SENATE

Tuesday, March 02, 2010

The Senate met at 1.30 p.m.

PRAYERS

[MR. PRESIDENT *in the Chair*]

LEAVE OF ABSENCE

Mr. President: Hon. Senators, I have granted leave of absence to Sen. The Hon. Dr. Emily Gaynor Dick-Forde, who is out of the country.

REVOCATION OF APPOINTMENTS

Mr. President: Hon. Senators, I have received the following correspondence from His Excellency the President, Prof. George Maxwell Richards, T.C., C.M.T., Ph.D.:

"THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

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

/s/ G. Richards
President.

TO: SENATOR DR. ADESH NANAN

WHEREAS by the provisions of paragraph (e) of subsection (2) of section 43 of the Constitution of the Republic of Trinidad and Tobago, the President acting in accordance with the advice of the Leader of the Opposition, is empowered to declare the seat of a Senator to be vacant:

NOW, THEREFORE, I, GEORGE MAXWELL RICHARDS, President as aforesaid, acting in accordance with the advice of the Leader of the Opposition, in exercise of the power vested in me by the said paragraph (e) of subsection (2) of section 43 of the Constitution of the Republic of Trinidad and Tobago, do hereby declare the seat of you, ADESH NANAN, to be vacant.

Given under my Hand and the Seal of the President of the Republic of Trinidad and Tobago at the Office of the President, St. Ann's, this 1st day of March, 2010."

"THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

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

/s/ G. Richards
President.

TO: SENATOR DR. JENNIFER JONES KERNAHAN

WHEREAS by the provisions of paragraph (e) of subsection (2) of section 43 of the Constitution of the Republic of Trinidad and Tobago, the President acting in accordance with the advice of the Leader of the Opposition, is empowered to declare the seat of a Senator to be vacant:

NOW, THEREFORE, I, GEORGE MAXWELL RICHARDS, President as aforesaid, acting in accordance with the advice of the Leader of the Opposition, in exercise of the power vested in me by the said paragraph (e) of subsection (2) of section 43 of the Constitution of the Republic of Trinidad and Tobago, do hereby declare the seat of you, JENNIFER JONES KERNAHAN, to be vacant.

Given under my Hand and the Seal of the President of the Republic of Trinidad and Tobago at the Office of the President, St. Ann's, this 1st day of March, 2010."

"THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

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

/s/ G. Richards
President.

TO: SENATOR MOHAMMED F. RAHMAN

WHEREAS by the provisions of paragraph (e) of subsection (2) of section 43 of the Constitution of the Republic of Trinidad and Tobago, the President acting in accordance with the advice of the Leader of the Opposition, is empowered to declare the seat of a Senator to be vacant:

NOW, THEREFORE, I, GEORGE MAXWELL RICHARDS, President as aforesaid, acting in accordance with the advice of the Leader of the Opposition, in exercise of the power vested in me by the said paragraph (e) of subsection (2) of section 43 of the Constitution of the Republic of Trinidad and Tobago, do hereby declare the seat of you, MOHAMMED F. RAHMAN, to be vacant.

Given under my Hand and the Seal of the President of the Republic of Trinidad and Tobago at the Office of the President, St. Ann's, this 1st day of March, 2010."

"THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

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

/s/ G. Richards
President.

TO: SENATOR DR. SHARON-ANN GOPAUL-MCNICOL

WHEREAS by the provisions of paragraph (e) of subsection (2) of section 43 of the Constitution of the Republic of Trinidad and Tobago, the President acting in accordance with the advice of the Leader of the Opposition, is empowered to declare the seat of a Senator to be vacant:

NOW, THEREFORE, I, GEORGE MAXWELL RICHARDS, President as aforesaid, acting in accordance with the advice of the Leader of the Opposition, in exercise of the power vested in me by the said paragraph (e) of subsection (2) of section 43 of the Constitution of the Republic of Trinidad and Tobago, do hereby declare the seat of you, SHARON-ANN GOPAUL-MCNICOL, to be vacant.

Given under my Hand and the Seal of the President of the Republic of Trinidad and Tobago at the Office of the President, St. Ann's, this 1st day of March, 2010."

SENATORS' APPOINTMENT

Mr. President: Hon. Senators, I have received the following correspondence from His Excellency the President, Prof. George Maxwell Richards, T.C., C.M.T., Ph.D.:

"THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

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

/s/ G. Richards
President.

TO: MR. FOSTER CUMMINGS

WHEREAS Senator Dr. Emily Gaynor Dick-Forde is incapable of performing her duties as a Senator by reason of her absence from Trinidad and Tobago:

NOW, THEREFORE, I, GEORGE MAXWELL RICHARDS, President as aforesaid, acting in accordance with the advice of the Prime Minister, in exercise of the power vested in me by section 44 of the Constitution of the Republic of Trinidad and Tobago, do hereby appoint you, FOSTER CUMMINGS, to be temporarily a member of the Senate, with effect from 2nd March, 2010 and continuing during the absence from Trinidad and Tobago of the said Senator Dr. Emily Gaynor Dick-Forde.

Given under my Hand and the Seal of the President of the Republic of Trinidad and Tobago at the Office of the President, St. Ann's, this 26th day of February, 2010."

"THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

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

/s/ G. Richards
President.

TO: DR. SURUJRATTAN RAMBACHAN

In exercise of the power vested in me by paragraph (b) of subsection (2) of section 40 of the Constitution of the Republic of Trinidad and Tobago, I, GEORGE MAXWELL RICHARDS, President as aforesaid, acting in accordance with the advice of the Leader of the Opposition, do hereby appoint you, SURUJRATTAN RAMBACHAN, a Senator.

Given under my Hand and the Seal of the President of the Republic of Trinidad and Tobago at the Office of the President, St. Ann's, this 1st day of March, 2010."

"THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

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

/s/ G. Richards
President.

TO: MS. LYNDIRA OUDIT

In exercise of the power vested in me by paragraph (b) of subsection (2) of section 40 of the Constitution of the Republic of Trinidad and Tobago, I, GEORGE MAXWELL RICHARDS, President as aforesaid, acting in accordance with the advice of the Leader of the Opposition, do hereby appoint you, LYNDIRA OUDIT, a Senator.

Given under my Hand and the Seal of the President of the Republic of Trinidad and Tobago at the Office of the President, St. Ann's, this 1st day of March, 2010."

"THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

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

/s/ G. Richards
President.

TO: MR. MERVYN ASSAM

In exercise of the power vested in me by paragraph (b) of subsection (2) of section 40 of the Constitution of the Republic of Trinidad and Tobago, I, GEORGE MAXWELL RICHARDS, President as aforesaid, acting in accordance with the advice of the Leader of the Opposition, do hereby appoint you, MERVYN ASSAM, a Senator.

Given under my Hand and the Seal of the President of the Republic of Trinidad and Tobago at the Office of the President, St. Ann's, this 1st day of March, 2010."

"THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

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

/s/ G. Richards
President.

TO: MS. VERNA ST. ROSE GREAVES

In exercise of the power vested in me by paragraph (b) of subsection (2) of section 40 of the Constitution of the Republic of Trinidad and Tobago, I, GEORGE MAXWELL RICHARDS, President as aforesaid, acting in accordance with the advice of the Leader of the Opposition, do hereby appoint you, VERNA ST. ROSE GREAVES, a Senator.

Given under my Hand and the Seal of the President of the Republic of Trinidad and Tobago at the Office of the President, St. Ann's, this 1st day of March, 2010."

OATH OF ALLEGIANCE

The following Senators took and subscribed the Oath of Allegiance as required by law:

Foster Cummings, Dr. Surujrattan Rambachan, Lyndira Oudit, Mervyn Assam, Verna St. Rose Greaves.

SENATORS' REVOCATION AND APPOINTMENT

Mr. President: Hon. Senators, I would like formally to welcome the new Senators that we have and to say that I look forward to hearing your contributions. I will also like to say, on a personal note, that I am very pleased to see Sen. Mark back here. [*Desk thumping*]

His experience goes a long way and I am glad that it has been recognized. We recognize your great experience and I have benefited greatly from your being here. I thank you very much and I am glad to see you back.

As to the outgoing Senators, I formally record my appreciation and thanks to them for their many hours of hard work. I think we can all say they were faithful to the oath they took; they worked hard; they did the best they could under the circumstances; they were loyal to their party and their country and to the people as a whole and we need to thank them and to formally recognize them for that.

MOTOR VEHICLES AND ROAD TRAFFIC (MISCELLANEOUS PROVISIONS) BILL

Bill to amend various Acts, namely the Queen's Park Act, Chap. 41:04, the Highways Act, Chap. 48:01, the Motor Vehicles and Road Traffic Act, Chap. 48:50, the Motor Vehicles and Road Traffic (Enforcement and Administration) Act, Chap. 48:52 and the Maxi-Taxi Act, Chap. 48:53 to increase the pecuniary penalties for motor vehicle offences; to provide for the issue of tickets for certain motor vehicle offences; to regularize and increase the period for the renewal of driving permits and to provide for related matters, brought from the House of Representatives [*The Minister of Works and Transport*]; read the first time.

