:

- Official travel document number;
- Issuing State or organization of the official travel document;
- Official travel document type; expiration date of the official travel document;
- Surname, given name(s);
- Nationality;
- Date of Birth
- Gender
- Place of Birth”

2.30 p.m.

Mr. President, what I am submitting to you is that the information we are speaking of is information that passengers already give. This is not new information. It is information already given. However, a lot of the submissions have been along the line of security.

What I would like to do, however, is turn a little bit, in terms of the benefits and the impact on the airline industry on the advance passenger information. The notion of advance passenger information system was conceived by the customs division, which identified the need to address the increased risks posed by airline passengers in recent years, especially with regard to drug trafficking and other threats to national security.

Article 29 of the Chicago Convention requires every aircraft engaged in international navigation to carry certain documents, including passengers, a list of their names and place of embarkation and destination. It is in anticipation by the industry of reducing the cost of aircraft delay due to inordinate long passenger clearance times, that the advance passenger information, which can be briefly described as data on each passenger, is captured in the machine-readable zone of the passport and is used during the check in process, formatted by airline reservation control systems and transmitted to the centralized customs system, where it can be checked against inter-agency databases and lockout lists. The results of these checks are then downloaded to the airport of arrival, where they are distributed to both immigration and customs.

The accomplishment of this part of the process, prior to the arrival of the flight, substantially reduces or eliminates the time-consuming data entry and computer processing required during the examination of every passenger for the flight on which advance passenger information data was not transmitted.

In effect, what I am saying is that where you do not have advance passenger information transmitted, it results invariably in an inordinate long time, in terms of being checked at customs and immigration.

As the airline and control authorities progress in their refinement of the system, an improvement of the system performance, passenger clearance time for transoceanic flights which, prior to advance information, frequently involved delays in excess of two hours, have been reduced to averages well below the ICAO standard of 45 minutes. I note the change from two hours to 45 minutes.

In addition to this improvement in productivity, the control authorities have realized an enhancement in their enforcement efforts, due to the fact that receipt of information in advance gives them more time to process the information of the passengers and make better decisions regarding their inspection targets and appropriate level of control.

Advance passenger information systems, in the several states where they have been introduced, have been quite successful, both as a measure to facilitate clearance of passengers and as a tool for enhancing the effectiveness of border inspection systems.

Countries such as China, Mexico, Canada, the United States, the United Kingdom and other Caribbean countries have all benefited from this. In light of recent events which have had the effect of boosting the level of interest in exploring advance passenger information as a security measure, and also for facilitation, ICAO seeks and also encourages contracting states to review and update their processes accordingly.

It is to be noted that ICAO interest in API systems stemmed from the Chicago Convention, which mandated that contracting states prevent unnecessary delays by facilitating prompt border clearance formalities. Moreover, we have all been aware of the long delays we have experienced both at our airport in Trinidad and Tobago and at foreign airports, in clearing the necessary security measures.

However, if I look back at when passenger information was first mandated, it pointed to me that it envisaged a manual process, which is where all the information was basically written and forwarded. At the time, it seemed not to have envisaged electronic transfer. What we have here is an evolution taking place; utilizing the technologies that are available today that would allow us, if I may use some of what Sen. Dr. Kernahan shared, to share a number of different ways but, more importantly, to send forward to the arriving destination, information on those who are going to be arriving. Customs and immigration can certainly allow a good process, such that when passengers arrive, the delays that we experience at our airports are mitigated against in a substantial way.

Mr. President, with that submission, I continue to support this Bill. I thank you.

Sen. Cindy Devika Sharma: Thank you, Mr. President. As I rise to make my contribution to this Bill to make provision for the transmission of advance passenger information respecting persons travelling to Trinidad and Tobago and for related matters, I am going to address one major concern that I have, with regard to the legislation, structurally.

I am looking, in particular, at the singling out of information in an electronic format, which is to be transmitted to the Chief Immigration Officer. I feel that such information could be deemed very important. It is personal information which is transferred in a different format other than the printed format. I feel that there must be some operational protocol included in the legislation with regard to how the Chief Immigration Officer would use this information. If this is to be provided only to the Chief Immigration Officer, is there some guideline, with regard to if this person should be entrusted with this information and be allowed to transfer it to another party? There does not seem to be that type of information given in the Bill and there is no guideline with respect to that. I am a bit concerned about that because the transfer of information to a third party should be examined very carefully.

As far as I am aware, when information is going to be transferred to another party, there must be some form of permission given to the person who is in charge of such important information. There does not seem to be any kind of guideline in

place to guide that person as to how to operate, neither is there any type of sanction or regulatory mechanism that I can see, specifically with regard to the transfer of electronic information from passengers. It is not included in this legislation. I feel something that important should be included, in order to strengthen it further if it is to have the effect it is intended to have.

Again, my concern lies with regard to the capacity that we have to implement this Act in a very real sense. Are our officers currently sensitized enough, with regard to the type of information they are going to be receiving and that they should not transfer it to another party? As far as I am aware, this information would come and the intention must be with regard to some form of screening of the passengers, at the end of the day, to determine if any party or passenger is going to be deemed a security risk to our nation. If it is, indeed, to be made useful, what plans exist for providing the Chief Immigration Officer who, as far as I am concerned, is the only person authorized by this legislation to examine the information? Would this person have another independent officer or authority that would guide him or her, in terms of selecting individuals who would be deemed security risks? I think that is missing and it is one of the concerns that I have.

I want to add that to all the other concerns that colleagues on this side have already raised. I ask that the Government take heed of certain advice given, in order to make sure that the legislation they bring serves and protects those it is intended to, and act in the best interest of all parties. Thank you.

Sen. Annette Nicholson-Alfred: Mr. President, thank you for this opportunity to share my feelings on the Bill to make provision for the transmission of advance passenger information respecting persons travelling to Trinidad and Tobago and for related matters.

I do agree that passenger information is very useful and very important and even more so, when received in advance, proper use of this information can prevent the wrong kind of visitor from being permitted to stay in our country.

I wonder though, how well will the comprehensive data be used by those who are supposed to use it. Will it be used only to refuse suspected terrorists, or will the information received be used to prevent the fast flow of illegal sex workers from inhabiting our cities and our towns? Very often, one reads of groups of sex workers being found in the country, and very often this is reported. I think if we were to accept and agree to this Bill, the efforts to be exercised would impact on that kind of thing, or stem the flow of such an activity into our country.

Will our data collection be used to prevent the boats that race in and out of our coastlines from dropping off drugs and guns, for which our residents fight and kill? Drugs and guns breed crime. Gang warfare has taken over our beloved Trinidad and Tobago. Will advance passenger information help us to intercept boats that make these regular drop offs? I think it would. The API is very useful, for where there are no visa requirements—we know that in some instances there is no visa requirement to enter—API provides the necessary information.

2.45 p.m.

Mr. President, I say yes to advance passenger information if it will be used to halt the deposit of waste from the yachts and boats that enter the beautiful waters of Tobago; the waste which kills our reefs and fish beds, the same reef and fish that our beautiful island depends on so greatly.

It is clear that the majority or most people will agree on seeking the information, but I strongly believe that we should have that intent, the mind and the feeling to use it, not only for a small or just a few areas, but to spread it out. A lot is happening to our country Trinidad and Tobago. I want to say, again, that if the information is used in the correct way, we would be a better country.

In supporting this Bill, I ask that the Government use the information received to deal with all and sundry, and not only some. I think everybody should be subjected to this. It is often said that the guns and drugs and so forth are coming in from on top, and we have to stop it from on top. We have to find out about these boats and pay more attention to what they are bringing. By so doing, dealing with all and sundry, and not only the small man, a safer place for us to live would be provided.

I thank you. [*Desk thumping*]

Sen. Dr. Carson Charles: Mr. President, thank you very much. The Bill before us was presented to us in a rather innocuous manner by the Minister of National Security, as a piece of legislation simply providing for information that is already being collected to be transmitted in advance. This is how it was presented to us. If we are presented with a Bill that says information which is already being collected is now going to be supplied in advance, and if it is easy to supply this information in advance from the last port of call before entry into Trinidad and Tobago territorial space, then who could argue with such a Bill? No one can argue with that. So, I do not have an argument with that, but I do not think that is the whole story.

The problem that we are actually faced with here is that the Bill was brought into existence in a particular context. It was brought into existence in the context of security concerns by the United States of America following September 11, and following the United States of America's attempt to introduce security protocols beyond the borders of its own territory that would protect it from those who have evil intent against its own territory. That is the context.

In fact, when this Bill was brought into law in this country, it was brought into law with a sunset clause, which means that there were some concerns at the time about bringing into law this kind of legislation, because of the collection of information, the use of information and suspicions about the use of information. If they were so innocuous, there would have been no reason then to bring it into law with a sunset clause.

So, my particular angle this afternoon is to challenge the simplicity with which the Bill was presented to us, and if it was so simple, the Minister would not have assured us in his presentation that information collected would not be used as a method for profiling individuals; it is unintended to be used for profiling and it will not be used for profiling; although the Minister cannot give any such assurance beyond the use of the particular authorities over which he has control. One wonders, in this time, how far his control really extends, given the condition of his security services. In what way can he really give assurance, considering the particular condition of the security forces in Trinidad and Tobago?

I do not think the matter is as simple as looking at the words of the legislation. I think we have to be concerned about what the Government's intent is; what this Government policy is; and what the Government intends to use this information for.

Sen. Dr. Jones-Kernahan raised a particular point about the very broad definition given in the Bill with respect to what advance passenger information is. Although the schedule is specific, it seems to me that what that implies is that if the Government wanted to upgrade this Bill at some later stage to require more detailed information—to go more in the PNR direction for example—the fact that we have passed this legislation, we do not really expect a full debate on the policy matters, but simply to increase the Schedule, and say that Schedule is now amended as follows. In other words, there is no provision for negatives or positives, so it means that he has to come and present it and debate it. What I am saying is that the intention would be that if they want to amend the Schedule, they would have to come and debate it, and one would not expect the debate to be on the Bill itself, but it would merely be on the extent of increase on detailed information. [*Crosstalk*]

Advance Passenger Information Bill
[SEN. DR. CHARLES]

Tuesday, May 13, 2008

Mr. President, the point Sen. Dr. Jones-Kernahan made is a point of interest, and I thought I would clarify it. In fact, what it says is that although you have to come back here to change the Schedule, you would not be coming back here for a full debate on the Bill and, therefore, we are concerned about the fact that it is defined in such a broad manner.

Mr. President, I want to deal with some very specific points. It seems to me that the United States of America, being one of our major trading partners, is a country that we should be concerned about assisting whenever we can. If the United States of America has security concerns, I do not see any reason we should not assist them with their security concerns.

In fact, I would say that if we have security concerns in Trinidad and Tobago, as we have had in the past, we have not hesitated in thinking of the United States of America as an ally in addressing these security concerns. So, I do not see how I can object to us assisting the United States of America in attending to its own security.

I have a problem with the fact that we seem to be always operating without a kind of self-consciousness as a nation. This is what was being found out about the Canada legislation. We lack the self-consciousness of stating in our own legislation what our information is for, how it should be used and how it should not be used. We lack the self-consciousness of insisting that if we share information, it be two ways.

There are things that the United States of America wants of us, but what are the things we want of the United States of America? What are the things that Caricom wants of the United States of America? Is there any intention by this Government to get information on things that really bother us, like deportees? We do get very much information in advance, but we get it on the spot when it happens. Did the Government think that it could have used this opportunity of assisting the United States of America in meeting their security needs? We would like to help them meet their security needs, but could we not use the opportunity to negotiate for things that we would also like to have, like advance information on deportees, because that is tearing us apart?

