SENATE

Tuesday, October 19, 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. Rudrawatee Nan Ramgoolam, Sen. Vasant Bharath, Sen. Kevin Ramnarine and Sen. Prof. Harold Ramkissoon who are all out of the country.

SENATORS' APPOINTMENT

Mr. President: Hon. Senators, I have received the following correspondence from His Excellency the President, Professor 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: MR. SYLVESTER PETER RAMQUAR

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

NOW, THEREFORE, I, GEORGE MAXWELL RICHARDS, President as aforesaid, acting in accordance with the advice of the Prime Minister, in exercise of the power vested in me by section 44 of the Constitution of the Republic of Trinidad and Tobago, do hereby appoint you, SYLVESTER PETER RAMQUAR, to be temporarily a member of the Senate, with effect from 19th October, 2010 and continuing during the absence from Trinidad and Tobago of the said Senator Kevin Ramnarine.

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 14th day of October, 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. LYNETTE ABRAHAM

WHEREAS Senator Rudrawatee Nan Ramgoolam 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, LYNETTE ABRAHAM, to be temporarily a member of the Senate, with effect from 19th October, 2010 and continuing during the absence from Trinidad and Tobago of the said Senator Rudrawatee Nan Ramgoolam.

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 14th day of October, 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. VENOSH SAGEWAN-MARAJ

WHEREAS Senator Vasant Vivekenand Bharath is incapable of performing his duties as a Senator by reason of his absence from Trinidad and Tobago:

NOW, THEREFORE, I, GEORGE MAXWELL RICHARDS, President as aforesaid, acting in accordance with the advice of the Prime Minister, in exercise of the power vested in me by section 44 of the Constitution of the Republic of Trinidad and Tobago, do hereby appoint you, VENOSH SAGEWAN-MARAJ, to be temporarily a member of the Senate, with effect from 19th October, 2010 and continuing during the absence from Trinidad and Tobago of the said Senator Vasant Vivekenand Bharath.

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 18th day of October, 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: MRS. PARVATEE ANMOLSINGH-MAHABIR

WHEREAS Senator Professor Harold Ramkissoon is incapable of performing his duties as a Senator by reason of his absence from Trinidad and Tobago:

NOW, THEREFORE, I, GEORGE MAXWELL RICHARDS, President as aforesaid, in exercise of the power vested in me by section 40(2)(c) and section 44 of the Constitution of the Republic of Trinidad and Tobago, do hereby appoint you, PARVATEE ANMOLSINGH-MAHABIR, to be temporarily a member of the Senate, with effect from 15th October, 2010 and continuing during the absence from Trinidad and Tobago of the said Senator Professor Harold Ramkissoon.

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 13th day of October, 2010."

OATH OF ALLEGIANCE

The following Senators took and subscribed the Oath of Allegiance as required by law: Senators Sylvester Peter Ramquar, Lynette Abraham, Venosh Sagewan-Maraj, and Parvatee Anmolsingh-Mahabir.

PAPERS LAID

1. Report of the Auditor General of the Republic of Trinidad and Tobago on the financial statements of the Eastern Regional Health Authority for the year ended September 30, 2004. [*The Minister in the Ministry of National Security (Sen. The Hon. Subhas Panday)*]

2. Report of the Auditor General of the Republic of Trinidad and Tobago on the financial statements of the Eastern Regional Health Authority for the year ended September 30, 2005. [*Sen. The Hon. S. Panday*]

3. Report of the Auditor General of the Republic of Trinidad and Tobago on the financial statements of the Eastern Regional Health Authority for the year ended September 30, 2006. [*Sen. The Hon. S. Panday*]

4. Annual audited financial statements of the Trinidad Nitrogen Company Limited for the year ended December 31, 2009. [*Sen. The Hon. S. Panday*]

JOINT SELECT COMMITTEES ESTABLISHMENT

Parliamentary Accommodation

The Minister in the Ministry of National Security (Sen. The Hon. Subhas Panday): Mr. President, I beg to move the following Motion:

Be it resolved that the Joint Select Committee on parliamentary accommodation be established;

And be it further resolved that this committee be mandated to consider essential guiding policies related to the Member and staff accommodation during the restoration of the Red House project and report to both Houses from time to time.

I beg to move.

Question put and agreed to.

Legislative Proposals

The Minister in the Ministry of National Security (Sen. The Hon. Subhas Panday): I beg to move the following Motion:

Be it resolved that this House consider the legislative proposal to provide for public procurement and disposal of public property, together with the legislative proposal to repeal and replace the Central Tenders Board Act which were laid in the Senate on Tuesday, July 06, 2010.

And be it further resolved that the Joint Select Committee be established to:

(a) Examine the legislative proposals;

(b) Consult with stakeholders and interested persons;

(c) Send for papers, records and other documents;

(d) Recommend amendments to the proposals with a view to improving the drafts; and

(e) Submit a report to Parliament within three months from the date of appointment.

I beg to move.

Question put and agreed to.

1.45 p.m.

EVIDENCE (AMDT.) (NO. 2) BILL

[Second Day]

Order read for resuming adjourned debate on question [October 05, 2010].

That the Bill be now read a second time.

Question again proposed.

Mr. President: The debate on the following Bill which was in progress when the Senate adjourned on Tuesday October 05, 2010 will be resumed, a Bill to amend the Evidence Act, Chap. 7:02. On the last occasion, on Tuesday October 05, 2010, Sen. The Hon. Subhas Panday who was the mover of the Motion, Minister in the Ministry of National Security, spoke for eight minutes and he therefore has 52 minutes of speaking time left.

Sen. Beckles-Robinson: Thirty-seven minutes.

Mr. President: Thirty-seven minutes. Thank you for your very quick calculation.

Sen. The Hon. S. Panday: Thank you very much, Mr. President. I have been informed that you were right and we were wrong.

Mr. President, the Bill before this honourable Senate today is the Evidence (Amdt.) (No. 2) Bill, 2010. This Bill seeks to amend the Evidence Act, Chap. 7:02 and in that process to revive the doctrine of recent complaint. It also extends the use of video recording to encompass all criminal proceedings. Later in the proceedings I will show the extension of the Bill as we started from 2007—2009. This Bill has come before the House, as I indicated, and it lapsed because the Parliament was prorogued. This Bill contains six clauses. As I said, it aims to revive the common law doctrine of recent complaint. The Bill also proposes to extend the use of video recording in evidence to encompass all criminal proceedings and to allow for the admissibility of the recorded statements of both accused persons and even where witnesses are absent.

If one looks at the Bill, one would see that this Bill is inconsistent with sections 4 and 5 of the Constitution and is therefore required, pursuant to section 13 of the Constitution, to be passed by a special majority of three-fifths of all the Members of each House and I will go through the Bill slowly.

There is the Preamble, and then you have the Short Title and Commencement. It says that:

"This Act may be cited as the Evidence (Amendment) Act, 2010."

It also says it shall come into force on a date proclaimed by the President.

In the interpretation section it says:

"…'the Act' means the Evidence Act."

It says at clause 4:

"The Act is amended by inserting after…15A the following sections:

15AA. Notwithstanding any other law to the contrary, the common law rules relating to evidence of recent complaint in sexual offence cases, that were in force in England prior to 4th April 2005, shall apply, from the date this Act comes into force, as if those rules had not been abolished..."

First of all, what is the doctrine of recent complaint? Under normal circumstances, a previous consistent statement which is made by a person is not admitted into evidence to buttress their evidence that they give from the witness box. For example, if Tom is walking down the road and John hits him a lash and causes him injury and he comes home and tells his wife, John inflicted an injury on him by hitting him with a bottle on his head while he was having a drink or something, that person to whom he gave the complaint—that person cannot go in court

and say, "Look, you know what he is saying is true, because he told me that at the earliest available moment"; that is, a previous consistent statement cannot buttress the statement of the complainant from the witness box. However, the doctrine of recent complaint is an exception to the rule of previous consistent statement. The doctrine of recent complaint may be admitted to bolster the credibility of the complainant in sexual offences cases only, for example, rape and other sexual offences or sexual assault.

So if a person has been raped and that person goes home and tells another person that she had been raped by so and so at so and so time at so and so place, the person to whom she complained is permitted, under these special circumstances, to be called by the prosecution, go to the court and give that evidence. Now, that evidence is not given as the truth as to whether the rape or the offence had been committed; that evidence goes in to really show or to support a method of conduct of the victim or the complainant to bolster her evidence as she gave her evidence in the court. It is a type of situation where it helps the victim to bring extra evidence that she could not have brought before or in any other cases.

However, it says, "Okay, we will allow the person who you told about the incident to give evidence, but it cannot be under ordinary circumstances." They say this complaint must be made to the person at the first opportunity or it must be very recent. In certain cases, it was held that even a day after—if somebody reports the incident a day after the alleged incident, they said that that was not good enough. There was a case *Rush* in 1896; it is common law; it is so old, 16J at page 77, it said one day was not recent. It went on in another case *Ingrey* 1916 JP at 106; it said three days had been too long, and another case of *Birks* at 2003, 2 Criminal Appeals at 122, it said that two months had been too long.

The reason for my giving you these examples is to show that this law that is before this honourable Senate today has tightened that situation and it creates a situation to say that if the person did not report on time or as recent as the common law, that that may not be fatal to her case.

It says in the Canadian case that a person may not wish to report the matter very recently because of a number of reasons. The recent complaint they say—and I quote from *The Law of Evidence in Canada*, Third Edition by Bryant, it says:

> "The doctrine of recent complaint is an anomalous and arbitrary exception…against narrative. (That is hearsay) Fauteux J.'s attempt [*in Kribs v. R.*] to formulate a modern basis for the rule cannot be justified in reason.

> The expectations of medieval England as to the reaction of an innocent victim of a sexual attack are no longer relevant. A victim may have a genuine complaint but delay making it because of such legitimate concerns as the prospect of embarrassment and humiliation, or the destruction of domestic or personal relationships. The delay also may be attributable to the youth or lack of knowledge…or to threats of reprisal..."