PAPERS LAID

1. Administrative report of the Ministry of Finance for the period October 01, 2007 to September 30, 2008. [*The Minister of Trade and Industry and Minister in the Ministry of Finance* (*Sen. The Hon. Mariano Browne*)]
2. Annual administrative report of the National Enterprises Limited for the year ended December 31, 2005. [*Sen. The Hon. M. Browne*]
3. Annual administrative report of the National Enterprises Limited for the year ended December 31, 2006. [*Sen. The Hon. M. Browne*]

4. Annual administrative report of the National Enterprises Limited for the year ended December 31, 2007. [*Sen. The Hon. M. Browne*]

5. Annual administrative report of the National Enterprises Limited for the year ended December 31, 2008. [*Sen. The Hon. M. Browne*]

6. Annual administrative report of the National Enterprises Limited for the year ended December 31, 2009. [*Sen. The Hon. M. Browne*]

7. Annual administrative report of the Telecommunications Authority of Trinidad and Tobago for the period October 01, 2004 to September 30, 2005. [*The Minister of Energy and Energy Industries (Sen. The Hon. Conrad Enill)*]

8. Annual administrative report of the Telecommunications Authority of Trinidad and Tobago for the period October 01, 2005 to September 30, 2006. [*Sen. The Hon. C. Enill*]

9. Annual administrative report of the Telecommunications Authority of Trinidad and Tobago for the period October 01, 2006 to September 30, 2007. [*Sen. The Hon. C. Enill*]

10. Annual administrative report of the Telecommunications Authority of Trinidad and Tobago for the period October 01, 2007 to September 30, 2008. [*Sen. The Hon. C. Enill*]

11. Annual administrative report of the National Maintenance Training and Security Company Limited (MTS) for the year ended December 31, 2008. [*Sen. The Hon. C. Enill*]

12. Annual administrative report of the Port Authority of Trinidad and Tobago for the fiscal year 2007/2008. [*Sen. The Hon. C. Enill*]

13. Annual administrative report of the National Helicopter Services Limited for the fiscal year 2007/2008. [*Sen. The Hon. C. Enill*]

14. Annual administrative report of Caribbean Airlines for the year ended December 31, 2007. [*Sen. The Hon. C. Enill*]

15. Annual administrative report of Caribbean Airlines for the year ended December 31, 2008. [*Sen. The Hon. C. Enill*]

16. Executive report of the Pilotage Authority for the fiscal year 2007/2008. [*Sen. The Hon. C. Enill*]

17. Annual administrative report of the Trinidad and Tobago Transport Board for the fiscal year 2007/2008. [*Sen. The Hon. C. Enill*]

18. Annual administrative report of the Airports Authority of Trinidad and Tobago for the fiscal year 2007/2008. [*Sen. The Hon. C. Enill*]

19. Administrative report of the Ministry of the Attorney General for the fiscal year 2007/2008. [*The Attorney General* (*Sen. The Hon. John Jeremie*)]

1.45 p.m.

ORAL ANSWERS TO QUESTIONS

Landate Matter (Findings of)

1. Sen. Michael Annisette asked the hon. Minister of Health:

Could the Minister inform this Senate of the findings of the Ministry's enquiry into the Landate matter?

The Minister of Health (Sen. The Hon. Jerry Narace): Mr. President, that question is in its final stages of preparation. I would say that within two weeks we would definitely be able to answer it.

Question, by leave, deferred.

Landate (Commission of Enquiry)

2. Sen. Michael Annisette asked the hon. Attorney General:

Could the Attorney General indicate to this Senate what action the Government intends to take with respect to:

(i) the findings of the Commission of Enquiry into the Scarborough Hospital; and

(ii) its investigation into the matter which included Landate?

The Attorney General (Sen. The Hon. John Jeremie SC): Mr. President, the answer to that question is not in the final stages of preparation. In the circumstances, I would ask for a little more than my colleague; three weeks in the circumstances.

Question, by leave, deferred.

Revenues for Oil and Natural Gas
(Details of)

22. Sen. Prof. Ramesh Deosaran on behalf of Sen. Basharat Ali asked the hon. Minister of Finance:

Could the Minister advise the Senate on the following:

(a) what was the estimated production and petroleum revenues for oil and natural gas for the quarter October to December, 2009;

(b) with respect to (a), what was the actual production and petroleum revenues collected for that period;

(c) with reference to (b) whether the actual revenues exceed the estimates for that period by more than ten per cent; and

(d) whether the excess revenue has been or will be transferred to the Heritage and Stabilisation Fund (HSF)?

The Minister of Trade and Industry and Minister in the Ministry of Finance (Sen. The Hon. Mariano Browne): Mr. President, I had indicated that I would be in a position to answer that question today. Regretfully, I am not able to do so, but I would be in a position to answer it next week. Thank you.

Question, by leave, deferred.

Brian Lara Tarouba Sporting Complex
(Details of)

33. Sen. Wade Mark asked the hon. Minister of Sport and Youth Affairs:

Could the Minister indicate to the Senate:

(a) the total expenditure to date on the Brian Lara Tarouba Sporting Complex;

(b) the projected date of completion of the complex; and

(c) the estimated total expenditure anticipated for this project?

The Minister of Energy and Energy Industries (Sen. The Hon. Conrad Enill): Mr. President, question No. 33 is not now available. It in fact has not been received and, therefore, I will undertake to enquire on this matter and I expect that within two weeks, we should be able to respond positively.

Question, by leave, deferred.

Airships Purchased by the Ministry of National Security (Details of)

34. Sen. Wade Mark asked the hon. Minister of National Security:

Could the Minister inform the Senate what is the cost of maintenance of the airships purchased by his Ministry from the date of purchase up to the end of 2009?

The Minister of National Security (Sen. The Hon. Martin Joseph): In response to question No. 34, the Government of Trinidad and Tobago purchased two airships between December 2004 and present. The first airship, the Aeros 40 b, was retained for six months, during which repairs and routine maintenance were performed on the aircraft. The cost of these repairs and maintenance, which were covered by the maintenance contract, included in the purchase agreement amounted to TT $7,056,050.

With respect to the second airship purchased, the Sky Ship 600, the total cost of maintenance from the date of acquisition June 2006 to December 2009, was $19,714,314. Hon. Senators should note that the maintenance undertaken on the airship is consistent with the requirements of the Federal Aviation Authority Federal Air Regulation Part 43, which stipulates stringent maintenance requirements to include preventative maintenance schedule; pre-post flight requirement; 50-hour inspection; 100-hour inspection; 400-hour inspection; six months inspection and annual inspection.

Thank you.

Sen. Prof. Deosaran: Could the Minister tell the Senate if with those costs, he is satisfied with the services provided by these air ships?

Sen. The Hon. M. Joseph: That is another question.

Mr. President: Senator, that calls for an opinion and that is outside the Standing Orders.

Local Government Reform Exercise (Details of)

36. Sen. Wade Mark asked the hon. Minister of Local Government:

Could the Minister advise this Senate of the current status of the Government's local government reform exercise?

The Minister of Local Government (Sen. The Hon. Hazel Manning): Mr. President, the answer for this question is in its final stage and I am sure by next week we will have a response.

Question, by leave, deferred.

EVIDENCE (AMDT.) BILL

[Second Day]

Order read for resuming adjourned debate on question [February 09, 2010]:

That the Bill be now read a second time.

Question again proposed.

Mr. President: The following is a list of those who spoke: Sen. John Jeremie SC, who moved the Motion; Sen. Wade Mark; Sen. Dana Seetahal SC; Sen. Dr. Adesh Nanan; Sen. Prof. Ramesh Deosaran; Sen. Lyndira Oudit; Sen. Ramkhelawan; Sen. Dr. Gopaul-McNicol; Sen. Gronlund-Nunez; Sen. Dr. Kernahan; and Sen. The Hon. John Jeremie SC was in his winding up and he had spoken for eight minutes and has 37 minutes of normal time left.

Sen. The Hon. J. Jeremie SC: Mr. President, when last we met over a month ago, I think—[*Interruption*]

Hon. Senators: Two weeks.

Sen. The Hon. J. Jeremie SC: Two weeks? It seems like such a long time ago. Things were so different then. Two weeks ago, when I moved the second reading of this Bill, I was grateful to have the support of all on the Independent Bench who spoke. In particular, I wish to thank Sen. Prof. Deosaran, Sen. Seetahal SC and Sen. Ramkhelawan who said, in uncharacteristic fashion, some very warm things about the Government, not about me, and about the alacrity with which we had moved to amend this legislation, which we had last looked at in December 2009.

Colleagues would remember, when we brought this Bill, the Bill as it was laid, spoke to the doctrine of recent complaint and it had limited ambitions. It sought only to revive the doctrine of recent compliant. In doing so, at the same time, it sought to mitigate the deleterious effects of that doctrine at common law and to advance the probative use of the doctrine, which could be had in appropriate cases, with a caution of the judge. That was the form of the legislation, which was laid in the House. By the time I came to move the second reading of the Bill, the Government had inserted a host of provisions to treat with

the greater and better use of audiovisual technology, in relation to the conduct of trials generally. So that the Bill which I spoke to, had two principal objectives: one is to revive the doctrine of recent complaint and the other is to provide for the greater and better use of technology; in this case, audiovisual technology in relation to evidence-gathering and the effects that could have on the criminal justice system.

Now, with those broad remarks out of the way, I turn to the *Hansard* because I had, in the intervening weeks, the opportunity to study the *Hansard* of the contributions of all of the Members of the Senate who spoke on that day. You would forgive me if some of the names to which I refer are no longer with us. They are, of course, alive but they are no longer with us in this place.