Mr. President, not only advance information, but also economic assistance, especially for those territories in the Caribbean that need the economic assistance in respect of addressing the problem of dumping on their doorsteps people who have a history or a lifetime of criminal activity or of incarceration. There is a cost associated with reabsorbing those persons, and finding ways and means of

reforming those persons that you can or, at least, of finding gainful activity, employment or shelter as the case may be. They think that perhaps this is a way of establishing some kind of reciprocity?

When they were negotiating these MOI and so forth and they were looking for ways and means of assisting the Americans, did they think that the biggest area of assistance that we need is in security on an economic basis? We should also be extending these discussions to security in other areas of activity like food security.

You know, the terrorist threat did not arrive at the doors of the western world just like that. These things arose in a particular context. There are people who do not like some countries of the western world, including the United States of America, and they have their arguments and they have their reasons. We may not share in their reasons or in their approach to things, but this is part of the world's scene today. We have to recognize that there is a connection between security and economics. Even within our own borders here we can see it everyday. There is a connection between the two. You cannot divorce one from the other. If I want to help you with your security concerns, can you help me with my economic concerns?

I know we have regionalists on the other side who may think that we have all the money that we need in Trinidad and Tobago, but these regionalists would be concerned about some of the other Caribbean countries that do not have those resources, and that could very well benefit from economic assistance that they have not been receiving in recent years. All attempts to revive economic arrangements that would be of benefit to the Caribbean countries have reached nowhere.

Mr. President, this is the information age. You cannot run from information and you cannot hide from it. You can do little about the fact that information is going to be collected, and it is going to get into all kinds of hands, and because it is electronic, it is going to go all over the place, and people are just going to get their hands on it. You can do very little about that. What you can do is provide some kind of controls over those persons within your jurisdiction as to how they use the information, but equally important is that you can develop your own capability for using the information. I submit that the Government has no idea of what to do with information.

In no area of activity or of Government area of responsibility are we falling down as badly with information management and the use of information as in national security. In no other area is it as bad. In security matters, the battle today is a battle of the use of information. You are not going to fight criminals whether

they are international criminals or local criminals with the old heavy baton approach. You cannot go and shoot down all the criminals like some fellows did in the old days, I am told. In fact, some persons have been advocating that these days. You cannot do these things anymore. You cannot win the battle on crime in that way. You have to win the battle on crime by the use of information, and if you have no idea of what to do with information, how are you going to win the battle on crime?

It is glaring, even if the Government collects information it has no idea what to do with it. It has not paid any attention to this matter of information management which, I submit, is one of the most important things of the modern age. The Americans know the importance of information and information management, and they are going to fight their security battles using that method. They know that they cannot secure themselves simply by having enough guns and weapons of war. They know that the battle that they have to fight against Al Qaeda and all the other threats they have identified is the battle of information management; getting the information early enough and using it wisely.

3.00 p.m.

What about us? How are we using information and how are we preparing ourselves to use information to fight our own battles? There is nothing, there is no indication of that anywhere. I do not know if we are supposed to simply assume that the Government is doing all kinds of wonderful things when they do not say so. I am sure whatever wonderful things they are doing they will always tell us. There will always be a statement in the Senate, there will always be some press conference, usually whenever great things are happening. So, when we do not see anything happening we know nothing is happening, when we do not hear about it nothing is happening.

In the Minister's presentation there is no indication of all of this. I think it is fair to assume that he is in a bad way in the security ministry when it comes to the management and use of information. The Americans always have information of value to us. It is said by some that not too long ago, back in 1990, that they were in possession of information that could have been of great value to us. I am sure that they keep track of developments in our country, of security threats of all kinds. We should improve our relations with them to the point where we can actually expect to get advisories on some of these developments which they see taking place. Do not lose the opportunity if you are going to help them out to get something in return. One does not want to just dive into areas of sensitivity, but I think the Government must get the point.

Mr. President, the point of it is you have to negotiate. You cannot always simply give in; just give them what they want. You cannot do that. Have we negotiated any kind of protocol for the protection of our citizens? If you are going to have this heightened security system internationally whereby people get held up and they get detained all the time—and we have had so many cases in which it has happened to our citizens—have we negotiated any protocols which provide us information to protect our citizens; that if a citizen of Trinidad and Tobago is detained that we are going to be advised immediately on such detention so that we can use our own information that we have here to assist the US authorities to identify who the person is and to release that person?

So, if a citizen of Trinidad and Tobago with one of the names that America does not like or one of the names that they fear, is detained in the United States of America or attempting to board an aircraft, have we negotiated any protocol which allows us to get that information right away; for us to be alerted right away, so that we can clear the persons' name? We can have the person freed because we have our own way of identifying who the individual is and we can identify to the US authorities that Mr. Mohammed or whoever it is—Charles, that is an old English name they are not worried about that. They are paranoid about certain other kinds of names. But if a person with a particular name that they are paranoid about is held and we know who it is, we must have some protocol which allows us to clear that person immediately so our citizens do not get needlessly detained, harassed, terrorized and so on or end up in a place like down in Guantanamo where you cannot even get out when you get in no matter how innocent you are.

Do we have our own watch list? We should! We are depending—I know—on watch lists from Interpol and so on, but we have a lot of “fellas” here that, perhaps, we should have on our watch list.

Hon. Member: [*Inaudible*] [*Laughter*]

Sen. Dr. C. Charles: I give the Minister of National Security some credit you know. I do not expect him—I do not think he is as lost as sometimes he seems to be you know. I do not hold the Minister of National Security responsible for the terrible crime wave. I think it is the actions of other agencies within the Government that have led to this particular situation and as long as they continue you are going to have an impossible task on your hands. But I do hold him responsible for the condition that we are in, whereby there is no improvement in

the condition of the enforcement authority, there is no daily improvement. As I said, there is no ability to manage information. You tell them who the drug lords are, you could tell them “look” a “fella” selling drugs down the road, it makes no difference to anything. That is the problem we have here. That is what I hold him responsible for.

Mr. President, there are some specific matters in the Minister's presentation—just a few—that I would also like to comment on, just to understand. The memorandum of intent is still being negotiated, am I right?

Sen. Joseph: Yes, it is.

Sen. Dr. C. Charles: It is still being negotiated, and the Government is also waiting to see how the EU negotiations go with the US to assist us in determining how we should go. That makes good sense. One does wonder, however, if that is the case, why the Minister really just did not know what was the status of the actual agreement between the EU and USA, whether there was an APIS or no APIS, he seemed to be rather confused there when asked that question. He said he had to find out whether there was APIS between the EU and USA. That seemed a little odd, because if we are waiting on them to negotiate so that we could have guidance in our own negotiations, we should be able to say whether they have passed legislation similar to what we have or are they reluctant to pass, even legislation of this kind.

But as I said, Mr. President, the point is not the actual wording of the legislation, so much as the context or the policy of the Government with respect to how it is going to be used, as well as the fact that there is nothing in the legislation—it is rather bare—that says anything about what you are going to do with the information. There is no protection provided in the legislation about what can be done with the information. So it is presented in a bare way to the Parliament and after you pass it, then you are going to implement Government policy. Therefore we have no choice but to speak on Government policy—because you have provided no specifics in the Bill—and to advise the Government on some of the things it ought to do with respect to Government policy and the kind of safeguards that it should consider that perhaps should have been put in the Bill.

But if they are not there then they should be in Government's stated policy because you are telling us how you are going to use the law, how you are going to use the information and that is of concern to us and to the national community. But as I said more importantly to us—I think—is also the fact that when you get

this chance to get something in international negotiations you do not take it in a one-sided manner, simply give, give and ask for nothing in return. You have to ask for the things you need and we desperately could do with some of that assistance for ourselves, for our own security because we are in a rather insecure condition in this country.

We do not want to simply get information after some guy is to be arrested or some “fellas” had to be arrested because they plan to blow up some place, and we hear about it when the US has done all of its work, all of its investigation, all its sting operations and then after all that we hear that they want these “fellas” arrested, so we have to cooperate now with the arrest of these guys.

We do not want it to reach that stage. We want to be party to what is taking place in terms of the dangers to individuals coming and moving in and out in advance so we could do something about it ourselves; not only for American security, which we would like to help with but for our own security. Because persons who the US considers dangerous to them, we might very well consider some of those persons to be dangerous to us as well and we could do with the assistance in that regard.

There is no way we could provide a security net, an information net on security all by ourselves. We do not even provide a weather net on information on the weather by ourselves. We depend on the United States of America for that, so on security matters there is no way we can do it by ourselves. But with the assistance of the US and others who are going to benefit from this kind of legislation and also MOI, we certainly could do a lot more in respect of security. As I said, in many other areas of cooperation which must be pinned together with security concerns, because that is the only thing that America is going to ask us for; they are not going to ask us for assistance with food security, so we cannot wait until we are discussing food with them to raise it. But we can raise food while we are discussing other kinds of security with them.

That is my submission. That is the way I see it. So, I have a little difficulty with the actual working as I said, because I think it is lacking; it is too bare and I have a difficulty with what Government is going to do with this information, with the absolute lack of preparation for managing the information with the situation that we are in right now, where, as security matters go we have not even the foggiest idea of what to do when we find out who are the persons involved in wrongdoing. Even if we collect information on people who are coming into the country that we think should not be coming in, unless we are going to stop them

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from coming, we really cannot do anything about them when they reach here, because we cannot do anything about the ones who are already here and who are involved in all kinds of other activities.

So, if you find some guys coming in here, you know who are coming in and unless you are going to stop them from coming in—which I do not think you are going to do in every case—you are not going to turn back the vessel. The idea is to monitor the people who are coming, but when you get the information on who are coming, what are you going to do with it? Ask the police officer about the drug block next to him and he would probably tell you he knows what is going on down there, but what can he do about it? So, pay some attention to those things before you expect us to have some confidence that this Bill will make any positive difference to us here in this particular country, although, sure it will help the US with whatever information it wants to get.

Thank you very much, Mr. President.

[*Sen. The Hon. M. Browne stands*]

Mr. President: Excuse me, Sen. Merhair.

Sen. Gail Merhair: Thank you very much, Mr. President. The Bill before us today, an Act to make provision for the transmission of advance passenger information respecting persons travelling to Trinidad and Tobago and for related matters, is one of simple intent. It is designed to provide state officials beforehand with information pertaining to persons wishing to enter Trinidad and Tobago and as a matter of course when it comes to tracking persons of interest or suspected terrorists visiting Trinidad and Tobago.

Let me state that I support the legislation in question. It is the belief that such a legislation is required if we are to make Trinidad and Tobago safe, especially from persons coming in from other areas who might not have such noble intentions. Now, although this is a separate piece of legislation which the hon. Minister of National Security indicated to us last week, the advance passenger information system is a natural forerunner to the passenger name recognition, which is better known as the PNR, and this will eventually have to be put in place in a legislative agenda to give effect to a wider information gathering and tracking, particularly since the information will be transmitted to a third party for analysis.

So, in terms of the passenger information system, I am quite well aware that at the 13th Special Meeting of the Conference of Heads of Government of the Caribbean Community held in Port of Spain on April 04—05, 2008, that the

Heads agreed to continue in the legacy of the World Cup 2007 and they also agreed to upgrade and expand on a permanent basis these security measures, and these include the Advance Passenger Information System, the Regional Intelligent Fusion Centre, the Joint Regional Communication Centre.

However, just because there are no serious incidents that have taken place, we need to know what success these various areas have had or systems that were installed had in the past. It has also been reported that the Caricom Heads of Government have agreed to sign a Regional Maritime and Airspace Security Cooperation Agreement and a Caricom Arrest Warrant Treaty by July of this year. They also agreed to explore the establishment of a rapid deployment regional joint force and to enact legislation to allow security forces to conduct wiretapping as well as to establish a Caricom Polygraph Facility. All these major systems will in fact not only help with the security of Trinidad and Tobago but would also help with security on a regional basis.