So what has happened is, in this legislation today that is coming before this honourable House, the law has been tightened as far as it relates to recent complaints. It is also said that, in the doctrine of recent complaint, it must be a complaint; it must be as early as possible and it must be voluntary. It must not be, for example, where somebody comes and says, "Did he do so and so; did he do so and so?"; and lead the questions. It has to be voluntary.

So that is basically what we are introducing here today. Today, as I say, we have moved one step forward. Before 1986, we had the basic doctrine of recent complaint which says that if you complain about an incident of rape shortly after the incident or the first possible opportunity, you could lead the evidence. However, in 1986, that doctrine of recent complaint in our country was abolished. Why was it abolished? I would like to quote the *Hansard*. The *Hansard* on that occasion, when the Bill was presented by Mr. Russell Martineau, Attorney General as he was then—and he said:

> "One of the more important changes in the bill—we have jettisoned the common law rules relating to recent complaints on sexual offences cases. This provision which dealt with recent complaints gave the impression that every woman who was raped or anything like that automatically ran down the road and shouted to the first person she met 'I have been raped, I have been raped.' That seemed to have been the thinking—that she will jump and tell the first person she meets."

He says:

> "Now, we know that it is far from being the fact that in fact, there are a number of women in our society who will for various reasons, many of them good reasons, be reluctant to let anybody know that they have been sexually assaulted, raped or what have you.
>
> So that the basis for this rule is unfounded and we have sought to get rid of it. In fact, it is a rule which cast aspersions on the dignity of our women folks."

2.00 p.m.

So the reason the law of recent complaint had been abolished was because of that reason. So that was the situation in 1986. However, after 1986 to about 2000, if somebody had raped or indecently assaulted someone, and that person ran and told somebody, "Look, this is what happened to me", as we have repealed the law, it says in those circumstances, no, you cannot lead that evidence. So what did we find in those circumstances? It says you cannot lead that evidence whatsoever. So we found that many persons who would have had that opportunity to lead that evidence were unable to do so because of the law which abolished the doctrine of recent complaint.

Now, as we have said, the doctrine of recent complaint does not go to the truth of the matter, not because that person complained to somebody shortly thereafter, that it means that person had been raped. As I said, that evidence is led for the purpose of buttressing the person's evidence as to her conduct because, in the case of rape, it usually takes place in private. Probably there might be no other person present, and as such, assistance is given to the victim so that she can complain.

It also went on, Mr. President, to bolster her evidence in the box, because, if somebody who has been raped, immediately thereafter, or as soon as possible, rushes and tells another person what has happened, then in those circumstances, since rape is an offence which deals with consent, nobody who has been raped will rush and tell another person immediately thereafter, "I have been raped". It is in those circumstances that the evidence was necessary at times to negate the issue of consent. As I have also said, not to corroborate really, but to assist the complainant in her matter. After a period of time, the prosecution found itself in a position where, as they could not have introduced that evidence of recent complaint, they found difficulty in proving their case. So the prosecution began to lose their cases, because this extra help or assistance from the doctrine of recent complaint, they were denied that assistance.

So, therefore, in 2000—it was section 31 of Act 1986 that abolished the doctrine of recent complaint. Section 18 of Act 31 of 2000 says:

> "The Act is amended by repealing section 31 and inserting a new section 31..."

So, because of the problems that the prosecution was experiencing, they repealed section 31 of the 1986 Act, which had done away with the issue of recent complaint.

Now, some felt that by repealing the Act which repealed the common law, the common law would have been revived. So, nothing was done. However, section 31(1) of the Interpretation Act says:

> "The repeal"—of an Act—"or the amendment of a written law shall not be construed as a declaration as to the previous state of the law."

So apparently, by repealing Chap 3:01, section 31(1) of the Interpretation Act did not revive the common law as it was. But nothing was done! There was a case that had decided this matter. In the case of *Godfrey Gabriel* in 2006 or 2007, the Court of Appeal on page 9 of the judgment says:

> "…the repeal or amendment of a written law is not to be construed as declaratory of the previous state of the law. 'Law' in 'state of the law' certainly includes the common law."

So it went on to explain the law as it is related to this situation.

> "In each case the repealing act will have to be construed to determine whether it was Parliament's intention to revive the previous law. In this case it is common ground that the 2000 Act does not contain such an intention. The consequence therefore is that the repeal of the 1986 Act did not reinstate the common law rules as to recent complaint."

As I have said, because of that, the victim's credibility was put under pressure.

Now, what we are trying to do here today in this legislation is to expressly—not by implication as had happened before—put into law, in a positive way, the revival of a doctrine of recent complaint. Apart from what we have said, why are we reviving this doctrine of recent complaint? As I have said, the problem is posed to the credibility of the victim. However, it is felt in legal circles that recent complaint enables the jury—because all rape cases are indictable which have to go before a jury—to have a more complete picture of the facts of the case and to hear direct evidence relevant to the circumstances. That direct evidence which is relevant to the circumstances is the first statement made as a recent complaint to the person. The main purpose of reintroducing this evidence is to support the credibility of the virtual complainant. It says that the exclusion would mean that the jury would be denied the proper assessment of any supporting contemporaneous complaint.

It went on to say further, when this Bill was first debated, that if evidence is not given to the jury, then the jury might speculate and we might get a perverse verdict. So that is the reason for this legislation before us today. So, we speak

about reviving doctrine of recent complaint, and we have told you what is recent complaint and the reasons for reintroducing the doctrine of recent complaint.

Mr. President, if you look at the legislation before us, it says that this law, the doctrine of recent complaint—and I will read it over for clarity:

> "15AA. Notwithstanding any other law to the contrary, the common law rules relating to evidence of recent complaint in sexual offence cases, that were in force in England prior to 4th April 2005, shall apply, from the date this Act comes into force, as if those rules had not been abolished in this jurisdiction."

Why did they choose April 04, 2005? What is the magic in that date?

Mr. President, the Criminal Justice Act, 2003 in England, has expanded the doctrine of recent complaint much wider than we intend to go at this time, and it says that the doctrine of recent complaint can apply to any offence. Today, we are saying, the doctrine of recent complaint applies to sexual offences. In the English law it applies to any offence, and it goes further to say that the statement which you may tell someone that falls within the rubric of recent complaint, that evidence could be given as the truth of the contents contained therein. In our law we have not gone so wide. We are saying it does not go to the truth of the contents of the complaint made to the first person, but to show a type of behaviour consistent with the victim's evidence and that is why they have indicated that is the date for which we have adjusted our law.

There are some people in Trinidad and Tobago who feel that this amendment should go as far as the English amendment, in that we should not contain it only to sexual offences, because, in so doing, it might appear as though you are chauvinistic and you are putting women at a disadvantage and that it discriminates as being prejudicial against women and girls, and as such, we should open out the law.

2.15 p.m.

Well, this is a matter which Senators can debate and this Government is open. If you believe that this law has gender bias, this Government is willing to listen and accommodate.

The law goes on to section 15AB. So we know the doctrine of recent complaint. We know the conditions to have the evidence admitted. We know the circumstances under which they can be admitted. What has happened here? If one looks at clause 4, section 15AB, the law goes further than the common law. It says:

> "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 in respect of the commission of the alleged offence by the person upon whom the assault is alleged to have been committed or to suggest a delay by that person in making any such complaint, the Judge shall—"

It says now that the doctrine of recent complaint has been expanded. If, in a matter before the court, a lawyer or anyone asks a question which suggests that the person did not make a recent complaint, nor made a complaint at all, it does not stop this.

We go further. I have given the reasons before why many persons may not have made a complaint very shortly after. It says that when that happens, the judge shall:

> "(a) give a warning to the jury that an absence of recent complaint or a delay in complaining does not necessarily indicate that the allegation that the offence was committed is false; and
>
> (b) inform the jury that there may be good reason"—like those I have given before—"why a victim of a sexual assault may refrain from making or may hesitate in making such a complaint about the assault."

As I said, shame, fear, threats, et cetera.

Therefore persons who commit offences of a sexual nature will find themselves on a tightrope. If you had reintroduced the doctrine of recent complaint only as the common law, then during the trial you could have cross-examined and said the person did not make a recent complaint and, if the person did not, maybe the offence was never committed. So, to close that door, to prevent that line of examination and defence, section 15AB was introduced.

I want to inform some people—maxi-taxi drivers who carry young people to school—if you believe that on the last day of school you could do something, commit an assault, and a week or a year after you do not hear about it, do not feel you are off the hook, because, long after that, that person may complain and if that person has a good reason for not making a "recent complaint", you could be caught and charged.

Maxi-taxi drivers, people who work PH, even stepfathers, if you believe—sometimes there are circumstances where somebody has a wife who has children and he believes that he could sexually abuse the child and, because the mother is

dependent upon him for a living, the mother would terrorize that child so much that the child might be afraid to talk, beware! If that child complains a long time after the incident, this legislation, as it stands here, will catch you.

There was a case where a stepfather had interfered with a young child. Holidays passed, and, when the school term opened, the child began crying in school and the teacher called the police. The police took action and because of this legislation not being in place, I do not remember what happened to the case. With this law, persons like that will be caught.

These sexual offences are not crimes of passion but well-thought-out and deliberate actions. I want also to warn persons that the doctrine of recent complaint does not only deal with consent but applies when there is no need for consent. For example, there is something called statutory rape where someone has sex with a person who is not his wife and who is under the age of 14. He is guilty of an offence even if she consents. So the argument we were making before that the doctrine of recent complaint deals with the issue of consent even applies where there is no need for consent.

Ladies and gentlemen, it says that, below 14 years, he is guilty of an offence whether or not the female person consented to the intercourse and whether, at the time of the intercourse, he believed her to be 14 years of age and is liable to life imprisonment.

There is a saying that ignorance of the law is no excuse to break the law. We believe that, since the law has become so complex and technical, it is important that as a government and as a Parliament we speak to the people in their language and educate the population so that we give them knowledge of the law.

You would not have a defence by saying that she looked big; that she looked like an adult. The law says it is a matter of age. Big and beautiful does not matter. As a man, you have a duty, and the obligation is placed on you, according to law, by age. There is no excuse whatsoever to say you thought she was a big woman and that she behaved like a big woman. No, Sir. The law is serious and the doctrine of recent complaint applies to situations like this.