Sen. Mark, in his characteristic self, gave an impassioned—I thought it might have been a parting speech, in terms of how it was couched and his demeanour but, he has often described himself as the Rock of Gibraltar. He says that he would withstand all. I think his presence here today shows that is, in fact, the case. He is indeed the rock of Gibraltar. He spoke, you might recall, in his usual fashion, of the reintroduction of the doctrine and he said that the reintroduction of the doctrine did not serve to balance the scales of justice. The answer to that, of course, is contained in the legislation itself and it was recognized by Sen. Prof. Deosaran and Sen. Seetahal SC, who sought I saw—it did not occur to me during the course of the debate—in studying the *Hansard*, Sen. Seetahal SC had to intervene on more than one occasion to correct the distinguished Senator and to pull him up for being chauvinistic in his outlook. I see that he has new company and, perhaps, that is to his immediate left, that attitude might be tempered somewhat going forward. Without the doctrine, the answer to his question about the reintroduction of the doctrine is this: if a complainant did make a complaint, it was not taken into account and that can hardly be said to be in the interest of justice.

The Bill which is before us, seeks to allow the court to take into account such a complaint. It also deals with the situation where no complaint was made, or there was a delay in making a complaint. It treats with the deleterious effects of the doctrine of common law. It says, in those circumstances, that a judge must give a warning to the jury. I think you will agree that in doing that, it strikes an appropriate balance between the rights of both parties to the proceedings.

Sen. Mark also said, I think he was paraphrasing—to be kind, an argument which I have seen elsewhere—I did not see anything more than that; you were paraphrasing an argument which I have seen elsewhere. I did not say that you

were plagiarizing anything. He said: "There may be very powerful reasons." I can quote something which sounds very much like that or identical to that, but to be fair to the Senator, he did not plagiarize, he summarized, perhaps, an argument which he had seen elsewhere or which might have stuck in his subconsciousness.

2.00 p.m.

He said:

> "There may be very powerful reasons which may cause victims not to make a complaint immediately—social, emotional and even economic pressures. It could also be…"

Well this is where he deviates from what I have seen:

> "a desire not to cause distress to family members; fears of being disbelieved; and feelings of guilt and shame about the assault. These things militate against revelations. In dealing with this matter, we must be even-handed and fair."

Mr. President, that is perhaps the only area in which we agree. I completely agree with the analysis of the problem, given by my good friend, but I say in addition to that, that is precisely what the Bill does. If he had read section 15AB which he might not have had the time to read, because he said the Bill was rushed legislation, he would have seen that is precisely the balance which we seek to achieve in this legislation; an even-handed and a fair trial.

In section 15AA and 15AB, he made the point that those sections were lifted from the Tasmanian Criminal Code of 1987. That is something that we could agree to disagree on. The model was really section 29 of the Sexual Offences Act, Chapter 154, of Barbados, and also section 294 of the Criminal Procedure Act, 1986, of New South Wales in Australia.

Mr. President, in referring to the proposed section 15I(2), he said that the witness would not be cross-examined, but section 15I(2) is premised on the fact that the witness is present in court and would be cross-examined. So, he was labouring under a misapprehension there, but the distinction is where the victim is dead or absent for specified reasons, then his recorded statement would be admitted under section 15C; these are the same conditions applying to a written statement by an absent witness under our 2007 amendment, that will now apply to a recorded statement by an absent witness under this amendment, and it makes perfect sense. What we did in 2007 with respect to writing, we seek to do in 2010 with respect to new technology, the use of audio-visual technology.

His final and closing point was that the statement should be on oath in section 15(3). That is a point that Sen. Seetahal SC spoke to, and the answer to a trained lawyer would be obvious. Sen. Mark, whatever his vast experience and immense qualifications are in this Senate, as is evident by his presence here today, the Rock of Gibraltar, is not a trained lawyer. So, where a person gives a statement to the police at the present time, he does not have to swear to it, only in a court is that required. That is the answer to Sen. Mark's various points on the last occasion.

Sen. Seetahal SC spoke roundly in favour of the Bill and, as a matter of fact, she attempted to respond to Sen. Mark's concerns about statements being sworn or not sworn and on the issue of cross-examination. She did not agree with Sen. Mark's view that it was rushed legislation which he typically levels—that is a criticism which he typically levels at the Government, and to which we on this side have grown accustomed. She said that the decision of the Court of Appeal, which clarified the law on the doctrine, was given on September 27, 2006. So that almost four years had elapsed since the Court of Appeal had provided clarification without action by the Government.

Just to add to what Sen. Seetahal SC tutored Sen. Mark on, I would point out to him that the Bill was prepared in early 2008. Comments of the DPP on the Bill were sent to the Law Reform Commission in August 2008, and the Bill has been on the Order Paper, albeit in its limited form because, as I said, it came to us in its limited form originally, since the last session.

Sen. Seetahal SC spoke to the main purposes of the Bill. She pointed out that it seeks to reintroduce the doctrine as it was prior to 1986. She went on to address the concerns raised by Sen. Mark on fairness and balancing the right of the parties in these types of cases. In section 15AB, she suggested—and this was her only point of departure with what we had done in the legislation—that we should insert in 15AB the word "recent" before "complaint". That is a matter which we can consider in committee.

Sen. Dr. Adesh Nanan, who was with us on the last occasion, but is elsewhere today—

Sen. Dr. Saith: He may come back.

Sen. The Hon. J. Jeremie SC: In life all things are possible.

Sen. Dr. Saith: He may come back.

Sen. The Hon. J. Jeremie SC: We look forward to the day when he might again grace us with his erudite expositions on the law, because Sen. Dr. Nanan, if it is one thing that he is known for is his research. He pointed out to us in this

Senate—as if we did not know—that a version of the Bill was in place in Australia and New South Wales, which I have said provided the legislative precedence for what is before us and in Victoria, but he concluded—on what basis, I do not know—that the Bill had not really worked in Australia, because the judges felt that it would shift the balance in favour of the complainant. I do not know what is the basis for that conclusion. I have sought to do the research, and I have seen nothing.

I would only say that one ought to bear in mind that the direction in section 15AB is not given in a vacuum. The judges' direction is tailored to fit the facts of each case, and then you have a jury of sensible men and women who would make the decision whether or not to accept the case for the prosecution. Of course, the prosecution is required to prove its case and, to do so, beyond reasonable doubt, in accordance with the normal standards which apply in criminal law against the accused.

Sen. Dr. Nanan also made a useful but irrelevant comment, insofar as the Bill does not speak to police processes. He said that we need to enhance evidence gathering and case building. That is, in fact, accurate, but it does not speak to the legislation which is before us.

In the case of Sen. Prof. Deosaran, he mentioned the various reasons why a victim may hesitate to make a complaint, for example fear, shame, embarrassment, gossip, some of the same reasons which were articulated by Sen. Mark, but he went a little further than Sen. Mark, who might not—I make this point again, lest I be accused of being uncharitable to my good friend who I am extremely happy to see here with us this afternoon. Sen. Prof. Deosaran went a little further than Sen. Mark, and instead of making the point, he said that in section 15AB of the Bill there is, in fact, a fair balance struck between the parties and, to this end, the word "shall" in the legislation should not be replaced by the word "may". This is a point that I agree with entirely.

Sen. Oudit, who was, perhaps, always destined to be here today, made a strident contribution. She said that there was a lack of consultation on the Bill; the proposed section 15AB can lead to mismanagement in the police service; improper record keeping; biased interpretation—I do not know what that means—and possible police manipulation of information. I would like to hear what the police officers who are in this Chamber and outside listening to us have to say about that. I, myself, fail to see how the reintroduction of the doctrine of recent complaint and the use of audio-visual technology to see what is actually going on,

can contribute to police misfeasance. If anything, I should have thought that it would do the opposite. I am certain that is not something that would have fallen from the lips of the Senator to her right, Sen. Mark.

Sen. Oudit also went on to deal with the absence of a complaint but, unfortunately, it seems that Sen. Mark's lack of appreciation for the Bill might have contaminated her appreciation of what was in or out of the legislation. So, unfortunately, it seems that the Senator might—I say "might", I did not put it any higher than that—not have properly read the Bill. Again, I refer her to the proposed section 15AB which deals with both a delayed complaint and no complaint. Now, no complaint, as I understand it, means the absence of a complaint. Mr. President, through you, I think that point really falls on its own weight. It has no legs.

Sen. Oudit then asked, in relation to section 15AB, a very peculiar question: What good reason would a judge give? Well, Mr. President, I said that some of us are not lawyers, but the judge is not required to give any particular reason. We do not usually tell the judges how to do their business, but the legislation requires him to tell the jury that there may be a good reason why the victim did not make a complaint or why the victim made a delayed complaint. Of course, there is nothing in the law to prevent the judge from indicating reasons such as fear, embarrassment, et cetera. I think that treats with all the points I have been able to glean from the *Hansard* contribution of Sen. Oudit.

On the Independent Bench, Sen. Ramkhelawan, for the first time—in my memory, I have only been here for a very short time, not as short as most of the Senators opposite but, relatively speaking, a short time in this version of myself. Of course, I have been here before since 2003. That is a long time—he congratulated the Government with one hand, but he said that this is not something that—I do not want to misquote him—that he wants to do, but this is not something that I usually do, but he said it in the type of way that I got the impression that it was not something that he really wanted to do, but I might be mistaken on that.

2.15 p.m.

But in any event we on this side take, wholeheartedly, the compliments and the good wishes given by the Senator with respect to the Bill before us. He made several points. He said that the Bill cannot cure all the ills of our society and some of these points, I think, need amplification in the wider society. There is, in the battle against crime—as some of us in this Chamber have said on repeated occasions—no magic bullet.

Sen. Ramkhelawan pointed to the incremental progress which he had seen, in terms of the legislative efforts of the Government in the recent past in treating with the ills in the criminal justice system. Now he said trenchantly that he did not support the call by Sen. Mark for the Bill to go to a joint select committee, which as we know is a euphemism, for saying, kill this Bill, so he said he was prepared to support it. He wanted some time and time we have had since the last occasion.