I do have some concerns, however, Mr. President. Any tracking of travel arrangements of citizens can lead to a serious breach of privacy. This Bill together with the Caricom Development Watch List may make some feel quite uneasy. Some may even want to state that we are living in a police state or even have a Big Brother watching their every move. We may even question if this is the price we have to pay for our safety. I know my colleague, Sen. Ramkhelawan, did in fact indicate that he would support it because we need to have safety first, but we need to also look at the privacy of our citizens.

With this in mind, the Canadian Government—and I heard many Senators in this honourable Senate draw reference to Canada in this debate—was faced with a similar dilemma.

3.15 p.m.

On January 09, 2003, the Privacy Commissioner of Canada, George Radwanski, presented the then Minister of National Revenue, the hon. Elinor Caplan, with a legal opinion from the hon. Marc Lalonde, did in fact have concern that a third opinion and the eminent legal authority that the CCRC Big Brother database is contrary to the Canadian Charter of Rights and Freedoms. As a matter of fact, hon. Lalonde said, and I quote:

"I have had the opportunity to review the relevant case law and doctrine and subsequently, I have had the benefit of studying the opinions of the hon. Géard V. La Forest, CC, QC and of Roger Tassé, OC, QC, which you provided me."

Following, is an analysis of which was stated, and I quote again:

"The unfocused nature of the governmental objectives as well as the lack of sufficient limits on the use or access to the API/PNR information makes it difficult to justify the intrusion of privacy rights that the initiative entails."

Mr. Radwanski also went on to say:

"You have been presented with independent, objective legal opinions from a retired Justice of the Supreme Court of Canada who wrote many of the Court's most important decisions regarding privacy rights under the Canadian Charter of Rights and Freedoms, from a federal Deputy Minister of Justice who was instrumental in drafting the Charter, and from a former Minister of Justice of Canada, all stating that the CCRA database clearly appears to be in contravention to this Charter."

He went on to say, and I quote:

"What is unacceptable—and, I hope you will now recognize, unlawful, is the subsequent retention of this personal information about all law-abiding Canadians in a six-year database of dossiers that can be used for potentially almost limitless government purposes."

Here, I take the opportunity to ask the hon. Minister, how long would this information be kept on a database? Who is going to log it in, and who will have access to this information? Because after all, all information regarding people who are Trinbagonians returning to our shores, will in fact be also kept on this database.

"The CCRA's purported justification for this retention, in violation of the explicit written undertaking that was given to me when the Customs Act amendments were before Parliament..."

Mr. President, on April 09, 2003, the Privacy Commissioner of Canada released a statement in response to the letter received from the then Canadian Revenue Minister, Elinor Caplan, in which he stated, and I quote:

"I was particularly concerned that, under the information-sharing provisions of the Customs Act, all this information would have been available for a virtually unlimited range of governmental and law enforcement purposes. Such purposes, by the government's own account, could for instance have included routine income tax investigations and flagging individuals as possible pedophiles on the basis of repeated travel to countries that have a flourishing child sex trade.

Now, there will be no such dossiers of personal information obtained from third parties for lawful activities of all Canadians, for unrestricted potential use against any individual. A precedent setting and extraordinarily grave intrusion of privacy rights has been averted. The changes announced today by Minister Caplan have substantially addressed the concerns expressed by myself and many others."

Basically, Mr. President, what has transpired in Canada with all these various correspondence to and from, what eventually happened was that the Canadian Government did in fact withdraw their policy and made amendments to their legislation, where they can in fact eliminate the use of information for fishing expedition, such as identifying everyone who has travelled to a particular country a certain number of times or routinely accessing travel profiles of individuals for any other purpose.

Here I want to draw to the attention of this honourable Senate, for example, people in Trinidad and Tobago who would perhaps be conducting business within certain parts of the Far East, say Thailand, to make a point of reference. Let us say they travel to Thailand three or four times for the year, what signal is that going to send to the Government or people who are looking at their travel plans? Are we going to say that they are going for other reasons besides conducting business, especially now since a lot of economic activity is taking place with that continent?

Mr. President, Trinidad and Tobago must in fact follow the example set by Canada in ensuring the rights of citizens of this country. The advance passenger information is a required tool in our fight against terrorism, however, what we do with that information when it is collected, is critical. For instance, we have in place an automatic targeting system to identify suspected terrorists, and if so, how successful has this been?

The issue of usage is fundamental and the application of the API given our history of accepting deportees upon their return from other countries which have rejected them. What sort of system do we have in place to ensure that we are informed when deportees arrive in Trinidad and Tobago? Will this information be given in this Immigration (Advance Passenger Information) Bill as well?

I also wish to use this legislation, Mr. President, if you would indulge me for just a few minutes more, to discuss a certain issue facing passengers travelling by air to various countries.

Because of the regulations of 9/11 and the attacks to New York, passengers are in fact asked to sign when they travel that we give permission to the airlines for our luggage. We put our luggage on board and we make certain regulations

that our luggage is there and it has to be searched and so on, but in the event that our luggage is lost or stolen—in normal economic terms if we purchase something from the grocery, we can in fact return it, but when our luggage is stolen or broken into during flight, a lot of times the passengers do not have any rights to the airlines. I would like to urge the Minister to bring before this honourable Senate a Passenger Bill of Rights, so that individuals who are travelling would have some sort of rights. Not only would it go one way where we are in fact providing information, but at least people who are travelling can in fact have some recourse to the airlines.

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

The Minister in the Ministry of Finance (Sen. The Hon. Mariano Browne): Thank you, Mr. President. I rise to add my voice to support the Act to make the provision for the transmission of advance passenger information respecting persons travelling to Trinidad and Tobago and for related matters. I think the emphasis is for transmission of advance passenger information for persons travelling to Trinidad and Tobago. I think that is the point that Sen. Seetahal SC made very comprehensively and a point that has been missed in large measure.

Listening to the Opposition: Sen. Mark, Sen. Dr. Jones-Kernahan and Sen. Rahman, I was reminded of the witches in Macbeth, if only because it was tragic that perhaps you are attempting to stir the cauldron, so it would burn, it would bubble and something would come out of it. But, I think in large measure, many of the contributors on the other side seemed to have missed the—well, it is not so much, perhaps then I should have said the soliloquy of Macbeth then, all full of sound and fury signifying nothing.

I think the Bill is very clear in its purpose. It is small and simple, but in large measure I think only Sen. Seetahal SC referred to its antecedent, the Immigration Act which clearly sets out who is prohibited and who is permitted to enter. In the Immigration Act, Chap. 18.01, Act No. 41 of 1969, section 8 sets out very clearly who are the prohibited immigrants into Trinidad and Tobago and who is permitted.

Sen. Mark was also very clear in referring to section 12(5) with regard to the information which is required to be disclosed, and a lot of the debate had also concentrated on the question of privacy of information and so on and so forth and it ought to be held and to be guarded. But section 13 of the Immigration Act very clearly says that immigration officers in charge of a port of entry are special

enquiry officers and the Minister may nominate such immigration officers as he considers necessary to act as special enquiry officers. It also goes on to say that you are required to give information and specific information.

Section 18 in the Immigration Act of 1969 says very clearly and speaks to the issue of the information to be given and requiring people to answer truthfully all questions, setting up the background to requirement in terms of the disclosure of information. It also gives special powers of enquiry to the immigration officer in section 21.

Sections 36 and 37 speak of transportation companies bringing persons to Trinidad who shall upon the arrival of the vessels not allow any person to disembark. In other words, it sets out port of entry, the requirements for control of who is coming and who is not coming. That is the background to this Bill.

Section 44 sets out once again, very clearly: "The Minister may make regulations for carrying into effect the purposes and provisions of this Act and, in particular, may make regulations..."—returning to the conditions applicable; the registration of persons; registration and recording, and so on and so forth. We go on to the back of the prescribed forms which are attached in the Immigration Regulations to the Act thereto, 1969 I might add.

Form 1 of the Immigration Regulations sets out very clearly the passenger declaration form and a departure record in terms of what you are required to disclose: flight number, border, your name, date of birth, country, passport and so on and so forth. In other words, what this Bill which is before us today seeks to do is simply a continuation of information which was being gathered for the last 39 years. It is not new, it is not about sharing any information with a third party, it is simply putting in position the fact that we wish to have the information in advance, in accordance with technology which is currently available. That is all the Bill seeks to do and for those of us who have been travelling and coming back into this country, this is what you fill out every time you travel into the country. It is very simply—

Mr. President: Minister, I have already ruled on the issue of using props. By all means you can refer to it and you can read out the information on it, but we would not wave around props in the Senate. Thank you.

Sen. The Hon. M. Browne: Thank you, Mr. President. Good! It is Form C15 and it is no more or no less than the reproduction of Form 1 which is attached to the Act No. 41 of 1969 as part of the regulations. All this Bill seeks to do, is to require the information to be disclosed in advance, information which we all give

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and have all given for the last 39 years. There is nothing sinister about it; there is nothing that requires any sort of reference to memorandum of understanding; it is simply the Government doing what is required by the Constitution, as required by section 1 to protect the sovereignty of our country. Quite the reverse to the allegations made by the Opposition.

It is not about giving away anything; it is not about a memorandum of understanding; it is not about declaring information on anybody travelling anywhere out of Trinidad going to a third party; it is simply seeking to capture the information and to seek the legislative and legal authority to put that information in an electronic format. That is all.

Thank you, Mr. President. [*Desk thumping*]

3.30 p.m.

Mr. President: Hon. Senators, I was just advised that, in fact, Sen. Rogers had made his maiden contribution. [*Desk thumping*] Better late than never, Senator. [*Laughter*]

Sen. Dr. Adesh Nanan: Mr. President, I rise to make my contribution on this Bill in an atmosphere of sadness. The collective Opposition would like to express sympathy and extend condolences to the family. I know you directed otherwise, but we will also do as you said with respect to sending a letter to the family from our party.

This debate centres around information and the secrecy of information. We are dealing with advance passenger information. As we deal with secrecy of information, the Government has no credibility in terms of the management of information. We have seen a fiasco in just administering an examination for 4,000 students. [*Laughter*] To administer an exam for 4,000 students there is a fiasco. [*Crosstalk*]

Similarly, in this country in terms of the management of national security, the Government has no credibility. At 6.00 a.m. this morning the murder rate climbed to 171. I am sure as I speak in terms of minutes, hours and days, the murder toll would continue to rise. So when they laugh at the statement made about their credibility, the fact is that the population recognizes that they have no credibility in their governance of this beautiful island of Trinidad and Tobago.

We also heard in the debate about yachts that arrive in Tobago and what was happening with pollution of the waters around Tobago. In this context I make reference to the Bill. Clause 3 states:

"The master of every vessel destined for Trinidad and Tobago, prior to departure of the vessel from the last port of call..."

In terms of our favourable position as the most southerly island in the Caribbean, we are a haven, we have sheltered harbours.

The Schedule of this particular Bill deals with the scheduled arrival time and the last place/port of call of the vessel:

“(Vessel departed from this last foreign place/port of call to go to ‘place/port of vessel initial arrival’).”

How practical is that in terms of our situation and location? Everyone knows that from June to November, in the hurricane season, we have cruise ships that come into our ports for unscheduled visits because of the weather conditions around the area.

The Government speaks—of course it is doublespeak, but we have to take it for something—in terms of building the tourism industry. I thought that the Minister of Tourism in the other place would have made reference to yachts and the yachting industry. We have a sheltered harbour in terms of our position. Many yachts come to Trinidad and Tobago as a port of call because of our favourable position and, of course, because of our hospitality. The improvement of our yachting industry is an opportunity as a tourism pillar, but we have a situation with the yachts arriving at a destination where they have to give the scheduled arrival time.

Many of these yachts depend on wind power. Their actual arrival time can vary from time to time, depending on the climatic conditions within the Caribbean. Clause 3(2) states:

- “(2) A master who intentionally or recklessly—
- (a) fails to transmit the data required by subsection (1); or
 - (b) transmits incomplete or false data...”