If you believe that she is above 14, what does the law say about that? It says in section 7(1) of the Sexual Offences Act that:

> "Where a male person has sexual intercourse with a female person who is not his wife with her consent and who has attained the age of fourteen years but has not yet attained the age of sixteen years he is guilty of an offence, and is

liable on conviction to imprisonment for twelve years"—in the first instance—"and to imprisonment for fifteen years for a subsequent offence."

So the law is serious. I do not want to speak about anticipated legislation but to indicate that we will bring law to this Parliament where the consequences and the sentences will be as severe as this. This Government intends to fight crime at all costs. We intend to fight crime today educating those persons who are so inclined to perform illegal acts. Of course, section 7(2) gives a defence.

Having said that, when one looks at the judge's warning in the absence of a delayed complaint, and when one looks at the direction which the judge—before I come to that, there are some people who are saying that maybe when the issue of recent complaint arises, the judge should intervene and deal with the issue immediately. They feel that at this stage in the proceedings the judge must give the jury warning. When does the judge speak to the jury? The judge speaks to the jury after all the evidence has been tendered; where the defence also would have addressed the jury; where the prosecution would have addressed the jury and then the judge, at the summing up stage, would give his direction.

Many people feel that the damage would have been done earlier in the case and this warning may not be strong enough to eradicate the impression which would have been created in the minds of the jury before. They are, therefore, saying that the judge should have intervened earlier. Well, Senators, it is a question we throw out to you. We put this idea on the table for Senators to deliberate. In those circumstances, proffer your suggestions and this Government will be willing to listen to them.

On the other hand, there are some persons who are saying that this thing is not balanced; it only speaks about a case where there is no complaint or no recent complaint that the judge will give this warning, and, as a result of that, the warning might be biased.

2.30 p.m.

I have looked at some judgments which state that, if we compel a judge to give a warning like this, it would appear to be a one-sided warning or a biased summing up. It falls short of a model direction, because, when a judge is summing up, he must walk in the middle of the road and put both sides before the jury. If you prevent the learned judge from having that opportunity to put both sides of the case, then, in those circumstances, it might not be a model direction and, as such, this case may fail on scrutiny by the appellate court.

That caused me to do some research on this matter. I have looked, I have checked and I have seen that this law was taken from the Criminal Procedure Act 1986 of New South Wales. I have also looked at the *Criminal Trial Courts Bench Book*, which deals exactly with this issue. It says:

> "(Section 294(1)—(2) *Criminal Procedure Act* 1986…*Kilby v The Queen...*
>
> This direction"—where the judge will warn the jury—"is only to be given when evidence is given, or a question is asked, tending to suggest an absence of, or delay in, making a complaint:"

as we indicated in the first part of section 15AB.

> "…the judge must not give this direction 'unless there is sufficient evidence to justify such a warning'"

Identical to this, it states what the judge should do. However, under the New South Wales law, it states:

> "The absence of a complaint [*or delay in making a complaint*] is a matter that you may take into account in assessing the credibility of [*the complainant's*] evidence as to what he/she said the accused did. The accused has argued that the absence of a complaint [*or delay in making a complaint*] is inconsistent with the conduct of a truthful person who has been sexually assaulted and so you should regard this as indicating that the complainant's evidence is false. This is a matter which you should consider.]"

However, with this legislation as it stands here, the judge is prevented from giving a balanced summing up. You then ask yourself: why is that so?

When you go to the New South Wales, Criminal Procedure Act 1986, from which this legislation was lifted, it states that the judge must give those directions and the reason the judge must give those directions, which I just spoke about, is that we must add something in the law. We must not only hold on or constrict ourselves to (a) and (b), but we must expand the law in order to have a balanced judgment. The law states that the judge must:

> "(c) not warn the jury that a delay in complaining is relevant to the victim's credibility unless there is sufficient evidence to justify such a warning."

Therefore, what is happening is—[*Interruption*]

Mr. President: Senator, I want you to know that you have five minutes more.

Sen. The Hon. S. Panday: Sorry. We have introduced an amendment which states in (c):

"…not warn the jury that a delay in complaining is relevant to the victim's credibility unless there is sufficient evidence..."

We have (a), (b) and (c), so there is a balanced summing up.

The other issue deals with videotaping evidence. For those of you who would have been looking at the legislation, you will see that it appears as though we are amending Act No. 5 of 2007 and 2009. However, the amendment as we have it before us in section 16 states that we can now use videoconferencing where a person, including an accused person, gives a statement. You can videotape him and use that as evidence.

If one looks at the law from Act No. 5 of 2007 to present, the law started in 2005, where there was a written witness statement which could have been tendered in evidence as the truth of the contents therein if certain conditions were fulfilled, for example the witness cannot be found, the witness was killed, et cetera. The mischief which the law was trying to deal with was to prevent persons from killing witnesses, terrorizing witnesses or in any way interfering with witnesses. If this evidence was videotaped, there was no gain in killing any witness.

Section 5 deals with the conditions upon which videotaped evidence would be admitted to make sure that there is justice in the case. It goes on to say, when the evidence is given, it goes into the matter as evidence-in-chief and the evidence may be on oath or otherwise.

In 2009, we moved from person-written hearsay statements to using video evidence. In 2009, video evidence pertained only to witnesses, not including the accused. It also pertained only to indictable offences. Today, what we have done in this Act—when one looks at clause 6(3)(d), it states:

"(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';"

That means it can be used in all proceedings. Mr. President, how much time do I have?

Mr. President: You have one and one-half minutes more.

Sen. The Hon. S. Panday: Thank you. In that one and one-half minutes, you would observe in this document that there is another amendment which we have introduced. Subsection (3) states:

"(3) Where a child gives a video recorded statement under section 15C(1), that statement shall be made in the presence of a person who belongs to one of the following categories of persons chosen by the police officer conducting the investigation into the matter in which the child is a witness…"

In order to add integrity to the proceedings, we will delete the words "police officer" and insert "a police officer above the rank of Inspector." In any event, one would see the category of persons who can witness the statement. We throw this out for Senators to see if they have any other idea. We are willing to listen.

Mr. President, I thank you very much and I thank Members of this honourable Senate for giving me this opportunity to say a few words.

I beg to move.

Question proposed.

Sen. Terrence Deyalsingh: Thank you, Mr. President. It is a pleasure to address this Senate for a second time. The Bill before us in this Thirteenth Sitting of the First Session of the Tenth Parliament is to amend the Evidence Act, Chap. 7:02.

I will give a brief history. I would like to tell those viewing and listening that this particular Bill was brought before this House under the previous administration, in the Ninth Parliament, full debate was had, but unfortunately, the Bill lapsed, so it is now before us again. So, it is not my intention to go into a full-fledged debate on the issue. Basically, I think we have a duty to explain to those listening to us, and those viewing, what we are about, especially when you hear that the Act may be inconsistent with certain sections of the Constitution. As members of society, whenever we hear something is inconsistent with the Constitution, our ears go up. We want to allay those fears.

I would be brief, and it is my intention to bring a more humanistic approach to the debate. I would leave all the legal niceties to the legal brains on all three sides: the Government Benches, my colleagues on the Opposition Bench and the Independent Senators.

One of the areas of focus of this Bill, as explained, is the admissibility of certain types of evidence, especially in criminal offences like rape, to review the doctrine of recent complaint and extend the use of video recording. We need to explain that this doctrine of recent complaint had its origin in early English law, dating back to the 15th and 16th Centuries, based on the concept of hue and cry, meaning, if you were raped, or if you were the victim of abuse, you were

supposed to raise a hue and cry, the village would hear you and that would be your complaint. We now know that there are many reasons people do not complain initially.

The purpose of reviving the doctrine of recent complaint is to show consistency and to rebut the claim, by the accused, that the alleged assault was done with consent and that any delay in making a complaint is an indication that the complaint was false. This is to give some protection to the victim of sexual abuse. There are many reasons a woman/a victim of sexual abuse or rape may not make an initial complaint. That person may be under duress, her children may be threatened, her family may be threatened, or there was repressed memory. We have cases of women who suddenly remember, in their 20s and 30s, that they were raped when they were young. There is the psychological issue of repressed memories. Then there is the issue of marital rape and incest.

Mr. President, with your permission I would like to show the general public how, in my view, women have been unfairly treated over the centuries, by a male-dominated society. To illustrate that point, the lawyers amongst you all will know the case of *RvR*. It is a 1991 case in England where a husband and wife were separated. Wife goes home to parents, estranged husband comes to visit wife at the home of estranged parents and proceeds to rape his wife, or have sex with his wife against her consent. Case goes to trial. Husband is found guilty of rape but he appeals. Do you know what grounds he appeals on? He appeals on an old 15th Century legal tradition, which states that the marital contract basically gives the man the right to have sex with his wife against his wishes. In those days, wives were treated as chattel—[*Interruption*] against her wishes.

Sen. Ramlogan: It would never be the other way.

Sen. T. Deyalsingh: Thank you. In those days, wives were treated as chattel; moveable property. That could never be right. That could never, ever be right. There is no rape, according to the marriage contract, and this is what this particular gentleman built his appeal on.

Eventually this particular case reached the European Court of Human Rights. Under Article 7 of the European Court of Human Rights, you cannot pass laws retrospectively. In other words, I cannot be charged for an offence today and we pass a law tomorrow and I am found guilty. However, the European Court of Human Rights—I would like to read this section with your permission:

> "This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was

> criminal"—this is the key part—"according to the general principles of law, recognised by civilized nations."

The whole idea of civility of nations came in. We recognize that you can, in fact, rape your wife. Needless to say the appeal was dismissed.

In the local courts, it was referred to by Sen. Panday, we have the Court of Appeal case of *Godfrey Gabriel and The State*, Criminal Appeal No. 30 of 2005, heard before Justices of Appeal John Mendonca and Weekes. This particular case highlighted the need for harmonization and consistency. This is why we are here today, to revive the doctrine of recent complaint.

I would now like—as I have said earlier—to take a more humanistic approach to this issue. Rape is not, according to psychologists all over the world, a sexual act. Rape is considered an act of violence. It is an act of violence; it has nothing to do with sex or sexual gratification. In some countries, rape is even used as a political tool in war. This cannot and must not be tolerated. The rape victim, after the act, is left with very deep psychological scars. They may never heal. Those scars never heal.