Interestingly, someone who is not with us, but was on the Opposition Bench on the last occasion, then Sen. Dr. Gopaul-McNicol, supported the Bill, and that was unusual and perhaps she knew more than we did at the time of what might possibly become of her, but she supported the Bill. She suggested that the reintroduction of the doctrine be applied retroactively. She went that far. She not only supported—this is a Member of your bench—the Bill, but she said, "go back, do it retroactively". As much as we are enthusiastic about what we seek to do, today we are unable to agree with that. We appreciate her words of support and her expression of support for the Bill, but we think that to apply the doctrine retroactively, it might involve a host of constitutional issues involved in fair trial rights and so on, which we might prefer to avoid at this stage.

She also suggested that the statute of limitations should not apply to sexual offences, but again that is an error which Sen. Seetahal SC and I would not make, because there is, in fact, no statutory limit in relation to indictable offences, and we are in fact speaking of indictable offences here. So, hers was—on the Opposition Bench—an expression of support for the Government and for the position taken by those on the Independent Bench who spoke. But she is no longer with us today, so I do not know what price she might have paid, if any, for that courageous expression of support for what is, in fact, good legislation.

Sen. Rahman spoke about—my good friend, but they are all my good friends. Sen. Mark is my great friend. [*Laughter*] I sent him a text from Brazil and he ignored me. I was in Brazil and I sent him a text saying, "be strong". [*Laughter*] Obey the biblical injunction, "Be strong and be of good courage." I sent him a text and he ignored me, all the way from Brazil. But be that as it may—and this is just one of several texts that I sent to my friend in his hour of crisis and in his time of need. [*Laughter*] But as I said, the love is not reciprocated. I reached out to him and there was silence from the other end, I do not know what he was doing.

But Sen. Rahman spoke of a need to have trials without a jury. I suspect that he might have been afraid of the colleague to his left, but that is a different thing. Sen. Rahman spoke of the need to have trials without juries. There is legislation in another place on that point and I wish to see what position a reconstituted

Opposition Bench will take to that call made by a Member of their own rank just a few weeks ago and which we must all remember has been made recently by the hon. Chief Justice.

Mr. President, I do not know if my friends opposite are caucusing these days, but I would like them to caucus on that piece of legislation which the hon. Chief Justice has said is needed and which their own colleague, Sen. Rahman, now deceased. [*Interruption*] I am sorry, when I said "deceased" I mean, no longer present in this Senate. [*Interruption*] Mr. President, I withdraw that term without reservation and I ask that it be struck forever from the record. [*Laughter*] But Sen. Rahman who is no longer with us this afternoon, spoke of the need to have trials without juries; that is coming. The Chief Justice has commended it and I look forward to seeing what an Opposition Bench, which caucuses, will say on that matter.

I am not sure that he said much more. He raised the point about "shall" and "may" in the legislation. We do not have to agree with that. We agree with the form of words which is in the legislation and which Sen. Prof. Deosaran has supported. He said, "When these measures become law there should be ongoing review, and if necessary, expeditious amendments should be introduced." That is something that we cannot disagree with and that is a matter that we cannot disagree on, and I think that the fact that we had an Evidence (Amdt.) Act in December 2009—we brought this in February 2010—it tells you of the Government's commitment to keep this area of the law, the criminal justice system, under constant review. That is priority number one for me, it is priority number one for the Government and we intend to take all the necessary steps to ensure that the criminal justice system in this country is fixed in the shortest possible time.

Sen. Dr.—whichever term you prefer to use—Kernahan, who was with us on the last occasion, but who is no longer with us today, not deceased, also raised the issue of lack of consultation. She raised the issue of the absence of specialized units in police service to deal with victims of sexual offences. That is a fact and I believe that there is a domestic violence committee set up in the Ministry of National Security to deal with domestic violence matters. That was an initiative which was pursued by my predecessor, some time removed, Glenda Morean, who had a particular practice in family law and domestic violence. The police service, I am told, is working on this.

She questioned why the court should take into account the delay between the time of the event and the time video recording is made in clause 5, which is the proposed section 15C(3)(a). And the answer to that, Mr. President, is the

recording would be a recording being admitted into evidence when the witness is not present in court. So it is important that the judge take into account the interval between the event and the recording, and point out the same to the jury, because it may affect the ability of the witness to accurately recount the events. This is all part of the role of the court to ensure a fair balance is maintained in a trial, and it might be the duty of the court in its inherent jurisdiction, in any event to speak to that matter.

Sen. Dr. Kernahan, asked the question, "What is meant by the quality of the video recording?" That refers to the quality of the voice recording and the clarity of the visual images. There are rules which I had promised when I moved the reading of the Evidence (Amdt.) Bill in December 2009. Those rules, I am told, have in fact been made today. They await my signature as a member of the rules committee and will be before this Senate as is the norm for appropriate action in relatively short order.

The final issue she raised dealt with the statement not being on oath, and that was raised by a few Senators on the Opposition Bench, including Sen. Mark. It was responded to by Sen. Seetahal SC. I can do no more than to echo the views expressed by Sen. Seetahal SC, that these are not statements being made in a courtroom; they are akin to statements which are made to the police and those are not usually required to be on oath.

Mr. President, I think that it would be fair to say that all of the Senators on the Independent Bench, who spoke, supported the Bill on the last occasion and recognized that in the words of Sen. Ramkhelawan, it represented an incremental step towards a more efficient criminal justice system.

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

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

Question put and agreed to.

Sen. The Hon. J. Jeremie SC: Thank you, Mr. President. I was making the point that all the Independent Senators recognized the utility of the Bill and commended the Government for its dispatch in bringing the legislation, and indeed, a Member of the Opposition commended the Government for—I am not sure she commended the Government for bringing the Bill, she might not have gone that far, but she certainly spoke in favour of the legislation.

These are in the words of Sen. Ramkhelawan, "incremental steps towards a better criminal justice system". It is not usual to have the degree of unanimity, the degree of support which was expressed, to this legislation, for any piece of legislation in this Senate. One remembers the acrimony which surrounded the Revenue Authority and some of the hard-fought battles in the Senate in the recent past. But this is a piece of legislation—

Sen. Seetahal SC: Not the Revenue Authority.

2.30 p.m.

Sen. The Hon. J. Jeremie SC: I am sorry, the Property Tax (Amdt.) Act and the Valuation of Land (Amdt.) Act. [*Interruption*] The Revenue Authority, I know you have your man for that. He is ready; cocked to go.

Mr. President, it is not usual for us to all come together on a matter, the Independent Benches, a Member of the Opposition Bench breaking ranks with the Opposition. It is not usual for matters of that type to happen, and I think it is because of the need that we all recognized for legislation which furthers the fight against those who are opposed fundamentally to law and order in this country.

I thank hon. Senators—sure. I give way to my distinguished friend and colleague, Sen. Prof. Deosaran.

Sen. Prof. Deosaran: Sorry to interrupt you. There has been an issue which trumpeted across the debate and that is the causing of fear, people being afraid, and it has led to several pieces of legislation. That element of causing fear, hon. Attorney General, could you make a comment as to what can be done, or what the Government intends to do in healing that serious gap in people's lives, those who have been assaulted and so on?

Sen. The Hon. J. Jeremie SC: I am taking it that you mean fear in the context of not reporting, not testifying, jury tampering. We recognized it, and that is what has led to the amendments which came in 2009. Fear was a part of the introduction of these measures to give evidence by using the technology, and to have that evidence used in chief in certain circumstances. You would recall that fear is one of those criteria.

We are looking at the question of jury tampering, where the jurors themselves have been intimidated in some cases. That is the subject, as I have said, of legislation which is in the other place. Sen. Rahman, I said spoke of it. We cannot anticipate legislation of course, but we are looking at it closely and we have

addressed the question in part. We have not found a complete solution, but we are working on finding a solution which will make the criminal justice system more accessible to persons of the normal fortitude.

Sen. Prof. Deosaran: Just one important point, again. Not the instillation aspect, but those who are causing the fear. I do not see an emphasis being put on investigating and bringing them forward to justice, because in families and neighbours this causing of fear perpetuates itself, and while you insulate, you need another mechanism or emphasis on preventing it and holding those responsible for causing the fear.

Sen. The Hon. J. Jeremie SC: I take that point wholeheartedly, and without saying more at this point in time, I wish to assure you, that the Government is very much aware that there are elements in the society that strive and live on the basis of intimidating the citizens of this country in trials. There are certain individuals and groups who, whenever they appear in court, you know that they would appear with their posse. We will have none of it. The Government is going to move aggressively. You are going to see concrete steps in the very near future with respect to what we have to see. Our actions will speak on that matter.

I give way to my distinguished friend, Deputy Political Leader, whatever, Sen. Oudit.

Sen. Oudit: Thank you very much, Mr. Gracious Attorney General, and thank you, Mr. President. [*Laughter*] I just wanted to get one point of clarification. I have raised the issue along with several other Senators about the question of having video evidence not given under oath, and I know you said, with all due respect, that Sen. Seetahal SC responded to that call to have it under oath. I would like to clarify. In today's situation, where we have cellphones, amateur video makers, film makers, and a number of tools that can be used to make videos, are you saying that any of those video recordings will be accessible and admitted; and also in court, not under how it is made, but admitted in court?