What is the provision in this Bill for this particular catchment of yachties? In fact, there are some ports they would call in where there would be no provision to transmit any data. These yachties would now have to have an electronic system, which is difficult to utilize, as compared to the cruise ships.

Mr. President, I know that you are very familiar with the shipping industry and the problems that yachties face. I am dealing with the yachties having to send this advance passenger information, if they are in a port of call where there is no specific provision. They would be in an unfavourable position.

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In fact, in the United States they make allowances for these yachties. In the legislation before, if I recall correctly, there was a certain tonnage with respect to ships, 100 tonnes; now we are bringing in this particular area with respect to yachts. As the Bill says in clause 2:

"vessel' includes any ship, boat, aircraft or other floating or airborne contrivance."

This particular clause that gives the definition of a vessel reminds me of the Shipping Bill that is languishing in some joint select committee dealing with "ships, boats, aircraft or other floating or airborne contrivance".

It points to the fact, in this particular situation, that the Minister of National Security came to the House with an impractical piece of legislation in terms of the industry, not only with respect to yachts coming into our waters, but also the container ships plying this particular route. With the number of ships that ply our waters, that come into Trinidad and Tobago from all over the world, in terms of the requirements, we have to ask the question: Is the Immigration Department of the Ministry of National Security able to cope?

A simple examination for 4,000 students has been a total failure by the Government. To go even further, the Minister of Education only made a statement saying that the examination was cancelled when the Caribbean Examinations Council said that the examination was cancelled. [*Laughter*] The point is that we are dealing with information secrecy.

There is a particular provision which could be utilized, but the Minister of National Security is probably unaware of it, because we have the provision to deal with port security. This particular Bill deals with this advance passenger information in terms of border security. What is the Government's stand on border security with respect to radar and the surveillance of our waters?

We have heard that right now there is a monitoring system in place, and they are looking at patterns of movement in our coastal waters. We have no guarantee that this Government is doing any surveillance on our coastline. We are looking at border patrol possibilities. Our coast guard should have been already trained in border patrol and even inspection at other ports. We are dealing with an advance passenger information system where ships are coming in from Miami, and information has to be transmitted by the captain to the immigration officer in Trinidad and Tobago. Do you know that we have the possibility of our coast guard officers being trained to go to inspection ports in Miami and other areas, where they would have to look at vessels coming into our ports?

But no, the Government does not have a clue in terms of where it is going with port security. This is an opportunity that is available. So the Minister of National Security, if he is still in office, should work with the Maritime Division of the Ministry of Works and Transport to get port security organized properly. With that particular area and yachts we see the problem with this piece of legislation.

The other area I want to deal with in shipping and with this particular clause is that we have a vibrant shipping industry with respect to our coastline. When we were dealing with foreign ports there was a view expressed, probably by the Yachting Association, that if we were utilizing a domestic space, as it was before, and Caricom can be considered a domestic space as it was in the previous legislation, why can a yacht coming into Caricom not just check in at one port of call and the information be transmitted between Caricom countries? That is a possibility, if you have that transfer of information that could take place.

While it is true that the legislation deals with only transmitting information to Trinidad and Tobago, there is the possibility of Caricom countries interacting so that this particular provision can be utilized to allow the yachts within the various Caricom countries to have that facility, to streamline the process. That is one view in terms of the yachting industry.

The other area I want to deal with is the arrogance of the Government. The Prime Minister came into this House and made a statement, up to now we have not been circulated with it. How can we condone that kind of activity? I heard the Prime Minister say in this House that an Independent Senator would chair a joint select committee. *[Interruption]* I just wanted the statement for information sake, because I was not sure. *[Laughter]* I wanted the statement to make sure. The Government said that they are not going to have Independent Senators chairing any joint select committee, so I just wanted to make sure that what the Prime Minister said was true. *[Desk thumping]* I wanted it in black and white. *[Laughter]*

Sen. Manning: Stick to the Bill!

Sen. Dr. A. Nanan: I will go on. *[Crosstalk]*

Mr. President, we also heard in the Minister of National Security's presentation about a memorandum of intent. It was part of the debate. I do not want to go in that direction, to rehash information on what the Minister of National Security brought into the debate, but we have to face facts. When we are in a debate and a Senator gets up and says that something should not be part of a

contribution, one could question the authority of the Senator. If you look carefully at the various contributions, that was part of the debate initiated by the Minister of National Security. You cannot condemn; if you were not here in the House, you should read the *Hansard* and recognize how the debate went.

3.45 p.m.

So if I am dealing with issues, it is because I have clear knowledge of what transpired in the House and what the Minister of National Security said in terms of the benefits of this advance passenger information system. History would show that this started since 1988 and was given voluntarily, and it is only because of the 2001 scenario it became compulsory.

Mr. President, we have to face facts. We are dealing with a Government we must be extremely concerned with in terms of the truth. One minute something is said and the next minute it is changed. We do not know what the truth is and what is not truth with respect to the Government. Whatever position is correct today can be wrong tomorrow and they will justify that is the new position so we have to be extremely careful. That is why I have to read every line of the Minister of National Security's *Hansard* contribution to see if what he is saying is actually true.

The Minister of Works and Transport says that we are going to have water taxis in August, so we have to question those things and continue to question them. The Minister of National Security said that the reasons for the API was because they had some screening process and caught a drug trafficker and they blocked some people from coming in, but we heard the other side, we saw it in the newspapers in terms of illegal immigrants. That did not happen overnight. The Immigration Department is now cracking down probably because the legislation is before the Senate, but that is nothing new. We have heard reports of vessels leaving Pier I and going to Venezuela. In fact, *The Prowler*, I think was the name of the vessel and we have to ask questions.

When we were going to put a major port in Cedros because the Government at that time recognized that it could be a major transshipment point, what happened to it? Is that port functioning? We have to ask questions like that in terms of border security. We are transferring information, people are coming to give information and the Senator is absolutely right in terms of tracking. When you go to other countries, this information will be transmitted on a database whether you like it or not, it will happen. An electronic database will be created and it will show how many times a Trinidadian goes to a particular country, how many times he travelled to China on a regular basis. That electronic database will be created.

You will recall that when the DNA legislation was brought, there was an issue with respect to privacy and some people were selling people's medical records, the country's medical records were for sale. We have seen things like that happening in terms of selling people's privacy. That is why alarm bells must be raised now in terms of the privacy situation. If you are dealing with the advance passenger information system and the PNR you will see that soon we can move to that area where even what you are eating ends up in that electronic database, and of course, medical records will filter into that at some time.

Mr. President, I remember SARS, that particular virus that was being transmitted throughout the world. If that situation resurfaces, there will be a situation where you will need to know the person who is travelling on that aeroplane and the seat number. That is to show how exact this thing has to go. So it will reach a point where people's privacy will be compromised and that is why the Opposition was putting alarm bells in place especially in those situations and the Minister of Health should have made reference to that when he was speaking because those are situations that can arise. We saw it with the person travelling with tuberculosis and the situation that developed with respect to who he travelled with and what countries he went to. Those things are important but we do not have a tracking mechanism for that.

I hope we do not have that situation developing here because the Ministry of Health, customs and all the authorities that are supposed to safeguard our country are hopeless with respect to the Government's position, so we have to be extremely careful when we are dealing with privacy matters in this country. It is an issue whether it is a regional communication centre in Barbados to which we are reporting, or whether it is the United States of America, we are dealing with privacy issues and we cannot trust the Government, that is the point of the whole situation.

So whether it is information secrecy and advance passenger information, where it was voluntary, it has now become compulsory. We have to question the authority and the capability of the immigration officer to receive this information. This is serious legislation before the Senate; we are talking about a fine of \$600,000 or six months.

“A summary offence in Trinidad and Tobago is liable to a penalty of six hundred thousand dollars which shall be recoverable as a civil debt.”

That is the amendment before the Senate. We have to make allowances, we cannot be rigid. In fact, this is up to the magistrate because he has to determine whether it is intentionally or recklessly, so there is still an allowance for the

magistrate. I do not know if the magistrate will take into consideration that the yacht could not make it, or they could not send the information on time because of a storm. I do not know if that could be evidence, but the Minister still has to waiver.

“The Minister may by order waive the requirement for a Master of a vessel to provide the advance passenger information under subsection (1).”

We want to know what the waiver is. When will you give an order to waive the requirement for a master of a vessel? Is it only if it is a military vessel, or one on official State business? Is that the intention?

Mr. President, what if a vessel is coming in which is not a military vessel and is not on official State business? I am dealing with a situation which was brought up in crosstalk, but it is important to understand that it is no laughing matter when it comes to natural disasters like earthquakes, cyclones and hurricane because the scale in terms of the number of people dying is unimaginable.

God forbid that anything like that happens in this country because we have a Minister of National Security—the Minister said the waiver would be for a military vessel on official State business. What happens in a situation if a ship is coming here, let us say a vessel is coming to render aid, where would that be classified, official business or military vessel? Of course, the Ministry of Health and the Ministry of Local Government cannot even handle a small-scale disaster much less for a large-scale disaster. What will happen there? There has to be a waiver for a ship coming in with doctors and nurses, it would not be on military business and it will not be on official State business. It will have to be their coming in with a need.

Similarly, we have to consider those situations and I do so in the context of the amendments before the Senate and I am pointing to the situation of the waiver. We are also asking the question about the amendment to the Schedule but that will not be done by order I am sure, it will be done by parliamentary debate.

There is no particular provision in the legislation before the Senate. The last time that some of the requirements of the advance passenger information were being put, there were additional data elements being moved into passenger data and the place of birth, city and country are now compulsory.

The Minister in the Ministry of Finance held up the arrival form, but we also have to consider when we are dealing with advance passenger information and who are coming into our country, we are dealing with a situation with respect to

deportees. We would have the information coming in; the immigration officer would have John Brown with this whole list of data; place of birth, gender, nationality, surname, official document type and all that which Sen. Rogers read from a prepared text that is in the particular Schedule.

You have all this information coming in with respect to this particular individual, John Brown, but it is of no value with respect to that particular person and the immigration officer will be none the wiser as to whether that person is a criminal deportee, and Sen. Dr. Charles made the point that there should be some reciprocity. If we are giving up our sovereignty, when we are discussing this matter, Minister—Do you want me to give way?

Sen. Joseph: I thank the hon. Member for giving way. Mr. President, who said we are giving up our sovereignty? When we are winding up I am going to address that because there is an assumption being made that all we are doing is driven by the United States of America, and that is so incorrect. We are not giving up any sovereignty.

Sen. Dr. A. Nanan: Mr. President, I am sorry I gave way. When the Minister is winding up he will tell us—I thought he was going to make an important point.

Sen. Mark: “Yeah, tell him ’bout electronic data.”

Sen. Dr. A. Nanan: Apparently the Minister is not aware of electronic data and the use of telecommunication technology in today’s society. This information will go all over; we do not have privacy laws in our country, I am not sure we can even keep our DNA database secret. We have no confidence in the Ministry of National Security and the matter with respect to DNA and databases. We have to be extremely careful. We have passed legislation in this House and we saw DNA going to London and we were promised that we would be able to have our own laboratory, do our own work and nothing is happening. We are waiting on the breathalyzer and we are not seeing anything. [*Laughter*]

In fact, there is a worldwide discussion on having cars in the advance passenger information system. [*Laughter*] I was dealing with the matter of passenger data and criminal deportees, but the point I am making in terms of electronic databases is that they can go anywhere. I am not casting any aspersions on those in the Immigration Department, nor on the Ministry of Education’s staff, but information is being leaked, it is going out.

4.00 p.m.