That person may suffer from nightmares for the rest of her life, the inability to form proper relationships with the opposite sex, or the inability to have a proper marriage with her husband. There are familial and social ostracisms. This person is scarred for life. This crime of rape is committed against mothers, grandmothers and girls as young as four years. It is a violation of the essence of womanhood and this Parliament has a duty to protect our women. Sometimes I wish, on a personal level, that we had the technology to rewire the males in society, those who are bent on perpetrating these types of acts, but we do not.

In preparing for this debate today, I did some legwork and I went to the Rape Crisis Society and the Crime and Problem Analysis Branch of the police service to see if I could get some statistics on rape, to find out the prevalence, so that we could judge what effect rape is having on society. The Rape Crisis Society, in their annual report, 2009—and it is not my intention to go through the whole report, but mainly to highlight certain pertinent facts. This is the breakdown for 2009: 132 cases of rape, 63 cases of incest and 173 cases of child sexual abuse. When you look at the breakdown by ages, 0—4, pre-school, four cases in 2009; ages 5—11, primary school girls, 18 cases; 12—17, 69 cases; you see the big jump, as these girls get older. It continues: 18—26, we might consider these girls to be young adults, 68 cases; 27—35, 53 cases; and 54-plus, this is where our grandmothers are, 11 cases; giving a total of 266 cases for 2009.

When we break down the categories of offenders or accused in these cases, in 2009, strangers accounted for eight of those rapes and gang-related rapes, 4, but, this is where things get frightening. This is where our women have to be careful. Acquaintance or date rape is by far the biggest category. Women—and this is a global phenomenon—are being raped by people they know; people with whom they go out on dates. If this Parliament can do anything, it is at least to alert women of these dangers.

Yesterday afternoon, I went to the CAPA Branch of the police service during all the hail, fire and brimstone. I reached too late to get the data in time for today's sitting. There is something called the Iceberg Theory. These figures from the Rape Crisis Society are from people who voluntarily go to the society for counselling. It, therefore, means that the police figures will be much higher. If we believe statistics, like the United States, where they claim 84 per cent of rapes are not reported, if a similar situation exists here, then what we are seeing with these figures is simply the tip of the iceberg. With the Iceberg Theory, you see 10 per cent on top the waterline, but the other 90 per cent is submerged. This is a very grave problem which is difficult to quantify.

In talking about it again, as I have said at the beginning, women are placed at a disadvantage, in what was traditionally a male-dominated society. Women are our caregivers, they are our mothers and our grandmothers and now they are also breadwinners. Many women now lead the household as the main breadwinner. Many single-parent homes are led by women and now they also have to worry about being raped. That cannot be right. We have to do something. As a Parliament, as responsible parliamentarians, what I would like to do is follow every single woman and make sure she is not raped, but that is an impossibility. What can we do as parliamentarians? We could ensure fairness before the courts and we could ensure justice.

This Bill was piloted in the last Parliament. We think this is good law to protect good people and we, therefore, support this Bill. Thank you, Mr. President.

Sen. Subhas Ramkhelawan: Thank you, Mr. President, for giving me this opportunity to speak on this amendment Bill which, as was rightly noted by Sen. Deyalsingh, had come to this Senate and lapsed. Therefore, I am going to be focusing on some areas that may not have been raised the last time around, or reinforce some of those areas.

Our society, as I may have described it the last time, is an ailing society; not a failing society but an ailing society. It is a society where the economic veneer has kept things going, but now, as that economic veneer peels away, we see, in stark reality, some of the great issues that face our society and that we would have to contend with head-on.

Mr. President, people all over this country are crying out for justice. Everywhere you go: "We want justice" but sometimes, instead of justice they get law. As you know, there is a rather vast disconnect between justice and law. I am very pleased to give my support to this piece of legislation which seeks to address this whole question; this whole defence sometimes by perpetrators of the notion of the doctrine of recency of complaint.

I am not a lawyer so I have had to study this thing in some great detail, at least to get some basic understanding of what is meant by the notion of the doctrine of recency of complaint, but I think I understand it a bit now. I think the clear benefit is that perpetrators cannot hide behind, or find as a defence, this question of recency. Therefore, there is no other alternative for any reasonable and right-thinking person but to support wholeheartedly, this piece of legislation. So much is going on in our society that we have to pay great attention, and, what we do not want is to have some sort of lacuna in the law where there are situations where injustice is carried on because the law is not as effective as it should be.

As to the next matter of the question of video recording and it being used as evidence in the courts, when I first saw it, I wondered—because of all the caveats in the law—whether someone who wanted to make some sort of mischief could go to a police station and be video recorded and make a complaint, particularly in very, very sensitive issues such as sexual offences, and be able to avoid the courts, not have to go back and have the courts depend on, or the defendant in such a case, have to face a situation where video recording is the only piece of evidence that is put into the courts.

I found that the legislation, when I looked at it in detail, created an excellent balance, in that, it gave a number of degrees of freedom and leeway to ensure that there is a wide and broad interpretation by the courts and there is sufficient room to make, what I would call, a reasoned decision, in terms of what should be accepted or not accepted; whether it is video recording or not, whether it is accepted and the way it is placed on the video recording. We leave that as a matter to the Judiciary.

As we seek to modernize the legislation in many areas, I am pleased that, in this particular area, some of the loopholes are actually closed and that, as we seek to modernize, we will be able to address not only this, but a number of other areas where we can say that we have made progress as a Parliament, in ensuring that we gave the quality and breadth of laws, so that decisions and interpretations can be made properly in terms of sexual offences matters, and even wider and broader matters.

On a short note, as an aside, in terms of one of my recently discussed areas of parliamentary effectiveness, trying to decipher the pieces of legislation before us is a most difficult exercise. My friend, Sen. the Hon. Subhas Ramkhelawan, now adds another amendment to it. [*Interruption*] Subhas Panday, sorry, my namesake only in part; the first part.

3.00 p.m.

So, we are in 2010 and it would make great sense that, as parliamentarians, we get some sort of updated piece of legislation so that we do not have to search all over. First of all, it is very painful to understand the law but even more painful to try and re-craft everything and put it into one piece to understand amendment 15C; replace (1) to (6) with (4) to (9), and it is absolute confusion that is not necessary for us in this day and age; but that is an aside because—

Sen. Panday: Hon. Senator, I understand your frustration, and only today I got a version of the consolidated laws on evidence, and the Law Revision Commission is working assiduously to have this updated—this is only a draft and it will be coming very soon. The Law Revision Commission is working very hard on this matter.

Sen. S. Ramkhelawan: I am grateful to the hon. Senator, but what I would like to suggest is that, even though all the laws have not been updated, when these matters come to the Parliament, the specific matters, if you can request of the Commission that for these specific areas that the matter be updated and consolidated so that we can better understand and interpret and make our contribution in this honourable Senate.

So, in conclusion, I would like to support this piece of legislation and I would like to ask all the Senators in this Senate to move to support this piece of legislation so that the Government, the State, can go about doing its work more efficiently and more effectively.

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

Sen. David Abdulah: Mr. President, thank you very much. This is the first occasion since I have been in this honourable Senate that we seem to be all ad idem, to borrow a phrase well used by those in the legal profession in this Senate, on what is a very important piece of legislation. It is good that we are expressing what I think is the common concern about the well-being and welfare of citizens of Trinidad and Tobago, and to find ways and means of closing the loopholes that now exist in the law in order to better protect the victims of rape.

In congratulating Sen. Deyalsingh on his contribution, I think there is one omission he made in that he was referring to victims of rape as only women and young girls and, of course, there are young boys and men who are also victims of rape. One will remember the terrible case of young Akiel Chambers where the perpetrator of that dastardly act has never been brought to justice, most regrettably, and also Sean Luke, a little boy who lost his life in the cane fields of Central Trinidad. So, this is a crime that cuts across gender lines and so on and, of course, it is not applicable to any particular social group in the society either.

The very data about incest and date rapes and so on suggests that really and truly the issues that this piece of legislation seeks to address are even that more important, because it is in instances such as where people know the perpetrator of the rape—that person may be a family member or an acquaintance—that the issue of recent complaint becomes even more important, because there are many instances where the person who is the victim may be all the more reluctant to come forward because the believability of the incident and so on would be challenged all the more, in terms of there being consent, certainly in terms of date rapes.

One of the issues I think the society has to come to grips with, even as we seek to close this particular legal loophole, is the terrible culture and scourge of violence in our society. The point was well made both by Sen. The Hon. Panday and Sen. Deyalsingh that the crime of rape is essentially a crime of violence—it is an issue of an act of violence—and it is just one other manifestation of the culture of violence that has taken root in Trinidad and Tobago.

Often we talk only about the major headline acts of murder and rape, but, running throughout our society there is a culture of violence, and it is something that not only as Members of Parliament or as leaders in civil society we have to address, but it is: how do we reverse that culture of violence? It is one thing to pass laws and so on; it is one thing to have the laws implemented and given effect, but it is quite another to change people's behaviour, and this is something that requires a major national effort.

I was reading an article that appeared in the *Trinidad Express Women Magazine* of July 03, 2010 and the writer was referring as well to the fact that perpetrators of rape are sometimes children themselves, very young people, adolescents and children. How is it that a young child can get to the point of being so violent to someone else who is equally young or just a bit younger than them? It suggests that we have to look at how we socialize our children and what is happening both in terms of our family, communities and schools and so on. All these things need to be addressed even as we seek to close this particular legal loophole.

Mr. President, I am aware that when this Bill came in a somewhat different incarnation in the Ninth Parliament, there was quite a debate between some Senators in this honourable Senate and representatives of civil society, particularly, representatives of the women's movement who felt that what the Parliament needed to do was to tackle in a very holistic way the whole issue of legislation surrounding sexual offences and, in particular, rape, to ensure the victims of such crimes are afforded the best possible protection; both in the law as well as in the prosecution of the perpetrator, also in terms of how the courts manage those particular crimes so that the victim does not end up somehow being on trial. It is well known that in many cases vigorous defence lawyers make the victim somehow to be the guilty person.