You went on further in section 15C to indicate section (3A)(c), and you said that the court will now have to consider factors that might affect the reliability of what the person said in a video recorded statement. My question is, if you are again indicating that the court will then have to decide the reliability, I would have imagined that one of the ways of assuring some sense of reliability was to get an admission under video recording.

Sen. The Hon. J. Jeremie SC: I would respond to that in the general and sincere spirit, I believe, in which it was asked. The audio-visual recording that is contemplated by the legislation, and which you will see is set out in the rules, is to

be done under very stringent circumstances. That has been explained. It was explained in the reading of the Evidence (Amdt.) Bill in December, in the other place, when I was asked about specific locations.

There is prescribed in the rules—I think Sen. Drayton had asked about the integrity of the process—which have now been made by the Rules Committee, headed by the Chief Justice, an appropriate mechanism for security in terms of how those recordings are to be made. There is no hard drive. There is a particular piece of equipment which is used. There are dual cartridges and they are removed. There is a master copy which is initialled and kept somewhere. One is used for disclosure. It is timed, dated, stamped, and so on and so forth. The rules go into specificity which cannot be gone into in the legislation. But to answer your question in brief, the Government is aware that these days you can make a video recording on a cellphone. That is not the object of this legislation. Those types of recording would be entirely outside of the admissibility provisions which are set out in the legislation.

Mr. President, I wish to thank hon. Senators on the Independent Benches and the Opposition Bench, the singular Senator of the Opposition Bench, who supported the legislation, but indeed all Senators who spoke on this debate, including my very good friend, Sen. Mark, and my emerging friend, Sen. Oudit, for their contributions on this important piece of legislation.

With these few words, Mr. President, I beg to move. [*Desk thumping*]

Mr. President: Hon. Senators, before I put the question, I would just like to remind hon. Senators that while we do not have a specific rule on the matter, it has always been the practice in this Chamber to refer to lady Senators as Senator, Madam Senator or Lady Senator, and we try as far as possible to avoid using the word, "she". It can be derogatory if used improperly, and therefore, we try to maintain the highest standard possible and I would just remind Senators of the custom. It is not the rule which is provided. It does not interrupt anyone, but it has been the custom here to be as courteous as possible to the lady Senators.

Question put and agreed to.

Bill accordingly read a second time.

Bill committed to a committee of the whole Senate.

Senate in committee.

Mr. Chairman: We have amendments from Sen. Oudit and the Attorney General. Sen. Oudit, your references are to section 15AB, clause 6. That really is clause 2. It is really to amend clause 2, and then at 15A and so on—because we really have only two clauses in the Bill.

Sen. Oudit: Is this the consolidated version or the—because I have about three versions of the Bill in front of me.

Mr. Chairman: The Bill before us—

Sen. Oudit: Is just this one?

Mr. Chairman: Yes—has two clauses.

Sen. Oudit: Okay. Well, I was going with the one with the consolidated version.

Mr. Chairman: Well, even that had only six clauses.

Sen. Seetahal SC: You are saying that there is only one set of amendments from the Attorney General, but I have two sets.

Mr. Chairman: Hon. Attorney General, I have only one list from you.

Sen. Jeremie SC: Mr. President, I am seeing two sets of amendments. There is one which is headed—it is not dated—[*Interruption*] If I could explain, the Bill has two clauses. We circulated a list of amendments, and then for ease of reference of Senators, as I explained during the reading of the Bill, I provided Senators with a consolidated version of the Bill incorporating those amendments. Subsequent to that, I produced a one page amendment, so there are in fact two sets of amendments: one to take into account the Bill as it was read, and a second one to deal with some of the points which arose during the course of the debate.

2.45 p.m.

For ease of reference, if Members have a draft Bill which has at the top "Final Consolidated Version", that would incorporate both sets of amendments; so you can follow that version of the Bill; the one which says "Final Consolidated Version".

Mr. Chairman: This is what it is supposed to look like after we have finished?

Sen. Jeremie SC: Yes.

Sen. Mark: What is before the honourable Senate is, in fact, the initial Bill, and there were subsequent amendments, so I think it is procedurally bad for us to take, virtually as if it is a new Bill, a consolidated version or final consolidation.

Mr. Chairman: We are not dealing with that.

Sen. Mark: Just dealing with the amendments?

Mr. Chairman: Yes.

Clause 1.

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

Sen. Jeremie SC: Mr. Chairman, I beg to move that clause 1 be amended as follows:

A. Delete the marginal note and substitute the following:

"Short title and commencement".

B. Renumber as clause 1(1).

C. Insert after the renumbered clause 1(1) the following sub-clause:

"(2) This Act comes into force on a date to be fixed by the President by Proclamation."

Question put and agreed to.

Clause 1, as amended, ordered to stand part of the Bill.

Clause 2.

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

Sen. Jeremie SC: There are some amendments.

Mr. Chairman: Perhaps we should take the amendments as circulated by Sen. Oudit first. Do these end up being in clause 2? [*Interruption*]

Sen. Oudit: We will actually have to look at the final consolidated version, because the one we are using at the start does not have the clause 4 and the final consolidated version has it.

Sen. Jeremie SC: That is just for ease of reference. The list of amendments is what we use procedurally. As Sen. Mark pointed out, we are amending the Bill as it was laid.

Mr. Chairman, I beg to move that clause 2 be amended as follows:

A. Renumber as clause 4.

B. In the renumbered clause 4, delete the word "Evidence", and in the marginal note delete the words "Chap. 7:02".

And in the proposed section 15AA after the word “sexual offences” insert the words that were in force in England prior to the 4th of April 2005 and delete

the words "as if they had not been abolished" and substitute the words "as if those rules had not been abolished in this jurisdiction".

Question put and agreed to.

We will do each part of the amendment to clause 2 separately.

Sen. Mark: Chairman, I want to be honest with you; I find this is very messy legislation and we are absolutely not following. We have had so many versions of this Bill and it is really messy. In fact, I know the time would have passed, but I would have wanted to suggest to the AG that this really be referred. It is really messy.

Mr. Chairman: Here is the final consolidated version, which is unprecedented. It will similarly have a list of amendments.

Sen. Mark: This legislation is affecting the rights of people. It is messy legislation.

Mr. Chairman: It is a little tricky, but we can get this. We have the amendment to clause 2, so let us do that. I have put that already.

Sen. Seetahal SC: Before we go on, I have a couple of amendments.

In relation to 15AB of clause 2, the fourth line, after the words "an absence of", should be—

Mr. Chairman: That is going to be clause 4.

Sen. Seetahal SC: You said that we were amending clause 2 now. This is clause 2 as circulated.

Mr. Chairman: Just give me a minute. [*Interruption*]

Sen. Seetahal SC: Before we deal with the new clause 2, we have to amend clause 2 to read clause 4 and then we can go back. Are we dealing with the original clause 2?

Mr. Chairman: Yes, of course.

Sen. Seetahal SC: In the original clause 2, 15AB, I am suggesting in the fourth line that after the words "an absence of", we should include "recent" to make it very clear what we are talking about, because there could be confusion as to mere complaint. So it would read:

"Where on the trial of an accused person for a sexual offence, evidence is given or a question is asked of a witness that tends to suggest an absence of recent complaint..."

That is the inclusion I suggested earlier. Also in 15AB(a) in the second line, again, it should be “recent complaint”; "give a warning to the jury that an absence of recent complaint..."

Sen. Jeremie SC: We agree. I mentioned in the course of my winding up that we would agree with that at committee stage.

Sen. Oudit: That was my concern, the fact that there was an absence of complaint all together, but putting in the word "recent" is fine. I would take out the first two, because those are the same two pieces that would address.

Mr. Chairman: So in 15AB(b) you are saying delete the words "refrain from making"?

Sen. Oudit: Again, it comes from the absence of a complaint, but if we are including the word "recent", that is fine. We will take off the first two amendments.

Sen. Seetahal SC: Before we reach to Sen. Oudit's removal of words, we will have to vote on the inclusion of the word "recent" in this. [*Interruption*]

Mr. Chairman: The question is that clause 2 be amended by insertion of the word "recent" in 15AB before the word "complaint" and 15AB(a) by insertion of the word "recent" before the word "complaint".

Question put and agreed to.

Mr. Chairman: Sen. Oudit, it is the first two. That is what I am saying, that in 15AB(b), you want to delete the words "refrain from making, or may".

Sen. Oudit: It should read:

> "…why a victim of a sexual assault may hesitate in making a complaint about an assault..."—because of the absence of a complaint.

If you refrain from making, it goes to an absence of complaint and we have just done away with that. If you refrain from making a complaint, it means no complaint was made. You have just included the word "recent" to get out of the absence of complaint. If you take out "refrain from making a complaint" and you leave it in 15AB(b)—

Sen. Jeremie SC: That is how you seek to strike the balance. We agree with Sen. Oudit with respect to her concession with respect to the first two matters, but we think that this is one with which we really cannot agree.

Sen. Seetahal SC: What Sen. Oudit is saying is that the person may make a complaint, but it may not be recent. Probably in (b) you could include the words "making such a complaint". I think the inclusion of the word "such" would

connect it to (a), which would be all talking about recent complaint. Just for clarity, because it would not be that the person never made a complaint, because obviously the matter is in court, at some point in life, a complaint was made.

This is 15AB(b) that is on the next page:

"or may hesitate in making such a complaint".

Mr. Chairman: Do you want the word "such" included?

Sen. Jeremie SC: If you put "such" in, we would go along with that.

Mr. Chairman: Sen. Oudit, is your amendment withdrawn?

Sen. Oudit: It goes to the point of refraining. If you say such, you are referring to such, meaning a recent complaint.