It is going out, whether it is the Ministry of Education or the Ministry of National Security. I am sure information from the Ministry of Planning, Housing and the Environment would be leaked with respect to UDeCott. So it all goes out. Whatever you try to keep secret and hide and try to muzzle the press with respect to no more broadcasting of joint select committees and any of our parliamentary committees, it is going out and the public is being made aware of how the Government is operating.

So we see that in terms of the information leakage, that the information that we want to utilize, we cannot utilize because there is no particular background to tell us that there is a criminal deportee on the way to Trinidad and Tobago and take special precautions. We have to ask the question: How long have criminal deportees been entering our country? It is not something that happened overnight. What is the Ministry of National Security doing? How long has the Minister been in the Ministry of National Security? Nothing! Those same criminal deportees could be the ones who shot Winston Budhram in Arima. We do not know. He was 28 years old and he could have been alive today. That is the situation we are faced with.

They are saying that the Ministry of National Security had no idea that criminal deportees were coming in. There is a rampant crime wave throughout this country, you know, and somebody has to talk about it. Innocent people are being held up! And now they are probably happy that this CAPE thing happened so it took the front page and crime was removed from there. But that should not be the reason for you to be happy with respect to crime! In every neighbourhood; you walk along any street and ask anybody, there has been an incident that took place. Somebody either got shot; somebody got burglarized; robberies.

We have to face the facts and whether we bring a Bill to deal with passenger information, we have to hold the Minister of National Security accountable. I thought the Minister would have come here and apologized with respect to his performance! We probably would have accepted it. But the Minister is so arrogant, and he is telling me about sovereignty? Mr. President, I do not want to get annoyed. I need to drink some water.

Mr. President: Senator, I am going to caution you about calling names in this Senate. I think that that is most inappropriate in this Chamber.

Sen. Dr. A. Nanan: Whose name did I call, Mr. President? I said “the Minister of National Security”. I would say “the Government” instead, and I would not identify any particular Minister.

Sen. Dr. Saith: Drink water. [*Laughter*]

Sen. Dr. A. Nanan: In my preparation for this debate, I took the line that I was dealing with the shipping industry and I feel sorry with respect to the situation with the yachties. But then the circumstances in which I am presented took me to different areas, so if I did go overboard in terms of going to various areas, I did so in the interest of the country and I will link it to the advance passenger information system. Deportees are only one aspect.

Yes, we are dealing with terrorists and we saw a situation this morning—I do not know if it was terrorism—of bombings in India. So in China there was an earthquake; in Burma we have the cyclone and now we have bombings in Jaipur in India. So we are faced with problems. I am sure they have very good advance passenger information. In fact, India was one of the countries mentioned here in terms of their advance passenger information, and still we have that particular situation developing.

So no matter what we have, whether we have no advance passenger information or we have advance passenger information, we still have to be prepared, and we see the local authorities being totally unprepared, whether it is the road deaths, murders, robberies and the like. We have no confidence.

This particular additional data elements, the visa number, issue date of the visa, place of issuance of the visa, this reminds me of when I was in the Ministry of Tourism in 2000. In fact, to boost the tourism industry—because at that time it was recognized that a lot of the tourists were coming from certain parts of the United States where they had no passports—the issue was, we were going to waive the requirement for a passport. That was a consideration. In fact, some Caricom countries actually waived the requirement for passports. I make that reference because it is on the passenger data now as an additional data element.

So what I am putting in perspective, in 2000 we were considering waiving the need for passports and today now we are dealing with electronic data and passports electronically. So that is what we are dealing with. So advance passenger information has gone a little further in terms of the world's outlook in terms of preservation of their borders.

Do you know what is frightening, as we are dealing with coastal waters and shipping and the movement of information via—you are sending the information on your crew and you are sending in the information from the captain of the ship and the pilots. We have a situation where a report would come out that the Prince would be on a ship in the Caribbean but no other island would be mentioned except Trinidad and Tobago because of drugs. The ship would be near Trinidad and Tobago. That is a BBC report. What would one think? Trinidad and Tobago is a drug haven. Drug smugglers frequent Trinidad and Tobago.

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We hear from the Ministry of National Security in terms of border security and how many helicopters and offshore patrol vehicles they are going to buy. But do you know how long we have been hearing about these plans? And we still have these countries looking upon us in terms of a drug haven.

We have to change the attitude in the Ministry of National Security, because we have to recognize that we are being blacklisted. In every update from those countries, the United States and the United Kingdom, we are being blacklisted. How can we build a country—yes, we are getting the advance passenger information and people are coming in, but what is the outlook outside? How can we build? We have more information and people coming into our country, but how is the world looking upon us? We are a little island down there with drugs. Be careful when you go there.

So one minute we have the yachties coming in because of the safe harbour; we are trying to build the yachting industry because we have a very good climate; in terms of boat-building capability we are very good in that particular area so we can build that and strengthen the manufacturing sector—so you have that possibility existing; we hear the Minister of Tourism talking about eco-tourism and more people coming in, and then we have all these countries putting out all these bulletins: “Do not go to Trinidad and Tobago; be careful if you walk on the road; do not go here in the night; do not walk in Port of Spain in certain parts; do not come off the ship or be careful when you come off the ship.” What is happening?

We are going to collapse. You will have less and less information coming in, in fact, because the number of passengers will be reduced. It might be only our nationals travelling back and forth. We will build our own database. So that is the atmosphere we are in. So if I did move on to different parts in terms of my contribution, I did so with humility and in the interest of Trinidad and Tobago.

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

Sen. Corinne Baptiste-Mc Knight: Mr. President, I am provoked to rise to support this Bill simply because some of the contributions that I have heard give me the impression that what is most important is to frighten the listening public. Very heavy weather is being made of the possible violation of the privacy of nationals.

It is quite possible that I have not understood this Bill properly; that I have totally misunderstood what was said by my colleague, Sen. Seetahal SC and by the Minister in presenting this Bill. But if, indeed, this Bill refers to passengers

travelling to Trinidad and Tobago, that is, people coming in from outside, it occurs to me that we must be aware that these incoming passengers necessarily fall into one of two categories. They would either be nationals of Trinidad or non-nationals who are visitors or in transit.

Now, with respect to the nationals of Trinidad and Tobago who would be coming back home, the information that would be transmitted about them in advance of their arrival would be information that is already resident in this country since they had to apply for passports, and it is that information that is in their passport. Most of them would probably have national ID cards, so that information would also be resident at the Elections and Boundaries Commission. The fact that they have left here and gone some place, suggests to me that that information is resident in whichever foreign country they visited by virtue of having had to acquire a visa to travel.

Now, when one acquires a visa, there is that timeline to the visa. It is normally for a period of 10 years or less. It stands to reason, therefore, that this information is in the archives, in the database of whichever country issues the visa for a minimum of 10 years. And we are worrying about this very information being sent back here about nationals, when we already have the data here.

Now, any Trinidadian or Tobagonian who has to worry about having that information come, it is because they are on either the Interpol watch list or some other of the watch lists that are going to be used for comparison purposes.

4.15 p.m.

You want to bet that that person would not be on the plane because they would have caught up with the person outside before they got back here. Let us not worry about violating the privacy of nationals. Let us worry about what would happen if a non-national who is on one of these watch lists—

Sen. Rahman: Which we do not have.

Sen. C. Baptiste-Mc Knight: Which we do have. Perhaps, somebody could make available to my colleague the report on the Cricket World Cup which tells you which watch list. I think that the Minister also mentioned a couple of the watch lists against which this information is compared in realtime.

The fact that this information can be made available and that measures are in place to ensure that the results of using this information will make our borders more secure, rather than violating the privacy of the nationals of Trinidad and Tobago, I think that it makes us feel that bit more secure. If you do not feel secure

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about that it is because, as has been said over and over, you have no confidence in your people. You leave here, go to New York, Toronto, London and everywhere else and you have confidence in all these people that you do not know and all these systems that you do not have a clue about. I will like to assure the national community that what we are doing here is in their interest. It is to protect them. We are requiring nothing from our nationals that they have not already voluntarily given to people outside where they just went to visit.

The information that is being required here as has been said over and over is already in the Ministry of National Security on your passport application form, unless of course, you made a mistake on the form and the information has changed. When you go to the United States, if you have a visa that was issued in 2002, in 2008, when you go, if your address or any other information has changed, believe it, the information that is resident on their data system is updated to reflect the latest position on you as an incoming visitor. Why are we making heavy weather about bringing ourselves into the 21st Century and having it in a database, instead of having to shuffle these pieces of white paper that come off the plane with you? Every little child now is playing with a computer and it is rocket science for us as legislators to agree that our Government come into the 21st Century and collect data that will be in the interest of the people of Trinidad and Tobago, because people could hack into a computer? Hello! There are firewalls and all kinds of other stuff that people who know about it can use to try to protect the data. Let us be serious and not try to scare the public.

Let us let them know that what we are doing is in their interest and this is a good Bill. The only problem with this Bill is that it is a little late. From the time we saw how well it worked during Cricket World Cup, the Government should have hustled here and passed this Bill. Of course, the downside to that is that I would not have had the opportunity [*Laughter*] to give you a few views on this, this afternoon.

Thank you.

The Minister of National Security (Sen. The Hon. Martin Joseph): Mr. President, let me start off by thanking the 15 Senators who contributed to the debate on this Bill. I do not want to single out anyone. I think that Sen. Baptiste-Mc Knight summed it up nicely in terms of not only the intent, but also the question about the concerns as to somebody listening to the debate taking place on this Bill about what we are attempting to do.

Let me also indicate that there are some issues which I still feel I need to clarify. This is notwithstanding the fact that others have clarified them, especially Sen. Dana Seetahal SC. The information that is requested to be provided is information that has to be provided by any person coming to Trinidad and

Tobago, as Sen. Baptiste-Mc Knight indicated. The only difference is that it is to be provided in advance so that the information can be compared with certain watch lists that currently exist. Even though there are those who feel that we do not have them, they are scrubbed against local, regional, Caricom watch lists, the Interpol database for stolen passports, as well as the UN terrorist watch list for persons of interest.

An attempt was made when we were looking at APIS and based on discussions with the United States government a memorandum of intent was entered into, but not executed because there were conditions that Caricom was required to meet that we were not willing to meet, as it related to dealing with the United States. As a result, we are unable to compare with the US watch lists whether it be FBI or CIA. I want to make it abundantly clear. I do not understand why Senators do not seem to understand and mix up the question of the memorandum of intent. This information is not shared with a third party. If you want to consider Caricom to be the third party, well then, that is the third party. We have decided that given the success of the security arrangements used in Cricket World Cup, those things need to remain, especially as my colleague requested, as it relates to the setting up of the single market and economy for us to be able to track movements of persons within the Caricom region.

Let me treat with this. Some Senators talked about this as a precursor for PNR and that we are opening the doors towards that. Advance passenger information and passenger name recognition data, let me say again and again, are separate and distinct. We are not being disingenuous when we say that the PNR data is not API. This is because there is a distinction between the two. As I said earlier, PNR information is wider and more extensive than API information. The PNR data includes reservation and itinerary information, as well as credit card information that is personal, more intrusive and potentially more revealing.

The ICAO recommended practice to which we adhere is very clear on the nature of advance passenger information that should be requested by State parties. The APIS collects basic biographical information for machine readable travel documents as passports and visas. In other words, the same information that will be provided to border agents, the Schedule to the Bill presented here adheres strictly to that recommended practice. So to say that we are opening the door and later on we will ask for more information, that is not the case.

The question about information transmitted to third party and the invasion of privacy, as I indicated that is not the case. It will be scrubbed against the local regional watch lists and the Interpol database for lost and stolen passports.