I am well aware, and I am sure my colleagues on this side are well aware, of all of these concerns. These are concerns that we certainly share. I think it is necessary that a simple piece of legislation that can close a particular legal loophole and offer some greater protection to victims, such as the Evidence (Amdt) (No. 2) Bill is seeking to do, is important as an incremental step along the way of generally attacking the issue of justice, as Sen. Ramkhelawan was making the point a short while ago.

I certainly think that, as Sen. The Hon. Panday indicated, the People's Partnership Government is very open to dialogue and consultation with all social partners in the society to ensure that those who are most vulnerable in our national community are protected, because a nation is judged by how it protects and treats the most vulnerable amongst it. [*Desk thumping*] We do not live in a nation and we ought not to want to live in a country where the law of the jungle prevails, where those who are strongest and most violent will survive. If that is the case, then we are heading towards barbarism, and certainly that is something that the People's Partnership is very much against. We are seeking to bring the country back from that brink of barbarism and the culture of violence.

So, as we go forward in discussing and consulting with social partners and seeking the best ways of addressing not only the wide legislative framework but also the issue of the culture of violence in our society, it is very necessary that we take those steps that we can take immediately as this legislation seeks to close the legal loopholes and, therefore, offer greater protection to those who are victims of rape. Like the others who have spoken before me, I stand to support this particular piece of legislation.

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

Sen. Pennelope Beckles-Robinson: Mr. President, thank you very much. I must confess I am going to be a little longer than some of my colleagues, because there are some important issues that I would like to raise. It is not too often when we have Bills being debated that the contributions are very short, but maybe Sen. Dr. Balgobin's contribution on the last occasion may have caused us to realize the value of brevity. [*Desk thumping*] On this occasion, I intend to be a little long.

I must confess that in reading this piece of legislation, it is not one of the occasions—even though I am an attorney-at-law—I will say that it is a simple piece of legislation or that it is an easy piece of legislation to understand. As a matter of fact, in my humble view, it is very difficult. I had to read it several times to ensure that I understand what is being said. I would read so that you would appreciate what I am saying.

Mr. President, now, 15AA says:

> "Notwithstanding any other law to the contrary, the common law rules relating to evidence of recent complaint in sexual offence cases, that were in force in England prior to 4th April 2005, shall apply, from the date this Act comes into force, as if those rules had not been abolished in this jurisdiction."

This part also has me a bit concerned and it is 15AB and it says:

> "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 in respect of the commission of the alleged offence by the person upon whom the assault is alleged to have been committed or to suggest a delay by that person in making any such complaint, the Judge shall—"

Now, I deliberately did not stop because it is not really a sentence as such, but it continues.

So, I am happy if the non-lawyers have understood it, because I cannot confess that I am as comfortable with it as I would like, but maybe that is the best way the draughters are able to put it across. I hope that those who are interpreting the legislation find it as simple as some Senators have. I just do not find it simple. Ideally, I would have loved if there was some way we could have made this a little simpler. I must confess that I have not been able to find the formula for the simplicity, but I am just saying I still find that it is a little too complex, nonetheless I share with Sen. Abdulah and all the other Senators who have spoken so far the importance of it.

3.15 p.m.

Mr. President, I was happy that the hon. Minister in the Ministry of National Security also explained statutory rape and the other offence relating to persons between the ages of 14 and 16 years and also made the point about the importance of educating the public, not just about this piece of legislation, but other pieces of legislation that relate to sexual offences, because some of our cultural practices are becoming more and more prevalent. He talked about the maxi-taxis, and we do not want to appear to be pinpointing them in particular, but we do know that after school we go certain places and observe certain practices.

As someone who has practised in the criminal court, from time to time, that reference which Sen. Panday made, "Well, I thought she was 18", and "I thought she was 16", and "I thought she was whatever", people need to be conscious, particularly for girls under 14 years. There are some men who are living with girls under 14 years, who seem to have no difficulty with it and do not understand that if a report is made, even though she has been consenting and may have even had a child for him and may love him and all the other things we talk about, really is no defence. So we can use opportunities like these to warn people about some of our practices which we feel are all right, but they are not all right; they are wrong.

I wanted to ask the question whether the best approach was to have the issue of videotaping and the amendment dealing with rape in the same piece of legislation. I would like Sen. Panday to address that because I am not too comfortable with it. I am not too sure that, at the end of day, it is going to do justice more for the issue dealing with sexual offences. The issue of videotaping is extremely important and is an important piece of advancement for the Government and the country. I totally agree with him, that for the number of witnesses killed, this is a further advancement on the issue of the prosecution being able to tender a statement of a deceased person and for value to be added to

that statement. I share the point that both pieces are important. I am not sure whether they should be in the same piece of legislation. I would want him to enlighten me, just to give me a certain measure of comfort with that.

Sen. Abdulah made the point, and I am sure he probably would have gotten the same call I did, as it related to some of the concerns of the non-governmental organizations in terms of the holistic approach and whether, in truth and in fact, that is going to ensure, to use his words, that we tackle the overall issue of justice and the holistic approach. There might be a certain measure of comfort in dealing with that particular issue.

And the incremental approach which Sen. Abdulah talked about in tackling the whole issue of justice is so important for the society because we are dealing with the protection of women. One of the things spoken about by the United Nations concerns the political will of any government to deal with the issue of the protection of women.

When we discuss the legislation, ultimately we are trying to ensure a balance between the rights of the victim and the rights of the accused person. If this legislation is to be successful, we need to ensure that the holistic approach Sen. Abdulah spoke about, takes place. The reason I make that point is because we are passing many pieces of legislation, but there are other things which need to be done to ensure that, as we implement, the justice system is improved.

I will just share my experience, so I would be able to explain what I mean; something that is very simple. Let us take, for example, something that happened today. I did not tell my friend, Sen. Cudjoe, that I was going to say this, but she came very close to not coming to Parliament today. That was because the taxi drivers at the airport refused to bring her to Port of Spain. Sometimes we do not realize that Tobagonians have many more challenges than we do. She took a plane, came to Trinidad and they said, "Look, we not going into that flood;" so no taxis. She called and it was already very late and I was trying to figure out what I could have done.

I share this because, as a Member of the Senate, she is supposed to be here to participate in this debate, but nearly did not make it for circumstances beyond her control. It was not nice to know that she ended up taking one of the PH cars, because those were the only ones willing to come into town. The reality of it is, that is the challenge we face. Sometimes we do not understand that there are other things which impact in a very serious way on our ability to deliver justice and to ensure it works in the way it ought to. Thankfully, she is here. As I said, it was not the ideal situation, but fortunately she is here safe and sound.

I attended court in Arima and Port of Spain today. In Port of Spain the Magistrates' Court was completely shut down. Most of the staff did not attend; there were no notetakers in most of the courts; as a matter of fact, they did not bring any prisoners. They did not bring any prisoners and the court was shut down because the public servants are basically on strike today. They are trying to make a point, but as many of the lawyers who are here today would understand a little more about what I am saying, particularly Sen. Panday who has practised in the criminal courts, that has an effect on everything, because it means you are just waiting until whenever a Justice of the Peace comes. It throws everything out of whack; you may not know when your date is and a number of other things.

The public servants are complaining, "Look, we are not having any court today; we have a problem with what is being negotiated and we are going to make a point to the Government", and the whole system collapsed. We know that these things happen from time to time, but my point is that when that happens, everything goes out of whack.

So we have had a problem where the drainage and flooding have caused maybe even some police officers not to bring prisoners, some persons with court not being able to attend and then you had all the strikes which caused the court system to come to a standstill. They have said that they are going to do a similar thing on Tuesday, so we understand that we may have another situation where the courts may not be functioning. You have a multiplicity of criminal cases, rape and whatever else we have in Trinidad and Tobago. Let us hope that is not going to spread throughout Trinidad and Tobago, because we understand what we are trying to achieve today and the difficulty.

This is really an advancement in terms of many pieces of legislation, to make it a lot easier. We have not had the video technology before, but it really would make things a lot easier, to speed up the process of prosecution referred to by Sen. Panday. All we can do, in a sense, is to urge the Government to settle whatever negotiations with PSA and the public servants, so this system, where the court is going to break down, is not going to continue. [*Desk thumping*]

A similar thing happened when I was in Arima today. One of my clients did not come and has not come for the last how many months. As you would know casually, "The prisoner was not brought", "The prisoner was not brought." You have a situation where the van could only hold a certain amount. I am not sure what the number is, but it causes a possible corruption in the system, because who really determines who comes. I do know how many prisoners the van holds, but who determines who comes?

Who determines whether Penny is left back and Lester is left back, but Shamfa comes and Sen. Brig. Sandy? Who determines that? What happens if week after week I am not brought to court, as is the case sometimes, you are not before a magistrate and you are charged with rape? In the case of murder they do not normally do these things, but, in some of these other offences, for months you do not see a magistrate. So here we are trying to improve on technology and the justice system, but the fact is that these are things which happen every day. This is not something I am making up. Particularly in the rural courts, it is even worse, because when a van has to leave Golden Grove to go to Rio Claro or Sangre Grande—[*Interruption*]

Sen. Panday: One o'clock.

Sen. P. Beckles-Robinson: My colleague reminded me that the van reaches at 1.00 o'clock. Mr. President, I know you have not practised in the criminal courts, but when the van reaches at 1.00 o'clock, let us think of the culture of the Trinidadian and the fact that you have policemen who might have worked a night shift and have come and is waiting. He is not sure, one way or the other, if the prisoner is coming, so, by the time the prisoner comes, "de policeman gone." Therefore, in an attempt to deal with these issues, we have to find a way where, if we really want to have the system work, we have to improve on it.

In continuing the dialogue on this matter, what is happening to the victim of rape who is coming every week, coming every year? At some point in time, the victim may decide, "I really cannot take this thing anymore." That person becomes the worst, because then they want to charge you for wasting the police time or whatever, but the humiliation you go through every week and, not only that, the cost you go through every week to come to court, depending on where the incident may have happened, depending on where you live.