Mr. Chairman: Do you want me to remove the words "refrain from making or may"? That is her suggested amendment, so it is either she withdraws that amendment or I put the question. The word "such" effectively makes your point.

Sen. Oudit: Refrain from making such a complaint. Your focus is on the word "such", as in the complaint. My emphasis is on the refrain part. Once you refrain, it means that you do not do it.

Sen. Seetahal SC: Making such a complaint, means dealing with "recent complaint". It deals with recent complaint, which you have referred to in the rest of the legislation. It is not no complaint at all. So if you say that the judge is to inform the jury that there may be good reason why a victim of a sexual assault may refrain from making such a complaint, then your concerns are already met in relation to what you are submitting.

Mr. Chairman: So, Sen. Oudit, do you withdraw your amendment?

Sen. Oudit: Yes.

Amendment withdrawn.

Mr. Chairman: The question is that in clause 2, section 15AB(b) be amended by inclusion of the word "such" in the last line after the word "making".

Question put and agreed to.

Clause 2, as amended, ordered to stand part of the Bill.

3.00 p.m.

Sen. Jeremie SC: Mr. Chairman, I beg to move that clause 2 be renumbered as clause 4.

Question put and agreed to.

Clause 2, renumbered clause 4, ordered to stand part of the Bill.

New clause 2.

The Clerk: New clause 2:

"Interpretation Chap. 7:02 2. In this Act, 'the Act' means the Evidence Act."

New clause 2 read the first time.

Question proposed, That the new clause be read a second time.

Question put and agreed to.

Question proposed, That the new clause be added to the Bill.

Question put and agreed to.

New clause 2 added to the Bill.

New clause 3.

Sen. Seetahal SC: Mr. Chairman, seeing that all of these are new clauses, they could be read out so that Senators can follow. That is my suggestion.

The Clerk: New clause 3:

"Act inconsistent with Constitution

This Act shall have effect even though inconsistent with sections 4 and 5 of the Constitution."

New clause 3 read the first time.

Question proposed, That the new clause be read a second time.

Question put and agreed to.

Question proposed, That the new clause be added to the Bill.

Question put and agreed to.

New clause 3 added to the Bill.

New clause 5.

The Clerk:

Insert after renumbered clause 4, the following new clauses:

Section 15C amended 5. Section 15C of the Act is amended—

(a) by renumbering subsections (1) to (6) as subsections (2) to (7);

(b) by inserting before the renumbered subsection (2), the following subsection:

"(1) Where a person, including an accused, gives a statement in relation to an offence, that statement may be video recorded."

(c) In the renumbered subsection (2), by deleting the words "Subject to subsection (2), a statement made by a person in a document" and substituting the words "Subject to subsections (3) and (3A), as the case may be, a statement made in a document or in a video recording by a person who is a witness".

(d) In the renumbered subsection (3) by deleting the word "(1)" wherever it appears and substituting the word "(2)"; and

(e) By inserting after the renumbered subsection (3), the following subsection:

"(3A) Where under subsection (3), the Court is considering granting leave in relation to a video recorded statement, the Court shall consider the following additional factors:

(a) the interval between the time of the events in question and the time when the video recorded statement was made;

(b) the quality of the video recording; and

(c) any other factors that might affect the reliability of what the person said in the video recorded statement."

Sen. Oudit: We are dealing with section 15C but there is a section 15AA and 15AB that comes before. So how are we numbering and renumbering that if we are dealing with section 15C?

Sen. Seetahal SC: That is the original section 15C.

Sen. Oudit: But they are very different.

Sen. Jeremie SC: This is the 15C which came in 2009—

Sen. Seetahal SC: 2007.

Sen. Jeremie SC: In 2007, sorry. So this is not 15AB.

New clause 5 read the first time.

Question proposed, That the new clause be read a second time.

Mr. Chairman: Now, we can talk about it.

Sen. Mark: If I may just go back to 5(b) which says:

"(1) Where a person including an accused gives a statement in relation to an offence…"

Are we moving away from sexual offence, or are we dealing with all offences here?

Sen. Jeremie SC: Yes, it is.

Sen. Mark: That is any criminal offence?

Sen. Jeremie SC: Any criminal offence.

Sen. Mark: Are you saying for instance, that statement may be video recorded now?

Sen. Jeremie SC: Yes.

Sen. Mark: Any?

Sen. Jeremie SC: Any criminal offence.

Sen. Mark: But how we reach so far boy? We were dealing with sexual offences, how criminal offences come here?

Sen. Jeremie SC: A sexual offence is a criminal offence.

Sen. Mark: Yes, but what I am saying we were dealing with one aspect of it, but now you are coming with everything. I find that is a sweeping flight. Do you not think so?

Sen. Jeremie SC: No, we were dealing with recent complaint in the Bill that was before us initially, just one aspect of rape. But if you are asking what logical connections there are between the amendments and the Bill as it was laid; both relate to criminal matters and we are, in fact, enhancing the evidence gathering capacity of the police and their ability to prosecute in respect of all criminal offences, not simply rape. We seize the opportunity, Sen. Mark.

Sen. Mark: Mr. Chairman, we have some concerns about how these invasions are taking place. You are talking about all criminal offences and you started off by talking about sexual offences. I find it is a sweeping kind of—

Sen. Jeremie SC: It is an amendment to the Evidence Act and we are dealing with the aspect of evidence which speaks to the doctrine of recent complaint. So there is a logical connection between that and the evidentiary matters which we seek to deal with here. If that answers the question.

Sen. Oudit: Mr. Chair, I do not have a problem with broadening the powers of the police service and the courts, et cetera, I am sure that the intention is good. But in terms of the legislation that was debated, in terms of the Bill in front of us and the arrangement of clauses, it is very confusing in the Attorney General's final consolidated version which is what we have several versions of, in fact, it is very clear. You went from the previously numbered section 4 dealing with 15AA, recent complaint and 15AB, judges warning and you went into section 5 which dealt with 15C. Now, in this determination, you have skipped the first 15AA and 15AB and we have gone straight to 15C. My concern is not all the powers, but the arrangement of the clauses.

Sen. Jeremie SC: I had explained all that before. If you look at Act No. 5 of 2007 together with the 2009 Act, you will see that we go through the alphabet and when we get to "x", we have to do something else. We go (a), (b), (c), and when we get to the end of the alphabet we have to start AA, that is the rule we follow in drafting, you cannot go beyond "z". So the amendments will have logically then to be 15AA and 15AB. You start over.

Sen. Mark: Mr. Chairman, as I keep saying, you are dealing with the rights of citizens here and this Bill requires a three-fifths majority. It is very messy, it is incoherent and in some instances, we are not understanding the sequencing of it and we cannot take part in a committee stage of a Bill where people's rights are being infringed by this legislation and we do not have a clear understanding of what the Attorney General is trying to do.

On the one hand, he is trying to amend the Sexual Offences Act, but we bring the Evidence (Amdt.) Bill and amend it even though it is the Sexual Offences Act that is included and then all of a sudden, we move from sexual offences to all criminal offences. Are you trying to trick us? What is going on here?

Mr. Chairman: Senator, that is out of order.

Sen. Mark: All right, I will withdraw it.

Sen. Seetahal SC: First of all, I do not see any Sexual Offences Act here being amended; it is an amendment to the Evidence Act and the Evidence Act in 2007 was amended to create a 15C which was to allow statements of persons who were dead, who were unfit, who were outside Trinidad and Tobago and could not be found, persons who were kept away and we added who were fearful in 2009 and there was a big debate about it.

I am a supporter of the legislation totally because I know with witnesses not coming forward and you cannot find them, many times they are freed so that was taken from the English 2003 legislation to treat with that situation. Now all we are doing is to expand 15C which was created to add the provision that not only will written statements be admitted, but video recordings where the witness is dead, unfit, or cannot be found and that is what is happening. Some statements had been taken currently in the police video-recording department by kidnapped witnesses for instance, when they come from their ordeal and it is video recorded.

So why their recorded statements should not be admitted just because it is not in writing? I think Sen. Rahman raised that when this legislation was debated in 2009, when we amended the Evidence (Amdt.) Act.

Sen. Jeremie SC: Just to add to what Sen. Seetahal is saying; it is a fact that Sen. Rahman in 2009 when we debated this asked why we are limiting ourselves to written statements in 2007, why not use the technology to apply across the board? And that is what we seek to do in the legislation before you. The amendment is logically placed in 15C, which deals—as Sen. Seetahal SC says—

we are going on to expand and make the fullest use of the technology. We are in a fight against crime, and I thought my friends opposite would recognize that and applaud what we are seeking to do.

Mr. Chairman: We also have an amendment to new clause 5 as circulated by the Attorney General.

Question put and agreed to.

Question proposed, That the new clause, as amended, be added to the Bill.

New clause 5, as amended, added to the Bill.

Sen. Oudit: Mr. Chairman, I have a concern; does section 15C deal with the oath, the section on admitting the recording under oath?

Sen. Jeremie SC: This is the recorded statement given to the police, it is not the oath.

3.15 p.m.

Sen. Seetahal SC: In 2007, for number 5, deals with admissible first-hand, hearsay statements in criminal proceedings. That is what it was. That was when there was the debate about whether it was hearsay and all of that; Sen. Mark would remember. That has nothing to do with video recording—15C. That was in 2007. In 2009 we created that section dealing with video recording in 15I. So what we are doing is 15C which is amending the 2007 law to include video recordings and that is why it is renumbered. That is really all that is about.