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Sen. Mark raised the question about the Economic Partnership Agreement between the Cariforum States and the European Community and its member states. He alluded to the fact that the Cariforum Agreement is contrary to the purport of the APIS legislation. I will point out that it appears that Sen. Mark's contribution may be misconceived. He referred the Senate to Chapter 6 of the Agreement which falls under the rubric of protection of personal data and proceeded to quote therefrom. The agreement is designed to protect personal data and must firstly be brought into domestic legislation via the Parliament. APIS does not violate the concept of data protection and is not involved in the transmission of personal information. As I said in my initial presentation, I was at pains to make this abundantly clear, APIS is supplying in advance information that is required by any receiving state. It is the right of every sovereign state to require information of persons wishing to be granted access into its jurisdiction.

Sen. Dr. Jones-Kernahan raised a set of issues about CISNET and quoted information that we did not reveal during my presentation. The memorandum of intent as I have explained is no more than that. By definition, a statement of intent is subject to the negotiation of an operational protocol. To date, those negotiations are in limbo because of the very concerns expressed by member states of the region and the United States government.

She also quoted extensively from a report emanating from the Jamaican Information Service based on a media conference held on the final day of the 27th regular meeting of the Conference of Heads of Government in July, 2006. The report speaks to the status quo at that time. Caricom Member States had requested of the United States technical assistance in the processing of advance passenger information and such information to remain the property of Caricom governments. The United States did not seek any relationship with Caricom Member States in respect of this or any other security systems put in place to enhance the security of the region. This has been articulated and it is in the records of this honourable Senate.

Sen. Dr. Carson Charles raised issues about context, reciprocity; what we are doing is giving up to the United States; what do we need to get in return and the question about information on deportees, et cetera. That ought to be another debate. That has absolutely nothing to do with this particular piece of legislation before us as it relates to APIS. To treat to the fact that negotiating with the United States, economic security and other such areas is to give the impression that this Government is at the beck and call of the United States. This conveys the completely wrong impression.

Mr. President: Mr. Minister if you can wind up within the next three or four minutes?

Sen. The Hon. M. Joseph: No.

Mr. President: We will suspend the sitting for tea. We will resume at 5 o'clock.

4.30 p.m.: *Sitting suspended.*

5.00 p.m.: *Sitting resumed.*

Sen. The Hon. M. Joseph: Thank you very much, Mr. President. To continue where I left off before we went to tea, I was responding to some of the concerns raised by Sen. Dr. Jennifer Jones-Kernahan. She raised the question of the Caricom Intelligence Sharing Network (CISNet).

Let me just indicate that CISNet is a closed, secure communications platform for use by vetted Caricom security and intelligence personnel only. It is a mechanism by which the regional intelligence community can hold meetings and transmit documents online. It does not establish operating procedures nor collect information. The Government of Trinidad and Tobago owns the system, the elements of which have been deployed throughout the Caricom region on established terms and conditions.

In reply to matters raised by hon. Senators, I spoke to the fact that major criminal activity today is organized, transnational in nature and can only be tackled through international cooperation. Such cooperation takes place on a daily basis through the sharing of information and intelligence across borders between security and law enforcement personnel. It takes place on a need-to-know basis and in targeted fashion. Why then should our region not enhance its own capacity to share such information and intelligence in its own interest and in the secure manner necessary?

There should be no confusion between APIS and CISNet. The functioning of APIS does not include nor involve CISNet. The systems are mutually exclusive. APIS is not part of CISNet and there is no need to involve it in a discussion regarding APIS. I think that Sen. Linus Rogers alluded to that when he made his contribution.

The Caricom Automated Watch List Management System (CAWS) is integral to the operation of APIS. It is an amalgamation of watch list data already maintained by law enforcement, border security and customs agencies. It includes

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data from the UN terrorist watch list, which is an open-source publication. The APIS is scrubbed against the CAWS and Interpol databases to assist in detecting, not defining, persons of interest to law enforcement.

So the purpose of the watch list is to advise law enforcement border security personnel on what action might be taken when persons who are on those watch lists are detected at a border control point. Somebody asked the question: What happens? If my name shows up against a watch list, I can either be denied entry when I land and be sent back, as has been done; I can be detained by law enforcement; or I can be monitored in terms of my presence in that particular territory.

APIS does not itself track movement. The system is not set up to provide alerts on the movements of persons. It collects information that can be analyzed to determine the movement of persons of interest to law enforcement and border security personnel.

The Caricom Intelligence Management System is exactly what its name implies—a system for the internal management of information and intelligence collected and produced by the Regional Infusion Centre as part of its daily functions.

What is disheartening, Mr. President, is that once more in this debate persons are questioning the capacity of citizens in the region to step up to the plate and to be able to provide the necessary intelligence so that our communities can be provided with the means to at least enhance their safety.

When this Bill was debated the last time, the same issues were raised. Someone raised the question of sunset. We were not less than honest when we introduced this legislation the first time. It was not to have been sunset legislation. At the time, the whole Memorandum of Intent and all the concerns coming out of the visit of the then Secretary of Homeland Security was in the air, so that I, in an order, because of the timeliness of the need for the legislation, put it as sunset, but we had indicated that it was only Trinidad and Tobago and Grenada that had put it as such. To say that we were deceptive is not the case.

Mr. President, on the recommended amendments, Sen. Seetahal SC, in her contribution, made several suggestions with respect to amending this Bill. Specifically, at clause 3, I want the honourable Senate to note that we have given serious consideration to all her suggestions and would like to refer hon. Senators to the new list of amendments that was circulated.

The Bill as laid out under clause 3(1) states that:

“The master of every vessel destined for Trinidad and Tobago, prior to departure of the vessel from the last port of call before Trinidad and Tobago, shall provide to the Chief Immigration Officer the advance passenger information data detailed in the Schedule.”

The Senator noted that the word "provide" was used initially in the body of the clause, whereas in clause 3(2), which outlines the offence under the Act, the verb "transmit" is used in the context of a master who fails to transmit data. As such, as we had indicated in the list of amendments, we have deleted the word "provide" in clause 3(1) and substituted the word "transmit", so that the clause will now read:

The master of every vessel destined for Trinidad and Tobago, prior to departure of the vessel from the last port of call before Trinidad and Tobago, shall transmit to the Chief Immigration Officer the advance passenger information data detailed in the Schedule.

Sen. Seetahal SC also raised the issue of the inclusion of the term of six months imprisonment in the list of amendments at clause 3(2). We have taken note of her point and, in addressing this point, we ask the honourable Senate to note that in the list of new amendments, we have deleted the words "and six months imprisonment", so clause 3(2) now reads as follows:

A master who intentionally or recklessly—

- (a) fails to transmit the data required by subsection (1); or
- (b) transmits incomplete or false data,

is deemed to have committed an offence in Trinidad and Tobago and is liable on summary conviction to a fine of six hundred thousand dollars.

The deletion of the term of imprisonment would address the concern of Sen. Seetahal SC—I am advised, since I am no lawyer and do not pretend to be one by any stretch of the imagination. This honourable Senate is asked to note that the whole purport and intent of the Bill is not the conviction of the master, rather it is the imposing of a duty on the master to ensure that the API is transmitted in the manner prescribed. It is not our intention, with respect to the passage of this Bill, to wait in ambush for the master to fail to transmit either intentionally or recklessly the API and then seek to prosecute him for the offence. The thrust behind this legislation is the expeditious gathering of this advance passenger data for security purposes and the protection of our borders and the faster processing of passengers through our ports of entry.

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Due consideration was given to the entire matter of enforcing such a term of imprisonment and the difficulty of doing so, especially where the master of a vessel is an agent of not just a private company, but also a state-owned organization. It will therefore make sense, in the interest of diplomacy, that we do not appear as if we were on a witch-hunt for the masters of vessels. If such priority was sought in enforcing this legislation, there would be international ramifications and repercussions for our State.

My information is that the predecessor Act, 2006 worked well in terms of its operations. It never became necessary to prosecute anyone for an offence committed under the 2006 Act because strict compliance had been observed by the masters of the vessels in forwarding the advance passenger information data to the Chief Immigration Officer.

Additionally, I must add that the absence of a term of imprisonment within the legislation merely reflects the legislation that is currently in force throughout other Caricom countries as none of the other Caricom States has a term of imprisonment within their penalty clause. This further serves to bring some sort of harmony to the pieces of legislation throughout the region.

Sen. Dr. Nanan: When you spoke about the amendments, you said it was “summary conviction”. I do not think that is in the amendment. It says that it is a summary offence in Trinidad and Tobago and is liable to a penalty. What you said is “on summary conviction”. I do not know if that is—

Sen. The Hon. M. Joseph: I am sure that I gave an explanation that the legal people would understand; if not, I am sure that in the committee stage, the hon. Attorney General will help me in this regard.

To reiterate, Mr. President, the legislation will assist with the Caricom Single Market and Economy (CSME), as Sen. Ramkhelawan raised in his contribution, which would allow for the freedom of movement of both people and goods. To this end, we must ensure that we have a reliable and cohesive regional intelligence and security mechanism to guarantee that our borders are protected.

The APIS legislation will be an essential tool for the detection of the entry of high-risk persons prior to their arrival and will augur well for the efficient screening of passengers.

I beg to move.

Question put and agreed to.

Bill accordingly read a second time.

Bill committed to a committee of the whole Senate.

Senate in committee.

Clause 1.

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

Sen. Rahman: Mr. Chairman, I suggest that this is more so related to security than information. I put this to the other side.

Sen. Annisette-George: Mr. Chairman, we will stick with the word “information” because what is required is the passenger information.

Question put and agreed to.

Clause 1 ordered to stand part of the Bill.

Clause 2.

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

Sen. Mark: Mr. Chairman, the definition of “vessel”. Hon. Minister of National Security, how will this definition impact on the tourism sector in the context of Trinidad and Tobago? Are you aware that your counterparts in other tourist destination points in the region have sought to address this issue because of the impact it can have on the industry as a whole?

5.15 p.m.

Sen. Joseph: My understanding is that as late as the last meeting of the Heads of Government in the region, there were discussions as they related to the question of trade off between the likely impact of this and tourism. At the end of the day, the balance was more on the security side.

Sen. Rahman: My original concern, and it remains my concern, is that by the definition of “vessel”, we are actually holding yachties who come into Trinidad casually, to ransom, because as captains of the vessels, under the terms of this definition, they would all be liable to the fine that is imposed in the Bill. I strongly recommend that the Bill revert to the original concept of “commercial vessels” or “vessels” which is identified to exclude pleasure crafts that would be coming into territorial waters.

Sen. Joseph: Again, Mr. Chairman, with respect to those matters, extensive discussions were held at the Heads of State. Again, given the major challenge the region faces right now, with respect to the question of drugs and the fact that in many instances those little craft are the ones that are doing most of the

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transshipment, it was felt that, given the technology now, the information could be faxed or texted. Again, we are on the side of making sure that they do not exempt. Again, I want to be clear. There are some states that are still raising some issues. The majority of the Heads of State is moving towards paying more emphasis on the security nature of this.

Sen. Rahman: May I then suggest that in the waiver category, at the discretion of the Minister, you include pleasure craft, which you would know—There would be people who would be coming regularly.

Sen. Joseph: Again, when this came in the other place, the Minister was provided with the wide laxity of waivering. It is on the basis of the other side that we indicated that we should identify the circumstances under which the Minister can exercise that waiver. That is the reason why you see those two circumstances.

While I am on that, let me respond to the fact that somebody had raised the question about supposing a hospital ship or something like that is destined to come. They would have sufficient time to send, in advance, the information about their arrival so that they could be processed.

Sen. Dr. Charles: I want some information. I understand the point the Minister made. I want to understand that if a fishing vessel goes out to Trinidad and Tobago waters and returns, what happens? Is it in violation of that situation or not? If it is travelling and goes into Venezuelan waters and then returns to our waters, is that a violation?

Sen. Joseph: We do not see that as a violation.

Sen. Dr. Charles: That would not be seen as a violation?

Sen. Joseph: We are talking about advance passenger information.

Sen. Rahman: And crew.