If you live in Port of Spain and they carry you somewhere in Rio Claro, what is the cost to you every time the matter is called for you to go to Rio Claro? Everybody gets fed up with you; your mother gets fed up, this one gets fed up with you. What happens at the end of the day? Some cases take as much as two years, three years, four years, five years, just in the Magistrates' Court. You go up to the High Court, you wait another two years, and sometimes it takes as much as 10 years before some matters are called.

Many countries are doing studies on the impact of that kind of delay in the justice system, not just in terms of cost, but to the individual and the entire society, because there is a cost which I will talk about in a little while.

I will share with you two countries. In the US alone, the cost of intimate partner violence exceeds US $5.8 billion per year; US $4.1 billion for direct medical and health care, while productivity losses account for $1.8 billion. In Canada, a 1995 study estimated the annual direct cost of violence against women to be some $684 million for the criminal justice system. In Canada $187 million for police and Can $294 million for the cost of counselling and training, totalling more than Can $1 billion a year.

A 2004 study in the United Kingdom estimated the total direct and indirect cost of domestic violence, including pain and suffering, to be $23 billion per year or £444 per person. I shared that because that is important data for us, because it tells us what those delays are costing us when prisoners do not go to court, those delays in terms of medical care and health care, those delays in terms of the cost you have to pay witnesses and all those other things. To me, this is very important.

3.30 p.m.

I am sorry if I have to be a bit longer, because this is an issue that I feel very strongly about. I really feel that, like many others, this is a very important piece of legislation and I congratulate the Government on bringing it. As Sen. Deyalsingh said, it is a piece of legislation that was passed, there were a lot of contributions and, in essence, they have more or less adopted what existed, but it is valuable.

Now, let us take for example, Mr. President, if we were debating this legislation yesterday, it could not have taken place because the Red House was flooded out everywhere. In the first place, you could not get in and you could not leave Port of Spain, and you look at the productivity cost, the loss, and, of course, the challenges to the staff. I do not know what your chamber was like yesterday but I know it was very difficult to get to the Speaker's chamber because the water was going down the steps like nobody's business.

At the end of the day we are talking about infrastructure and I did add my congratulations to the Minister of Planning, Economic and Social Restructuring and Gender Affairs and the Attorney General, because, in their contributions and in the allocations they have indicated to treat with the court system in San Fernando, which has been languishing for quite a while, the commitment to find a parcel of land for Arima and I think they mentioned Chaguanas; but there are several courts—from the Ministry of Planning, Economic and Social Restructuring and Gender Affairs and from the Attorney General—where there is an indication to do repair works and/or construct new courts so that could be a lot more comfortable.

I attended Siparia court last week, and, having been away from the court for quite a while whilst I was a Minister, I really could not believe that it was possible for the court to deteriorate;I did not think that eight years later it would be worse than when I was going to court in 2002; but sometimes when people recognize you, as they did this morning in Arima—"Miss Beckles, I hope you are going to raise it in the Parliament, you see, because people all down the steps, all outside in the road." In the case of Siparia, the actual court can only hold about six persons, so you are all really just juggling for space and, if rain falls, I mean—once it is dry everybody could be outside under the mango tree and everywhere else, but, when rain is falling there is simply no room for anyone to sit; so it is the lawyers, the members of the public, the staff and everybody. Those matters are really urgent for us to treat with, and I raise that because one understands that it—

I was looking in the Judicial and Legal Service Commission Report to see if I found the number of cases but we all understand that, in terms of criminal cases, very often you may go to a court and you have 100 or 200 cases per day in that court, and the likelihood of five cases being done—I am not talking about 20, you know, I am talking about five cases being done—is very remote and my friend will agree with me 100 per cent. So, we have to find a way where those challenges that we face, if we can treat with them or else what we do today really will be of little value.

I would read from the Judicial and Legal Service Commission Report 2007 the number of vacancies that still exist. Those are very important because the majority of time the complexity of some of the crimes, they tend to use counsel from the DPP and we know that there is an issue there in terms of attracting persons to take up employment at those places. So in terms of some of the vacancies: in the Supreme Court there are two vacancies for Court of Appeal judges; four Registrars or Deputy Marshals, one temporary Registrar; there are vacancies for six Magistrates and four temporary Magistrates. In the criminal law department—Assistant Director of Public Prosecutions, two vacancies; Senior State Counsel, five vacancies; State Counsel III, one vacancy; State Counsel I, five vacancies. I do not want to go through the rest. It is similar.

The point is that, once that situation exists, we understand the challenges that we would face, because a question that arises from time to time in the public domain is, why is it that so many of our prosecutions are unsuccessful? We talk about the fact that our detection rates with the crimes have been low and I have seen within recent times where it has been improving.

Sen. Panday: It is going down. It is going down.

Sen. P. Beckles-Robinson: That congratulation, Sen. Panday, is not only to your recent Minister of National Security, but that is also in relation to the past Minister of National Security [*Desk thumping*] and all the initiatives that would have been put in place to improve detection.

We acknowledge that we have seen a decrease in the murders and we have seen a decrease in some robberies and some other matters, but we accept that that could not have been as a result of extremely recent initiatives. That had to be as a result of some of the initiatives of the People's National Movement and the last government, [*Desk thumping*] but we give support to the Government in terms of any of its initiatives to reduce murder, to reduce crime generally and to put in place policies and practices for a safer Trinidad and Tobago.

There are just two other areas that I would like to talk about and, again, it relates to our concerns raised about rape and the prevalence of it. Now, I am sure that most of you would have heard today about five young men from a school in Port of Spain, which I would not want to name, who have been involved in raping a 12-year-old over the last month. This falls with the example that Sen. Panday was talking about, because you are talking about the fact that this has been going on for some time, but clearly, the young person, for whatever reason, had not reported it at the time that it happened. [*Interruption*] For all kinds of reasons people do not report things as they happen, but the point is, five young boys—and eventually she told someone and I think they are charged today.

For us as a society that is a concern, both for the boys, the accused persons, and for the victims, because, at age 12, for you to have been raped consistently over a month is not only horrendous but we have to condemn those things and hope that we try to get to the root of it. We also heard Sen. Deyalsingh explain what rape really is about. It has nothing to do with gratification and it has nothing to do with love. For many other young women and men, as Sen. Abdulah said, it is an experience for which no one of us can be happy.

I also heard on the 12 o'clock news the Minister of the People and Social Development at the town meeting last night talking about the fact that someone came to his constituency office and talked about three men gang-raping her daughter and the Commissioner of Police is now investigating it and has asked for a report. The fact is that these matters are going on much more than some of us know and it is the extent to which we create an environment that allows a lot of people to come forward and to talk about it—because some people feel that going to the station or going to your teacher or even going to your mother, which is one of the areas that we do not always like to talk about, but you going to your

mother, a lot of young girls and boys have difficulty in reporting, because, in our experiences, a lot of them believe that their mothers will not believe that they are speaking the truth and, therefore, it takes years for some of them to reach the stage to be comfortable enough to tell an aunt, to tell an uncle, maybe, to tell a teacher or to tell a friend.

So that leaves me to say to us, as we deal with it incrementally and as we talk about the holistic approach to which Sen. Adbulah refers, it means that as a Government, and as a Government I mean as a Parliament and as all of us in here who have some kind of responsibility to improve the justice system, there are some other things that we need to do to ensure that this piece of legislation is successful.

Some of the things we have the do, Mr. President, are the issue of shelters and the issue of gender sensitive training. Now, when you make a report of incest by your father, or you make a report of rape by a brother, or by an uncle or by a father, and what I described a while ago in which the matter is taking two years, three years and four years, where is that child living? Where is that child living throughout all this period of time? Very often she is back home by the same father, by the same uncle and by the same stepfather, and then something happens and, of course, eventually you do not want to give evidence. As a society we are not always thinking of those things.

I know that both Sen. King, who I know has been involved in the NGO movement, and I am sure the Minister of Health, who would have no doubt been exposed to some of what I am talking about—is how long would a shelter keep a child? They keep you for three months, maybe six months, because very often our allocation to help those persons who are managing those shelters—and this is all governments, I am not directing this at this Government. I am saying that as a society we have not traditionally placed sufficient value on those shelters and the people who manage those shelters, and our allocations to them very often are not enough to keep them running. So what does the shelter say? The shelter says, "I will only keep boys"; the shelter says, "I will only keep girls"; the shelter says, "I will only keep mothers or I will only keep mothers and girls, but I would not keep mothers and boys".

So, in addition to the breakdown in the family life and all the things that happen, they end up right back in the same situation and so it is really not a simple situation. Again, I go back to that word that Sen. Abdulah used, which is the holistic approach. So we have to be able to look at police stations that are able to treat with those things, we have to be able to deal with the training of police

officers who are gender sensitive and who understand the complexity of sexual offences, and we have to look at the training of judges and magistrates who understand the complexities of these matters.

Now, in most developed countries that is how they were dealt with. People do not assume that because you are a judge and you have been appointed a judge, it automatically means that you can properly treat with these matters relating to sexual offences. It is a continuous thing where you have the training on gender sensitivity, the complexity of family life and all of these other matters, so the likelihood is that the outcome is going to be better for the entire society.

3.45 p.m.

Now, the issue of providing legal aid and ensuring timely legal aid and the kind of assistance in terms of lawyers so that your matters can be prosecuted within a reasonable time is also very, very important. Now, sometimes the criteria—when you apply for legal aid—actually causes a lot of people not to qualify. You may be fairly—well, let us say reasonably well off, but when you have domestic violence or you have rape or some other related offence and you go and you say, "Well, yes, I have a car; I have a this and I have that", we are looking at the length of time this matter is going to take.

When they go through the criteria, they say, "Well, you know, you do not qualify." So what happens to you? You have to go and hope some friend would give you some money to pay the lawyer, but, certainly, the length of time you have to wait for legal aid, by that time you also get frustrated and some people just drop the case, not because they do not have a good case but simply because, when you go to the magistrate: "Have you got a lawyer?" "No, not yet. They told me to come back next week—come back next month", and at the end of the day you say, "You see me, it ain't worth it, yuh know. I think I going back home and lemme take meh licks", or whatever it is, "because this is not going to get anywhere." Okay?