Sen. Mark: Yes, but, Mr. Chairman, what is being advanced is that in 2009 we amended the Evidence Act to deal with video recording for specific areas. What we are reading into this confused piece of legislation before us is that the Government has gone from a specific, or one or two areas, into covering all statements or all offences that are committed, and you can be moved from a written statement to a video recorded statement for all criminal offences. I mean to say, where are we going? This thing is confusing and I believe the Government should withdraw this thing and bring proper legislation so that people could live with this thing properly.

Sen. Drayton: If I may, Chairman, my understanding is this is an Evidence (Amdt.) Bill, so we are dealing with evidence in criminal matters, generally; it is not a sexual offences amended Bill to deal with video recording.

Sen. Jeremie SC: That is 100 per cent correct. I could not have said it any better.

Sen. Piggott: And Sen. Mark knows that.

Sen. Jeremie SC: I am not saying that Sen. Mark knows that, but he is finding his feet. [*Crosstalk*]

Question put and agreed to.

New clause 5, as amended, added to the Bill.

New clause 6.

The Clerk: New clause 6:

Section 15I amended

6. The Act is amended in section 15I—

(a) by deleting subsections (3) and (8);

(b) by renumbering subsections (1), (2), (4), (5), (6), (7) and (9) as subsections (5), (6), (7), (8), (9), (10) and (11), respectively;

(c) by inserting before the renumbered subsection (5), the following subsections:

"(1) The existence of a written statement in relation to the same matter by the maker of a video recorded statement shall not affect the admissibility of that video recorded statement in criminal proceedings.

(2) Where a video recorded statement is admitted under this section, the statement shall be admitted as the evidence in chief of the maker of the statement where he is available to be cross-examined.

(3) A video recorded statement made by a person under this Part is admissible whether or not the statement is made on oath.

(4) Where a child gives a video recorded statement under section 15C(1), the video recorded statement shall be made in the presence of an adult chosen by the child.";

(d) in the renumbered subsection (5) –

(i) in paragraph (a) by deleting the words "in proceedings for an indictable offence or for the summary trial of an indictable offence" and substituting the words "in criminal proceedings";

(ii) by deleting paragraph (f); and

(iii) by renumbering paragraphs (g) and (h) as paragraphs (f) and (g), respectively;

(e) in the renumbered subsection (6) –

(i) by deleting the word "(1)(g)" and substituting the word "(5)(f)";

(ii) in paragraph (a) by deleting the word "not"; and

(iii) in paragraph (b)(ii) by deleting the words "subsection (3)" and substituting the words "section 15C (3) and (3A)"; and

(f) in the renumbered subsection (8) by deleting the word "(1)(g)" and substituting the word "(5)(f)".

New clause 6 read the first time.

Question proposed, That the new clause be read a second time.

Mr. Chairman: We have two amendments from Sen. Oudit which read as follows:

In clause 6(c)(3) delete the words "whether or not the statement is made under an oath"…and replace with the words "having been given under oath…"

Sen. Jeremie SC: Mr. Chairman, the answer, I think, was given in the course of the contribution of Sen. Seetahal SC, in the course of my piloting the Bill and in the course of the winding up. This matter is not a matter before the court, so that the oath does not come into question. This is really the police stage, so there is no need for the statement to be on oath. Is that the extent of the amendment?

Mr. Chairman: In (c)(3), yes.

Sen. Jeremie SC: What about "Court appointed attorney"?

Mr. Chairman: But that is in clause 6(c)(4).

Sen. Oudit: Mr. Chairman, could I ask the Attorney General, what is the precedence in other legislation of a similar nature, for example, the Family Court Bill where it came to evidence by, let us say, children or in matters of sexual abuse or home abuse? Is not the precedence where you do get evidence admitted taken under oath?

Sen. Jeremie SC: No.

Sen. Oudit: In court. You see, the thing about it is—

Sen. Jeremie SC: In court. In court—

Sen. Oudit: No. I understand from a prosecution point of view why it may not be necessary or it may not be wanted or required so we go ahead with the evidence, but I am suggesting that this is not only when evidence is taken—and we are assuming it is being taken at a police station. What if it is not recorded in a police station but it is recorded elsewhere? Because this here talks about a video recorded statement; it does not state a video recorded statement taken at an office—

Sen. Jeremie SC: Okay. The rules provide, as I said—

Sen. Oudit: I know.

Sen. Jeremie SC: The rules provide for a particular—they condescend to the details as to what type of machinery you can use. It says where, how, who should be in the room and so on and so forth. They have been done by the Rules Committee, as I promised when I did the legislation in 2009. It cannot be video

recorded statement off a cellphone; it cannot be taken on a football park; it cannot be amateur video taking. It is taken under specific conditions. As a matter of fact, we had a situation where we discovered that some equipment was purchased by the police which did not conform to the standards imposed by the legislation and that equipment will have to be disposed of. The proper equipment is—the standard is the equipment which is purchased by SAUTT. That is the "gold standard".

Sen. Prof. Deosaran: Mr. Chairman, I think Sen. Oudit's worry, if I could understand her well, the fear from her point of view, apparently, is that she does not want anybody to put anything on a video that is unfair, unduly prejudicial and so on. But if you could explain, AG, that when a statement is given to the police, it is just a statement to be subsequently tested in court where the oath is taken, for verification, for cross examination, so in that two-step process, it is not usual or necessary to take an oath in the first instance at the police station, but the veracity and so on of the statement will be subsequently tested under oath in court. Maybe if you could explain, at least, that part of it—

Sen. Jeremie SC: I do not think that I can add anything to what you have just said, that that is, in fact, the correct position.

Sen. Oudit: I understand for the first time that second part of the process. Again, we are not all lawyers, so I take what Prof. Deosaran has said, but I also feel that that statement should be made under oath and my question previously was: What is the precedence in other pieces of legislation?

Mr. Chairman: Would you like me to put the question?

Sen. Oudit: Yes, Sir.

Question, on amendment, [Sen. Oudit] put and negatived.

Mr. Chairman: It is also suggested that at clause 6(c)(4) that you add the words, "and a Court appointed attorney". I am not sure exactly where.

Sen. Oudit: Mr. Chairman, "shall be made in the presence of an adult chosen by the child and a court appointed attorney". It refers to Family Court as well. I looked at other legislation where children were concerned and if the Attorney General can—

Sen. Seetahal SC: There is no court appointed attorney in—

Sen. Jeremie SC: Is this okay now? I am not sure that you fully understand what is in the Family Court Act, but there is no provision, to my mind, for any court appointed attorney before you get to court. This is a statement being taken

before the police, so that the court cannot, in reality, make an appointment at that stage. This is one step before.

Sen. Seetahal SC: This is the investigative stage; when the police are investigating, they collect statements. The normal course is that people give a statement; it is read over to them; they sign it. Under 15C, following the Jamaican and English legislation, if the person dies before they can actually give the evidence now, that evidence would be admissible since 2007. So that is the point. If they had to go and wait until they can take an oath in court, then there is a lot of room for them to be eliminated before that happens and that is why the Legislature intervened before that actually happened.

Sen. Jeremie SC: It would defeat the legislation.

Sen. Seetahal SC: Now, in relation to a child witness, where would be a court appointed attorney? The matter might never reach to court. So that is why all of the case law that you have talked about, a responsible adult such as a parent or a justice of the peace being present—

Sen. Oudit: Mr. Chairman, then this really is even more confusing, because here you are dealing with a child and in my mind the explanation given there is that the child is treated as an adult—

Sen. Jeremie SC: No, not at all.

Sen. Oudit: In respect of choosing an adult to stand before and give a video and make a recording.

Sen. Jeremie SC: The child is being protected by an adult.

Sen. Oudit: Mr. Chairman, with all due respect, I have a real concern with this and the concern is that we are not looking at the best interest of the children, in particular, when you are coming to the making of a video. I have serious concerns with that, because, again, the adult chosen by the child may very well be the abuser of the child and there you have—we are dealing with sexual—this is the Evidence (Amdt.) Bill but it was very specific in relation to sexual offences. In fact, the interpretation came very clear. You even referred to it here in your Sexual Offences Act, Chap. 11:22 at section 31, abolishing the doctrine of the laws. It is in your Explanatory Note. So you did deal with the Sexual Offences Act. You brought it into this piece of legislation and we cannot now separate it, and you are referring to a child giving video recorded evidence. First of all, you

say it does not have to be under oath; we did that. Now you are saying that it should only be made in the presence of an adult chosen by the child, and I am saying for the interest of the child, if you can include "and a Court appointed attorney".

3.30 p.m.

Sen. Jeremie SC: Madam Senator, just to follow the injunction given by the Chairman, I do not think you understand where we are in terms of the investigative process. As Sen. Seetahal SC tried to explain, this is at a stage where the child is in custody. The normal practice would be to ensure that the child is protected. The adult is there to protect the interest of the child. The court does not come into it and may never come into it.

Sen. Prof. Deosaran may—

Sen. Prof. Deosaran: I may disappoint you on this occasion. I think that the Senator is raising a very important point in the real world. If you can put aside some of the rules and regulations surrounding this issue and try to understand from experience what really happens to a child in such a situation, you will recognize that we need a more integrated form of social service at this stage even though it is not as far as the investigation stage.

If the objective is to protect the rights of the child; not in the legalistic sense, but in a psychological sense where you need counselling and some direction, I find it difficult, unless a proper explanation can be given, to have a provision where the child, under such suffering and torment, has to choose an adult. That should be a more statutory provision in process; that is, the role of a counsellor or a social worker should be invoked here in real terms because you can easily say that man was not made for the Sabbath; the Sabbath was made for man. We have to differentiate between situations and rise to the occasion as we progress with legislation.