Sen. Seetahal SC: I want to point out that, in relation to a lot of boats that come from Venezuela currently in the Godineau River, if they do escape from being convicted of drug trafficking, they could be caught under this legislation. Many of them, right now, are sent back as prohibited immigrants and often we have difficulty, we as the State, in bringing home the case for possession. A lot of drugs is involved in that route. This legislation could also be useful for that purpose.

Sen. Dr. Nanah: With respect to the Schedule—I am making reference to that because—[*Interruption*] We have not reached the Schedule?

Question put and agreed to.

Clause 2 ordered to stand part of the Bill.

Clause 3.

Question proposed, That clause 3 stand part of the Bill.

Mr. Chairman: We have some amendments.

Sen. Joseph: Mr. Chairman, I beg to move that clause 3 be amended as follows:

In subclause (1), delete the word “provide” and substitute the word “transmit”.

In subclause (2), delete the words “an offence in Trinidad and Tobago and is liable to a fine of six hundred thousand dollars” and substitute the following words:

“a summary offence in Trinidad and Tobago and is liable to a penalty of six hundred thousand dollars which shall be recoverable as a civil debt.”

In subclause (3), delete the full stop and insert thereafter the following words:

“, where the vessel is—

- (a) a military vessel; or.
- (b) on official state business.

Sen. Seetahal SC: Mr. Chairman, in relation to subclause (1), clearly I agree with that, because it is consistent with subclause (3)(ii)(a). In relation to the penalty section, however, I had made a contribution and the Minister said that his team took that into account, in relation to the first amendment. Now there are two problems, as I see it, with the proposed new amendment. One was repealed. In relation to the final amendment, the word “penalty” should really be “fine”. I know that the drafters probably took it from a section where there is “penalty” referred to in the Act. That is section 68. In that Act, the Summary Courts Act, “penalty” is generic, which includes all penalties, meaning imprisonment, fines and community service. If you are talking about a fine specifically, you should say: a fine of \$600,000. That is one thing.

Then you should have: which shall be recoverable as a civil debt. It ought not to be the word “recoverable”. In section 77(3) of the Summary Courts Act, where you have a civil debt when a fine cannot be imposed, the legislation says:

“...shall be enforceable as a civil debt.”

The word should be “enforceable” because it is not a question of recoverable. It is enforcing because it is a criminal offence.

Section 77(3) of the Summary Courts Act refers to when compensation is set and it is not paid. The compensation will be enforceable as a civil debt. In drafting terms, this is what you mean. If you need to look at it you can find it in line seven of section 77(3). That is in terms of the drafting of the proposed section.

Mr. Chairman, in terms of the substance of it, my view is that the Minister said the other countries that have this legislation did not provide for an alternative to imprisonment and that they just provided for a fine. But, in those jurisdictions, their statutes would say where no penalty is provided as an alternative to a fine, the penalty would be this. It does not matter if you do not say it. Similarly, in our legislation at section 68(1) it says specifically:

“Where, by any written law, the Court is empowered to impose a penalty for a summary offence, or where under this Act or any other written law a sum enforceable as a civil debt...it may, in the absence of expressed provision to the contrary...order a defendant who is convicted of such offence, in default of payment of the sum of money adjudged to be paid by the order, either forthwith or at the time specified in the order, as the case may be, to be imprisoned in accordance with the scale set forth...”

If your legislation says \$600,000, but nothing about imprisonment, under section 68(1) of the Summary Courts Act, you can say: in default, this is what the penalty would be. There is a scale which is stated at section 68(2), which is already set out.

Even if you say Minister, through you, Mr. Chairman, that there is nothing in the other countries’ legislation, I have actually looked at statute in 12 of those other Caricom countries, so I am familiar with it. In my view, it is either you stick to the original draft, which is here, insofar as is liable to a fine of \$600,000, which means that the scale at section 68 will prevail, or you go with the last draft.

In any event, the court will know that the intent of the Act is not to drag a master. You need to enforce laws. If you do not have that here, or as was before in your previous amendment, and you say it is enforceable as a civil debt, it only weakens the whole position. My view is to leave it as it was.

Sen. Annette-George: Mr. Chairman, in terms of the first point made by Sen. Seetahal SC, as far as the wording is concerned, I want to refer to section 35(1) of the same Summary Courts Act where they referred to:

“Notwithstanding any rule of law to the contrary—

- (b) where by this or any other written law a sum of money is expressed to be recoverable summarily as a civil debt,...

That is the language they used. This is the language we have used here.

Sen. Seetahal SC: The statement of enforceable is usually—when you talk about recoverable, you are talking about maintenance or such. That is what it is in a general term. When you are talking about a criminal offence, you usually say “shall be enforceable”. That is in the terms of section 77; the section I just read to you.

Sen. Annisette-George: We would recall that even maintenance in the Magistrates’ Courts is really criminal in nature; it is not civil.

Sen. Seetahal SC: It is not a criminal offence.

Sen. Annisette-George: We could argue that.

Sen. Seetahal SC: The fact is if you are dealing with a criminal offence, I think it is better to say enforceable, consonant with section 77(3).

Sen. Annisette-George: I would not make any issue over either the words “penalty” or “fine”. We could agree on “fine”. Actually, we wanted to propose that we put “enforceable”. We would want to include “summarily” there also. That is why we really used the word “recoverable”. In terms of the recovery process, it would be under the Summary Courts Act.

Sen. Seetahal SC: Once it is a summary offence, it must be under the Summary Courts Act. Everything that is under summary offences—if one looks at the long title to the Act, you will see that it affects and relates to summary offences. Nothing that is a summary offence can be tried or dealt with anywhere else.

Sen. Annisette-George: This is not really the offence. This is the fine. We are sticking strictly to the language of the Summary Courts Act, when we put recoverable summarily.

Sen. Seetahal SC: I understand. You mean you do not want them to go to the High Court because the penalty is over \$20,000. I understand what you are saying. My point is, therefore, you would delete this whole thing about a civil debt and leave it as is in the original draft and then the magistrate—if it is that the magistrate sets it and says whatever: \$20,000, 20 days, 30 days or two months, as we have said, usually everybody pays up. So why make a big deal out of it? This weakens the provision when you bring it to the level of a civil debt, in my view.

Sen. Annisette-George: Mr. Chairman, the only thing I wanted to make a point on is that the way I understand section 68 and the way I originally understood the contribution made by Sen. Seetahal SC, is that, in terms of putting

some sort of penalty, there was only a monetary penalty and it did not give the court the option of saying pay the fine or serve. Definitely, there is nothing here about serving. Therefore, all a magistrate could do is impose the fine.

5.30 p.m.

Section 68 talks about where you have failed to pay. That is how I understand section 68. So, you will only spend the six weeks when it is time to enforce, if you have failed to pay.

Sen. Seetahal SC: Could I just say that since the last occasion I spoke here, I have always been of the view that you should not just say “fine”, but it should be “or” and which is how it is ordinarily. I looked at section 68(1), because I was asked by some other persons to interpret it. I looked at the section dealing with civil debt. If one looks at section 68(1) of the Interpretation Act, and if one reads section 68 of this Act with section 68 of that Act, it would seem that even though there is no imprisonment stated—I have also checked in some of the other jurisdictions—the fact that it is not stated gives the magistrate this generic kind of power. That is one point.

Alternatively, the recommendation that the Government brought last week, I was making the point and I still do make it, and that is when you are talking about \$600,000 and alternative of four months or six months or whatever, it is so inconsistent with the norm that it really is out of sync. What we are saying now is that you have gone more out of sync, because you are saying that it is recoverable as a civil debt which is six weeks. As opposed to going more out of sync, my suggestion is to come back to the original one which, at least, gives the magistrate some kind of discretion. That is the point. I never suggested that you go more out of sync.

Sen. Annisette-George: What we have agreed to is that we would revert to the original wording which is “liable to a fine of six hundred thousand dollars.”

Mr. Chairman: What about subclause (3)? In subclause (3), delete the “.” and insert thereafter the following words:

Sen. Annisette-George: It should read: “is deemed to have committed a summary offence in Trinidad and Tobago and is liable to a fine of six hundred thousand dollars on summary conviction”.

Mr. Chairman: So, it is really just the insertion of the word “summary”?

Sen. Annisette-George: Yes, we are going to put in the word “summary”. So, it would read “is deemed to have committed a summary offence in Trinidad and Tobago” and put “a summary”.

Mr. Chairman: In clause 3(2), we are going to delete the word “and” and insert the words “a summary” and in clause 3(3), delete the “.” and insert thereafter the following words “where the vessel is a military vessel or on official state business”.

Sen. Mark: I just want to make one point, if I may?

Mr. Chairman: Go ahead.

Sen. Mark: I just wanted to ask the Minister of National Security whether the population that would be affected by this far-reaching measure—people who use pirogues and who are in the yachting business—what kind of communication have you had with that sector, so that this thing would not come as a surprise to these people. Have people been communicated with in terms of this matter?

Sen. Joseph: Discussions have been held, and once this legislation is passed a proper public education programme would be put in place to make sure that they are aware that this legislation is now being implemented.

Sen. Mark: Does it mean that the legislation will not be promulgated until you embark upon this massive education drive? You see, it is one thing to pass legislation, but if you are passing legislation and people are not aware of it, and it is proclaimed and then you are going to educate people, what sense is it going to make? That is all I am asking.

Sen. Joseph: I have noted the concerns raised by Sen. Mark, and we are going to put the appropriate measures in place to ensure that there is sufficient understanding among people who are affected.

Question put and agreed to.

Clause 3, as amended, ordered to stand part of the Bill.

Schedule.

Question proposed, That the Schedule stand part of the Bill.

Sen. Dr. Nanan: In my contribution, I made the point about the scheduled arrival time with respect to the yachties, and the possibility of them not having a proper arrival time, based on climatic conditions. Also, with respect to the question asked by Sen. Dr. Charles with respect to if a Trinidadian ship goes into Venezuelan waters, would that not be a last foreign place? What is a last foreign place?

Mr. Chairman: Like a port.

Sen. Dr. Nanan: It has port here. Then it should not be a foreign place if it is the port, because you have port here already.

Mr. Chairman: No, unless you go to another port.

Sen. Seetahal SC: The question, as I understood it, is if you do not land on a port as it falls under the legislation—I was just saying to Sen. Dr. Charles that it must be on a port. So, if you just drift along on the high seas, and you go to Barbados and steal a fish and so forth, you still do not have to declare anything. So, it does not apply.

Sen. Annisette-George: Mr. Chairman, the legislation specifically speaks to a place or a port, and once you are in the waters you are not in a place or on a port.

Sen. Dr. Nanan: We have a problem there.

Sen. Annisette-George: If you are in territorial waters in Trinidad and Tobago, then this does not apply.

Sen. Rahman: If you arrive in Barbados territorial waters and you come back, then you have been in a place.

Sen. Annisette-George: You might be in the territorial waters of Barbados, but in the legislation here, place and port are referred to as a destination.

Sen. Seetahal SC: Clause 3(1) says:

“...prior to departure of the vessel from the last port of call...”

So, you must depart from the last port of call.

Sen. Annisette-George: The Senator was really speaking toward the Schedule which uses the word "place or port". What is envisaged here is that you may have left a place, and it is not really a designated port.

Sen. Seetahal SC: It is a place of call, so it has to be equivalent to a port. It would just be in lieu of a port, but the primary legislation says “port”, so you would have to look at that in relation to clause 3(1). So, it cannot be a place in a vacuum.

Question put and agreed to.

Schedule ordered to stand part of the Bill.

Question put and agreed to, That the Bill, as amended, be reported to the Senate.

Senate resumed.

Bill reported, with amendment, read the third time and passed.