So we have those issues, as I said, of your shelters and your specialized courts and the reason for the issue of the gender-sensitive training is because of the complaints we have heard from both men and women as to their reports when they go to the police station, because many of us feel that men are not abused by women or there is not abuse both ways, whether it be men and men or women and women. A lot of men who may decide that they do not want to react to violence from their partners and go to the station to make a report, a lot of the police officers find it very humorous. "You ain't see that man, boy; a big man, strapid man like he coming here to say he wife beating him."

Violence is not only physical, it is also mental and sometimes, if you understand the complexities and somebody comes crying out for help, that you do not take a position where, as soon as he comes, "yuh run in the back ah de station and when yuh hear the cry, every minute one more coming out to see wha he looking like and everybody think it is a joke" when, in truth and in fact, it is not. Or, you know, a woman goes and makes a report and somebody says, "Oh, yuh was watching TV", or, "Yuh probably didn't cook de food." Right?

Those are some of the cultural responses that we hear from time to time that show the insensitivity of some of our people to the complexity of these types of matters. So I think that is as much as I would like to say on the matter. Like all my other colleagues, I support the Bill. I would have preferred, as I said, in the draughting that it should be a lot simpler, but I think it is a very, very important piece of legislation and this piece of legislation also assists Trinidad and Tobago in terms of responding to our obligations to the United Nations, because this is one of the ways that they measure in terms of us being a developed society and us protecting our women. So I would just close by saying I support this Bill.

Thank you. [*Desk thumping*]

Sen. Dr. Victor Wheeler: Thank you, Mr. President, for allowing me to contribute in this very important debate. First of all, I would just like to thank Sen. Beckles-Robinson for raising the issue of us Tobago Senators having to travel to Trinidad. [*Desk thumping*] I was fortunate to take the first flight this morning, so when I arrived in Trinidad there was bright sunshine and I had no difficulty getting a taxi. However, soon after arriving in Port of Spain the torrential rain did cause me some difficulty and I am hoping that we do not go too late so that I would be able to get back to Tobago tonight.

First of all, let me say that I agree wholeheartedly with any legislation that would benefit the administration of justice in Trinidad and Tobago and that we should make full use of any technology available to us. Further, it is welcome that a doctrine of recent complaint is being reintroduced into our criminal justice system under certain guidelines. We have already heard a good summary from Sen. Panday and Sen. Deyalsingh about the history of the doctrine of recent complaint so I would not go into that any further, but, with respect to the amendment before us, I would like to raise some concerns in the way in which the amendments were draughted.

The first of the proposed amendments which I would like to look at is section 15AA, where it reads:

> "Notwithstanding any other law to the contrary, the common law rules relating to evidence of recent complaint in sexual offence cases, that were in force in England prior to 4th April 2005, shall apply, from the date this Act comes into force..."

This section does lack some clarity as to what the law will actually be and this is because it seeks to incorporate the law of England by reference to the law there without actually stating what the law is or giving sufficient guidelines to anyone reading the Act itself. This cannot be desirable because it leaves the door wide open for ambiguity on the issue. This debate today—this amendment—is actually a golden opportunity to codify the common law on this issue of recent complaint. Even today in the debate, the House would have been better informed if the proposed law was actually clearly stated instead of having to go and research the common law position in England prior to April 04, 2005. I have to agree with the comments made by Sen. Ramkhelawan in this regard as well. We do need better information coming forward when we have to deal with amendments. I do, however, look forward to some revision in this section on the issue of recent complaint, but without reference to the law in England.

The next area of concern that I have is with respect to the new proposed section 15C. I should comment that this section, I believe, is woefully inadequate in its intended result. First of all, there is no definition in the section itself. Does a video recording automatically mean that it is going to be an audio/video recording? This is important because it may just take a clever lawyer—and there are many in this honourable House; Sen. Panday for example —who might point out that a video does not automatically mean audio. I am sure, being a seasoned attorney, he would agree with me in this regard.

Further, what are the materials to be used to secure this information? Is it to be recorded on a DVD? Or is it to be recorded on a flash drive? Can it be saved on a flash drive? Or is it an actual VHS tape? What safeguards are going to be put in place to actually prevent tampering of these devices? Instead of reinventing the wheel of video-recorded evidence, I would like to refer—well, at least I have a copy that Members can look at of "The Police and Criminal Evidence Act, 1984 Code F," which has been updated on May 01, 2010. This code actually sets out a code of practice on visual recording with sound of interviews with suspects. If one gets a copy and reviews that code, one would see that there was a lot of thought that went into the guidelines.

The first, you would see it actually specifies visual recording with sound of interviews with suspects. Inside the document it also refers to the recording media and defines what this recording media is. That is:

"recording media' means any removable, physical audio recording medium (such as magnetic tape, optical disc or solid state memory) which can be played and copied".

Further to that, the guidelines also point out, secure digital network, which is a computer network system which enables an original interview recording to be stored as a digital multimedia file or a series of such files on a secure file server which is accredited by the National Accreditor for Police Information Systems. The guidelines also point out what this certified recording medium should be. It points out it should be a high quality; it should be new and should be previously unused, and, when the certified recording medium is placed in the recorder and switched on to record, the correct date and time in hours, minutes and seconds will be superimposed.

Sen. Oudit: Would the Senator just allow me? For the Members' benefit —I know you have referred to the audio recording, but if you go to the Evidence (Amdt.) Act, 2009, it does deal comprehensively with audio recording. In fact, it is section 15J and it does define audio, et cetera.

Sen. Dr. V. Wheeler: Thank you. However, that information is not present in this amendment and it is important to have it spelt out properly for clarification, the reason being, if a recording is to be used in evidence, all necessary precautions must be taken to preserve its procurement, integrity and accuracy. Remember, if this is used in certain circumstances, you are depriving the accused person of their right to cross-examine the witness and, therefore, high standards must be set to secure the recording in the first place. I certainly would like the House to consider some elements of this code and to have it included so that it would really give meaningful effect to this section. That was just a brief intervention.

In closing, I do support the aim of the legislation which is to benefit the administration of justice but we should make sure that we close all loopholes and do not give those very brilliant criminal defence lawyers out there any opportunity to have accused persons escape the full brunt of the law.

I thank you. [*Desk thumping*]

Sen. Faris Al-Rawi: Mr. President, my good colleagues in this honourable House, I thank you for the opportunity to contribute on this Evidence (Amdt.) (No. 2) Bill, 2010. I wish to firstly congratulate the coalition led by the UNC on their significant appreciation of the need in this first venture of theirs, to bring significant and far-reaching amendments to the laws of Trinidad and Tobago so that we can seek to achieve justice for the citizens of this country. They are to be complimented wholeheartedly for a host of reasons which I hope to expound in some better detail for the benefit of the Members of this honourable Senate and certainly for those persons who are tuning in and listening to our contributions.

A lot has been said already, very succinctly. I think that Sen. Dr. Balgobin should be complimented sincerely on his last contribution relative to the efficacy and efficiency of Parliament when he recommended that solid contributions constitute the majority of speaking time and that less speaking time be dedicated to politics. I saw with good humour that he had, in fact, secured the attention of those persons seated in the media gallery at his very noble commendations and I think that today is a classic example of good sense and good politics at work in an efficient environment at supporting a very important piece of legislation which is certainly dedicated to addressing the scourge of crime that permeates the society at present.

4.00 p.m.

Mr. President, the Bill is seemingly a very straightforward Bill. It is a short document which is comprised of merely six sections. Insofar as the record of *Hansard* under the rules of *Pepper v Hart* in statutory interpretation constitutes a source by which the laws are to be interpreted, I wish to set on the record the accommodation of the Independent Bench, and indeed of this Opposition Bench, that we make use of the adequate technology which is openly available to us, by perhaps using a track change document which could be circulated to all Members, if not at the hands of the Law Reform Commission who produce the Bills for discussion and debate, certainly by the resources of the hon. Leader of Government Business who would have the resources to at least put the amendments in the context in which they are intended to be interpreted.

You see, in looking at that, I wish to reflect on the fact that the Evidence Act itself is a very serious bit of legislation that has been with us for a very long time. The Evidence Act—and permit me to just lift the legislation for the benefit of the Members—originated in 1848. The Evidence Act, Chap. 7:02 originated in the year, 1848. It has been amended—on a total including this amendment as it will be passed—30 times in 162 years. I think it is very important for us to appreciate that interpretation of legislation must inherently be hinged about proper construction in the context of the legislation, and it is a very important point I think we can take as a voluntary measure, certainly through the good offices of the Leader of Government Business, that when Bills are circulated for debate in this honourable Senate, that, in fact, they are put in the context of the entire Acts and that the Bills are shown in a clear, easy track form which we all use.

I know, Mr. President, having worked against you in practice, I know you are a master of technology and that you yourself are one of the strongest advocates for the use of marked up and track changed documents, using a simple tool like

Microsoft Word. If we could take advantage in this Senate for the benefit of producing solid debate with good content in the context of the law in which we are debating, we will all be better served by that kind of tool.

Mr. President, the Evidence (Amdt.) Bill is something which I wish to immediately state is going to have full support, I think. Dare I say on behalf of all the Members of this Senate, I can state without reservation at all, that this legislation is something which we must immediately rise to support, but, for the sake of the clarity of interpretation again, relative to the laws, I wish to put on the record for those who may search the *Hansard* in aid of interpretation, that it is incumbent upon every Member of this Senate to read and to make contributions in the context of this debate—those contributions made in the last Parliament—the Ninth Parliament—specifically beginning on January 18, 2010, when the Evidence (Amdt.) Bill—I would call it the No. 1 Bill—was piloted by the then hon. Attorney General, John Jeremie S.C. as, there was very poignant debate which related to the context in which the amendments are brought, the purpose for which the amendments are brought and the results which they are intended to achieve. Specifically, in terms of putting it on the record, I wish to recommend to this honourable Senate that the contributions made by the 11 persons who spoke in that last parliamentary session also be relied upon in the context of this debate. I will not go through all of these submissions. I do intend to point you to certain material observations in those submissions because they can be applied mutatis mutandis to this debate, and I think it is very worthy for us to consider some of those suggestions.