I do not see us relying in this instance on precedence and rules where we have a challenge where every child is suffering. I think that the rights and prerogatives of the child should be expanded rather than kept narrow as we seem to be doing. I think that Sen. Oudit's point should gain some further reflection.

Sen. Mark: May I consolidate further on what Sen. Prof. Deosaran has said. In this matter of the child choosing an adult in a matter involving a video recorded statement, why can we not ensure that the parent, guardian or attorney-at-law—my colleague was saying, “appointed by the court”; but you may have it broad

and have "a parent, guardian or an attorney representing the child". At least you do not leave it as loose as it is here. That is one area I fully support in terms of tightening the legislation.

In addition, section 6 could be used to set up innocent people. This is a prosecution measure and that is why we insist that we have a responsibility to balance the scales of justice between the accused and the complainants and/or victims. In this regard, I refer specifically to subsection (2) of section 6. It says:

> "Where a video recorded statement is admitted under this section, the statement shall be admitted as the evidence in chief of the maker."

It goes further to say:

> "where (the maker) is available…"

I am saying that we have already amended the Evidence Act to include persons who are not able to appear before a court either because he is fearful or not in the country. Could you imagine where you are infringing the rights of citizens by admitting a video statement without oath and saying where the witness is available for cross-examination? If the witness is not available because he is fearful, what will happen here? If a video-recorded statement will be taken as evidence in chief and the person is not available for whatever reason for cross-examination, what will happen to that individual?

Sen. Seetahal SC: With due respect to Sen. Mark, that is really not understanding what this clause is about. If evidence is admitted only as evidence in chief, which, in preliminary enquiries, is all evidence since 2005, the person must be there to be cross-examined. If not, then the evidence cannot be admitted as evidence in chief. No evidence will go in. So it is just a question of evidence in chief meaning what the prosecution would elicit from their witness and what the defence would elicit. So, the person will be subjected to cross-examination.

Section 6, which deals with video-recorded evidence, deals with a situation where you have a live witness; a witness who is present; a witness who is available. Section 15C is entirely different. It deals with where a person is dead and you have to prove that the person is dead or out of the country and then the entire statement will go in without cross-examination because the person is not there. Only exceptionally would that happen if you show that there are systems in place such as other witnesses for the defence. All of that is contained in the 2007 Act. That is when the person is not available at all.

In 2009, what we passed in 15I was when the witness is there, available to be cross-examined, but you may have days of the testimony and you put it in as evidence in chief, or, if it is a child, you do not want the child to rehash the evidence, but the child must be there to be cross-examined.

In relation to a child witness, we have to differentiate between a child witness and a child accused. As the current law exists, a child, when he is an accused, is entitled to have, not only an adult, but also an attorney present and they do have someone from legal aid sometimes or his family gets someone and they hold on until they can get somebody and they do not take a statement until there are two persons present; his parent or an adult or priest or whoever.

There have been cases, Canadian cases in particular, which say that the child is entitled to choose whom he wishes. If he does not choose, he can come before the court and say that the person was in cahoots with the police or the defence and as a result his evidence will go out.

Now, you are dealing with a mere child witness; not an accused person. If you have child witnesses in numerous cases whether it is for robbery, simple assault or wounding, you must get, not only an adult, but a lawyer to be there as a witness. It is not reasonable; it does not go within the normal process of investigation. If you are talking about a child accused, which is not what this is about, then you are dealing with a different thing.

Sen. Oudit: With all due respect, I would like to refer to section 5. It says:

> "15C(b)(1) Where a person, including an accused, gives a statement in relation to an offence, that statement may be video recorded."

It is not saying: "Where a person, the accused", it says, "including". It is not only the accused we are dealing with. So with all due respect to the legal mind, I am not seeing where this piece of legislation deals only with the accused or only those who are witnesses. It deals with anyone. I am reading the Bill here.

Sen. Jeremie SC: But there is a special provision with respect to child witnesses contained in subsection (4). Provisions are clear and it says:

> "Where a child gives a video recorded statement under 15C(1), the video recorded statement shall be made in the presence of an adult chosen by the child."

We are not speaking about a child accused who, as Sen. Seetahal SC says, is entitled to counsel. This is just the ordinary case of a child witness. That is what this specific subsection is for.

Question, on amendment, [*Sen. L. Oudit*] *put and negatived.*

Question put and agreed.

New clause 6 added to the Bill.

Renumbered clause 4 recommitted.

Question again proposed, That renumbered clause 4 stand part of the Bill.

Sen. Jeremie SC: Mr. Chairman, I beg to move that renumbered clause 4 be amended as follows:

In the proposed 15AA, after the words "sexual offences cases" insert the words "that were in force in England prior to April 04, 2005."

They expanded their rules with respect to recent complaint to all offences. We are not doing that; we are restricting it to sexual offences. That is the importance of the date. We would like to incorporate the law as at April 04, 2005; not beyond that.

Sen. Oudit: [*Inaudible*]

Sen. Jeremie SC: Yes. That is where the common law comes from. It is the form that is used in the Supreme Court of Judicature Act.

Sen. Oudit: I know that these are taken from elsewhere, but I am seeing the inclusion of the words "in England". We are in Trinidad law.

Sen. Jeremie SC: If you check the Supreme Court of Judicature Act, there is a grandfather provision which says that the laws in England as of such a date will apply generally.

So in (b), delete the words "as if they had not been abolished" and substitute the words "as if those rules had not been abolished in this jurisdiction". That is for clarity.

Sen. Seetahal SC: Is it that day the 2003 Act came into effect—

Sen. Jeremie SC: Yes. The particular section of the Criminal Justice Act.

Sen. Seetahal SC: You are sure of the date, though.

Sen. Jeremie SC: Yes.

Question put and agreed to.

Renumbered clause 4, as amended, ordered to stand part of the Bill.

Preamble.

Question proposed, That the Preamble be inserted.

Sen. Jeremie SC: Mr. Chairman, I beg to move,

Insert after the long title the following Preamble:

Whereas it is enacted by section 13(1) of the Constitution that an Act of Parliament to which that section applies may expressly declare that it shall have effect even though inconsistent with sections 4 and 5 of the Constitution and, if any Act does so declare, it shall have effect accordingly;

And whereas it is provided in section 13(2) of the Constitution that an Act of Parliament to which that section applies is one the Bill for which has been passed by both Houses of Parliament and at the final vote thereon in each House has been supported by the votes of not less than three-fifths of all the members of that House;

And whereas it is necessary and expedient that the provisions of this Act shall have effect even though inconsistent with the sections 4 and 5 of the Constitution.

Question put and agreed.

Preamble inserted.

3.45 p.m.

New Parliamentary Certificate.

Question proposed, That the New Parliamentary Certificate stand part of the Bill.

Mr. Chairman: The amendment is as follows:

"New Parliamentary Certificate	Delete the Parliamentary Certificate at the end of the Bill and substitute the following new Parliamentary Certificate:

"Passed in the Senate this day of , 2010.

Clerk of the Senate.

IT IS HEREBY CERTIFIED that this Act is one the Bill for which has been passed by the Senate and at the final vote thereon in the Senate has been supported by the votes of not less than three-fifths of all the members of the Senate, that is to say, by the votes of …….Senators.

Clerk of the Senate.

I confirm the above.

President of the Senate

Passed in the House of Representatives this day of , 2010.

Clerk of the House

IT IS HEREBY CERTIFIED that this Act is one the Bill for which has been passed by the House of Representatives and at the final vote thereon in the House has been supported by the votes of not less than three-fifths of all the members of the House, that is to say, by the votes of …….members of the House.

Clerk of the House.

I confirm the above.

Speaker."

Question put and agreed to.

New Parliamentary Certificate 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.

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

Sen. Jeremie SC: We have to call for a division.

The Senate divided: Ayes 24 Noes 6

AYES

Enill, Hon. C.

Saith, Hon. Dr. L.

Jeremie SC, Hon. J.

Browne, Hon. M.

Joseph, Hon. M.

Manning, Hon. H.

Piggott, Hon. A.

Narace, Hon. J.

Gronlund-Nunez, Hon. T.

George, W.

Hadeed, G.

Rogers, L.

Lezama, Miss L.

Melville, Miss J.

Cummings, F.

Deosaran, Prof. R.

Seetahal SC, Miss D.

Annisette, M.

Ramhkelawan, S.

Baptiste-Mc Knight Mrs. C.

Nicholson-Alfred, Mrs. A.

Drayton, Mrs. H.

Merhair, Miss G.

Balgobin, Dr. R.

NOES

Rambachan, Dr. S.

Mark, W.

Oudit, Mrs. L.

Assam, M.

St. Rose Greaves, Mrs. V.

Joefield, C.

Question agreed to.

Bill accordingly read the third time and passed.

ADJOURNMENT

The Minister of Energy and Energy Industries (Sen. The Hon. Conrad Enill): Mr. President, on the last occasion we met, we had indicated that we would be doing today, the completion of this Bill and also the Civil Aviation Act, Chap. 49:03. It is not my intention to proceed this afternoon and, therefore, on the next occasion that we meet we would do this particular Bill, followed by an Act to amend the Prisons Act, Chap. 13:01 and time permitting, an Act to restructure the pension arrangements of the Petroleum Company of Trinidad and Tobago Limited.

Mr. President, I therefore beg to move that the Senate do now adjourn to Tuesday, March 09, 2010 at 1.30 p.m.

Question put and agreed to.

Senate adjourned accordingly.

Adjourned at 3:51 p.m.