Adjournment

Tuesday, May 13, 2008

ADJOURNMENT

The Minister of Energy and Energy Industries (Sen. The Hon. Conrad Enill): Mr. President, I beg to move that this Senate do now adjourn to Tuesday, May 20, 2008. On that day we will debate Bill No. 2, which is an Act to provide for the application on Trinidad and Tobago of the Hague Convention on the Civil Aspects of International Child Abduction and to provide for matters connected with or related thereto and we will do, whatever time it is, Motion No. 1 which is on the agenda.

Mr. President: Hon. Senators, I have given leave for one matter to be raised on the adjournment by Sen. Mark.

**RBTT Financial Holdings
(Sale of Shares)**

Sen. Wade Mark: Mr. President, it was on April 01, 2005 that RBTT Financial Holdings sold nine million Guardian Holdings shares at \$43.99 in a put through that was not disclosed under the Securities and Exchange Commission regulations. This April 01, 2005 transaction was worth nearly \$400 million.

Mr. President, under the securities and exchange law, institutions are required—particularly those listed on the Stock Exchange—under law to disclose immediately when they conduct transactions that are material. Material transactions are considered to be those that might have an impact on a company’s share price.

5.45 p.m.

On the day of the trade, April 01, 2005, RBTT shares jumped from \$39 to \$42.93. Now, there was no official notification at the time of this put through, and in an Anthony Wilson article dated Thursday, April 14, 2005, headed: “SEC probes Lok Jack’s GHJ deal”—and I want to quote this article for the record:

“Businessman Arthur Lok Jack and the Ahamad family have been identified as the players behind the purchase of nine million GHJ shares on April 01.

Lok Jack is the Chairman of GHJ whose shares he acquired. He is also a director of RBTT Financial Holdings, the bank which sold the GHJ shares.

He would also appear to be among Prime Minister Manning’s favourite businessmen as he was recently appointed to head a task-force looking into BWIA’s future and he is also the chairman of the Vision 2020 commission.

Although the transaction took place on April 01, RBTT did not officially confirm that it had disposed of 25 per cent of its 38 million share stake in GHJ until April 12, 11 days later.

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Mr. President, the article goes on:

“Securities regulations require listed companies to disclose price sensitive information in a ‘timely and appropriate’ manner.

The *Business Guardian* understands that the local Securities and Exchange Commission has opened a file on the April 01 transaction.

In an interview with the *Business Guardian*, the SEC Chairman Osborne Nurse said:

‘We are examining whether...there are any issues related to disclosure’ in the April 01 transaction.”

Mr. President, it is stated that the transaction was a put through which by definition is a stock market trade conducted by two related parties. The question that arises, therefore, is whether there was a breach of the Securities and Exchange Commission regulations by RBTT at the time. From the information that I have been able to extract, it appears that the Securities and Exchange Commission chairman opened a file because it was felt that there was some breach in this transaction. Particularly, when you take into account that whenever these actives do take place they need to be disclosed as a matter of course to the Securities and Exchange Commission. It was not until 12 days after this nine million throughput or put through that the Securities and Exchange Commission was alerted to this reality, and the country as a whole. Therefore, it meant that any person on the market who might have been interested in this transaction in terms of purchase of shares were denied their rights under the Securities and Exchange Commission regulations as it relates to early disclosure.

It is my understanding that a file was opened and very strong recommendations were made to the Prime Minister, who was then the Minister of Finance, as it relates to criminal action that could have been taken against the parties that were involved. However, the public is none the wiser because all we were told is that the Securities and Exchange Commission was probing this particular strange transaction. The matter went before the Minister of Finance, the Prime Minister, and up to this time as I raise this issue the country and the citizenry do not know whether the Securities and Exchange Commission regulations were indeed breached. If they were breached and a criminal act was committed by the RBTT and those players that I have just mentioned, why did the Government of Trinidad and Tobago not pursue the action against the offending parties?

I am not saying that these parties involved may have offended the Securities and Exchange Commission regulations, but what I and what we on this side are seeking clarification on is whether a probe was indeed conducted into this

transaction, and if a probe was conducted, could the hon. Minister in the Ministry of Finance share with the Parliament the outcome of this probe. Were criminal actions proposed by the SEC against the individuals who were involved in this transaction? If recommendations to that effect were made by the SEC, why did the Government of Trinidad and Tobago not pursue those criminal measures against the individuals involved?

As I said, I am just seeking clarification on behalf of the population of this country, because it cannot be that there is one law for one sector or section of the community and there is another law for another section or sector of the community. If the SEC regulations were breached by the Royal Bank of Trinidad and Tobago because of this transaction, it meant that action ought to be taken.

Mr. President, what happened in this particular instant, was a situation in which a company called Tenetic Limited which held 32.8 million GHL shares and which was involved in this particular transaction along with a company called Mc Kennon—it is important that this issue involving these players be made clear or be cleared up, because I do not believe it is in the interest of the population for such a transaction to go unnoticed or unpunished if the laws were violated. Because, as a result of this transaction as I indicated earlier, the share, the value of one share of RBTT was valued before this put through at \$39 and when this put through took place it went up to \$43.99, realizing in excess of a capital gain of some \$200 million. Because the value at that time was about \$400 million and RBTT, according to Mr. Wilson, took a capital gain of \$200 million and at that time it appeared that Royal Bank of Trinidad and Tobago made a healthy profit at the end of the particular financial year.

This is why these things are very important for us to get clarification on and I am calling on the Minister in the Ministry of Finance to clear the air on this transaction and to let the country know what really took place. And if a probe did take place, could the hon. Minister share with this honourable Parliament the outcome of this probe, the recommendations that were made and why, if actions were suggested by the SEC, did the Government not pursue actions against the offending parties.

So, I seek clarification on this very important and outstanding matter.

The Minister in the Ministry of Finance (Sen. The Hon. Mariano Browne): Thank you, Mr. President. The Trinidad and Tobago Securities and Exchange Commission was established by the Securities Industry Act as an

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autonomous agency to provide for the regulation of the security market in Trinidad and Tobago and for connected matters. Its main function as outlined in section 5 of the Securities Industry Act, 1995 are to:

- a. advise the Minister of Finance on all matters relating to the securities industry;
- b. maintain surveillance over the securities market and ensure orderly, fair and equitable dealings in securities;
- c. register, authorize or regulate in accordance with the Act, self-regulatory organisations, securities companies, brokers, dealers, traders, underwriters, issuers and investment advisers, and control and supervise their activities with a view to maintaining proper standards of conduct and professionalism in the securities business;
- d. protect the integrity of the securities market against any abuses arising from the practice of insider trading;
- e. create and promote such conditions in the securities market as may seem to it necessary, advisable or appropriate to ensure the orderly growth and development of the capital market.”

The powers that are given to the Trinidad and Tobago Securities and Exchange Commission are given by the Act and it is given to the commissioners in the exercise of their duties. As correctly pointed out, the transaction alluded to and identified here is the sale of nine million of Guardian Holding shares sold by RBTT in two tranches of 4.5 million shares each. They were acquired by parties identified by the hon. Senator. I want to point out that the Minister or the Ministry of Finance is not a regulator under the Securities Industry Act; it is not a member of the commission and the commission is independent and carries on its own investigations.

Further, it has its dedicated powers which are clearly established in the Act, under sections 6 and 138. In terms of the stock exchange and its movement on the index and the index of movement, the index grew in 2003 by 39.4 per cent; in 2000 it grew by 41.46 per cent; it declined in 2005, 2006 and 2007. So the year in which that transaction is noted there was a decline in the market.

I want to make the point that the people empowered to carry out these investigations are the Stock Exchange or the Securities and Exchange Commission (SEC). The current status of the matter to my best advice—and I know of no report that has been delivered to the Minister of Finance—is that it is

under review by the Securities and Exchange Commission and when this review and related investigations are completed, any breaches of the law will be disclosed. That is the information that I have at my disposal.

Thank you, Mr. President. [*Desk thumping*]

Question put and agreed to.

Senate adjourned accordingly.

Adjourned at 6.01 p.m.

WRITTEN ANSWER TO QUESTION

The following question was asked by Sen. Michael Annisette:

Employee Injury and Disability Compensation (Delay of)

58. Sen. Michael Annisette asked the hon. Minister of Labour and Small and Micro Enterprise Development:

Could the Minister state what is the reason for the delay in bringing legislation for the Employee Injury and Disability Compensation before Parliament?

The following reply was circulated to Members of the Senate:

The Minister of Labour and Small and Micro Enterprise Development (Hon. Rennie Dumas): The Government of Trinidad and Tobago wishes to inform this honourable House that there has been no delay in bringing legislation related to Employee Injury and Disability Compensation before Parliament.

Currently the labour legislation and labour relations practices in Trinidad and Tobago constitute an enabling and facilitative framework for the provision of Employee Injury and Disability benefits for workers. This framework provides:

- (i) provisions under the Industrial Relations Act for negotiations between representatives of workers and employers through the collective bargaining process. At the conclusion of such negotiations the collective agreements signed by the parties are registrable and enforceable in the Industrial Court; and
- (ii) for individual rights of employees under the employment contracts wherein they are not restricted in the terms that can be included in their contract of/for employment and they can negotiate the best terms possible.

Written Answer to Question

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In addition to the foregoing, there are certain minimum guaranteed benefits currently under specific pieces of legislation namely:

- a. Workmen's Compensation Act, Chap. 88:05
- b. National Insurance Act, Chap. 32:01
- c. Occupational Safety and Health Act, No. 1 of 2004

Moreover, where there are other categories of employees who are not deemed to be workers under the Industrial Relations Act such as the police and teachers, they have entitlements to benefits under their specific pieces of legislation.

One of the pieces of legislation mentioned before is the Workmen's Compensation Act, Chap. 88:05. It establishes a private insurance system whereby employers are insured by private insurance companies against claims for employee compensation. This legislation has been reviewed in order to modernize it. Key changes have been examined in which the Government intends to address issues such as:

- Extending the coverage of employees;
- Extending of the list of diseases covered; and
- Providing funding for rehabilitation and medical and social care.

The Ministry had looked at the implementation of a fund for the payment of assessed benefits, however it was realized that this would have been onerous and bureaucratic for all parties. The Ministry therefore developed a Policy Proposal and a Draft Employee Compensation Bill encapsulating new benefits, addressing the weaknesses of the present system and retaining its strengths.

To supplement this, the National Insurance Act established the National Insurance System (NIS) and provides income for the working population of Trinidad and Tobago in the event of loss of earnings due to sickness, maternity, invalidity, employment related injury, retirement and survivors benefits. The system is managed by the National Insurance Board of Trinidad and Tobago (NIBTT) and also provides for various grants such as a funeral grant and a retirement grant. This legislation was recently reviewed and new regulations covering better benefits have been proposed.

Additionally, the Occupational Safety and Health Act also provides that where a person dies or is critically injured, the employer, occupier or owner would be subject to a fine which may be applied to the victim or his estate in the amount of one hundred thousand dollars (\$100,000.00) or an amount equivalent to three years salary, whichever is greater.

Despite this extensive framework, the Government has agreed, that the Ministry should, in keeping with Government's Vision 2020 which provides for a nurturing, a caring society, enter into dialogue with relevant stakeholders to review the current legislation and the Draft Bill. This dialogue would be within the context of the new vision and ensures that Trinidad and Tobago maintains a productive workforce with provisions made to return them to work within the shortest possible time in a healthy work environment. The Government notes that this matter has engaged the attention of several administrations and unequivocally commits to bring closure to this matter at the earliest possible time.

This issue has been placed high on the Legislative Agenda of the Ministry and it is the intention of the Ministry, to continue the consultative process which will determine the direction the Government takes on this matter. Accordingly, any statement in respect of timelines for bringing the draft Bill to the implementation stage, will be premature at this stage, as the detailed work required to ensure that this system is operational and self-sustaining will need to benefit from the aforementioned consultative process. That process itself will be dependent on the extent of our stakeholders' involvement. The results of the processes outlined above will be brought to Parliament once completed and approved by the Government.