The interpretation of this Bill—albeit it does not form part of the legislation as it will eventually become—is very readily facilitated by the Explanatory Note to the Bill. The Explanatory Note sets out for us very clearly the purpose for this legislation. Firstly, to reintroduce the doctrine of recent complaint; secondly, to broaden the rules as they relate to first-hand hearsay evidence and specifically by lifting it in three dimensional terms to aid hearsay introduction on a first-hand basis through the use of video recordings in all proceedings. Those two purposes are very much to the benefit of the laws of this country, and I will join Sen. Ramkhelawan in saying that the laws of this type are essential to delivering the justice of the type which we seek and deserve.

So the purpose of it, being simply stated—I wish to adopt the humanistic approach—to use the term that Sen. Deyalsingh—has put for consideration today by giving the Members of this Senate a very real example of what the doctrine of recent complaint actually means in an example that has been used in the courts.

If you will permit me, Mr. President, I propose to read from a local case, which is a Court of Appeal judgment, *Diaz v The State*. The citation is 1989, 42 West Indian Law Reports and the judgment begins on page 425. The facts of this case are very instructive as to the context in which the doctrine of recent complaint is to be viewed. This, in fact, was a case which came about when the doctrine of recent complaint had been abolished. Sen. Panday reminded us of the history.

You will recall that it was abolished in 1986 when the Sexual Offences Act was originated. That Act was unique in its origin because it was the first codification of sexual offences and some have held the view that the removal of the doctrine of recent complaint was not only because of the prejudicial value, which was then argued could be suffered by the complainant, but also because the Sexual Offences Act in its origin may have inadequately appreciated the true purpose of the recent complaint doctrine and the aid which it could have to justice.

You see, the point is that we are here as legislators, in our capacity as Members of this Senate, adopting a veil of ignorance to come up with a position of justice, which is a very delicate balancing act. On the one hand we are balancing the rights of the accused in any criminal process, and on the other hand we are balancing the rights of the complainant, that is the victim, in any process.

In coming up with laws, we really ought to be viewing it in a very objective and careful measure so that persons are not afflicted by, on the hand of the victim, an undue process which could result in a breakdown and a travesty of justice, and, on the hand of the accused, allowing a door to be opened by which people can be exploited.

In returning to the facts of the *Diaz* case, which are instructive in citing a real world example right here in Trinidad and Tobago of how this doctrine can operate, I refer you to the facts set out by the then Chief Justice, Mr. Justice of Appeal Bernard.

The facts of this case, and if you will permit me, Mr. President, were that both parents were neighbours. They occupied twin apartments on the Eastern Main Road in Tacarigua. The victim’s mother occupied the apartment at the back. The victim was a member of that household. The applicant's mother occupied one at the front. Unlike the victim, the applicant was a married man and lived elsewhere. On the day in question, the victim's mother left home around midday, leaving the victim at home. About an hour later, the victim, who was a young girl then, was with her brother, who was also a young boy at the time, a little way away from their home.

The applicant, who was well known to them, approached them and asked for some water. Just about this time, two other children came along and called the brother away. The brother left and went away with them and, immediately thereafter, the victim went to fetch the water for the applicant. The latter followed her into the kitchen of the house where she had gone to fetch him the water for which he had asked. When she did so and offered him the glass of water, the applicant refused saying that it was not cold. He said that he wanted, as he claimed, ice water. He then put the glass down, placed his hands over her mouth and forced her into the bedroom. There he threw her on the bed, put a blanket over her mouth, threatened her and with one of his knees planted on her tummy, he proceeded to ravish her.

Shortly after the outrage, the victim went to the home of another neighbour living nearby by the name of X. Mrs. X found her in a state of distress. She was crying and when this witness enquired into the reason for the state of affairs, the victim told her that the applicant had raped her. Mrs. X kept the victim at her home to await her mother's return. The latter did so about 1.30 p.m. and called Mrs. X's home where she found the victim in tears. As a result of what she was told by Mrs. X, she immediately took her daughter to the police station for the area and lodged a report.

Later that same afternoon, the victim was examined by Dr. Y; the examination was painful and revealed that the victim was shaken and withdrawn and that a vaginal swab taken from the victim confirmed that intercourse had taken place.

Skipping quickly and paraphrasing, a charge was brought, a trial was had and Mrs. X to whom the victim complained and repeated her story, who had been given a recent complaint, was allowed to produce evidence in the trial and that evidence resulted in a conviction against the accused. Regrettably, because the law had been repealed by the amendments in 1986—the Sexual Offences Act, section 31—the conviction was quashed, because the learned Justices of Appeal held that the recent complaint made was inadmissible because the evidence ought not to be allowed because the common law was eradicated at that point, but this case context shows a very real example of what this piece of legislation is designed to protect against. Now, that is an example of a victim's case.

In the other cases, which I have had reference to—and they span every jurisdiction of the world—you will see that there are also similar tales where an accused, for one reason or the other, alleges that he has been brought before the courts by way of a malicious attempt, and that malicious attempt, of those whom

he says were malicious towards him, resulted in a scandalous charge being brought, which eventually the courts managed to set aside because they were satisfied of certain reasons.

So those two positions can be found in a plethora of case law throughout the world, but, right here in Trinidad and Tobago we have stark examples on the books of our cases which can show us the ills of not having adequate legislation in place to protect the rights of those who are in need of protection.

Mr. President, the doctrine of recent complaint, in the shortest possible frame, as capably put by the learned Sen. Subhas Panday, allows testimony from somebody, to whom a victim complained, to come to the courts in the course of a trial and give evidence that a complaint was made; also to introduce the particulars of that complaint which was made to them, and the time frame within which that complaint was made.

4.15 p.m.

If the judges of any tribunal consider that the criteria for admission of that evidence were satisfied, that would go to assist in shoring up the complainant's credibility. It would not go to the truth of the matter spoken of but to the credibility of the complainant. That was a very important consequence in the development of laws because credibility in the horrific offences that sexual offences deal with—and I join with Sen. Abdulah and those who spoke after him in saying that these are horrific crimes that have no distinction as to gender, age and competence—are horrendous acts towards men, women, children; old and young and insofar as these horrific acts exist in our lives as human beings—as much as we wish they did not—the doctrine of recent complaint allows a very critical element of assistance to complainants in the circumstance where sexual offences are not usually committed in public and where it would be very difficult in bolstering the credibility of a witness to call anybody who may have viewed the offence in its commission.

So, whilst it is that the law generally frowns upon self-corroboration and hearsay evidence—those running afoul of the rules of evidence in general—which run to the root of a fair trial, hence the reason for us discussing the application of sections 4 and 5 of the Constitution and the need to bring, through section 13 of the Constitution, a three-fifths majority to pass this legislation; while that is the case, it is critical that we as a society and as a Parliament, and, in particular, this Senate, come to aid those persons who have the immediate hurdle of not having had a witness necessarily to the crime. This doctrine of recent complaint goes a long way in assisting that.

The Bill, in sections 15AA and 15AB, provide a careful balancing act which codifies, in many senses, the rules which exist in the common law in any event. Sen. The Hon. Panday has pointed us to the fact that we must be very careful how we revive the common law of England. Our Evidence Act, in section 2, preserves unto us the common law of England prior to 1962. Once we had abolished the law in 1986—and there was an ineffectual attempt to revive the common law in the year 2000/2001 as the case of *Godfrey Gabriel v The State* in the Court of Appeal has shown us—I think it is No. 30 of 2005—that while that law failed in reviving it, it is critical for us to remember that, in reviving the common law, it is a good thing to be specific as to what aspects of the common law we are reviving.

I openly support the fact that we must be sure to revive the common law as it prevailed before the introduction of the Criminal Justice Act, 2003 in England. That Act, as Sen. The Hon. Panday pointed out, was a far-reaching piece of legislation which expanded the doctrine of recent complaint; not only to bolster the credibility of the witness but to prove the truth of the statements, going a very long way from the doctrine of hearsay and the exceptions to hearsay that attorneys are familiar with and also the self-corroboration prohibitions that exist in our law.

So, it is critical for us, and dare I say that, for the first time, I respectfully disagree with any Senator on the Independent Bench—I think that Sen. Dr. Wheeler's contribution is a careful one, but I wish to commend to him the fact that it is necessary for us to specifically state in this Bill and, therefore, in the legislation once passed, that we are reviving the laws as they prevailed prior to April 2005 in the United Kingdom, for the reason that, after April 04, 2005 the Criminal Justice Act would have kicked into effect and the laws would have been changed. The case law, therefore, does not assist us.

I commend to you, Mr. President, that the PNM, in moving this legislation as it did in January 2010, did so following upon a series of holistic amendments to the Evidence Act, firstly in 2007 and then in 2009. Of the 30 amendments to the Evidence Act, Chap. 7:02, it is those amendments in 2007 and 2009 that go a very long way in assisting the coverage of the lacunae in legislation which societal advances have outstripped. By that I mean that the application of technology as an aid to the preservation of evidence for trials was not being placed into our laws.

It was only in 2007 when those amendments were brought and in December 2009 when substantive amendments were brought, as Sen. Oudit pointed out, that we saw technology begin to a take place in the laws and in the courts of this land. It is important for us to remember that we must, as a society and as legislators, keep our fingers on the pulse of the development of technology as an aid to the justice system and the criminal justice system in this case.

We here in this Senate have a very sincere obligation placed upon us. I wish to refer specifically to the dicta of the Court of Appeal, again in the *Diaz* case. In that dicta and in the ratio of that dicta, Mr. Chief Justice Bernard pointed out that:

> "…it is not for the courts to question the wisdom of this enactment."—They were speaking of the 1986 enactment which abolished the doctrine of recent complaint—"Parliament is deemed to know the law and…the reason for it. The duty of the courts, therefore, is to interpret what Parliament has expressed (and no more)."

So it is critical, by way of aid to interpretation of the laws that we make in this Senate, that we do as I have, and recommend the importation, wholesale, of the entire debate that took place in this Parliament in January to March of 2010 as it relates to the Evidence (Amdt.) Act, of which this Bill is a replica in the amendments now brought by Sen. The Hon. Panday. It is critical for us to understand the interpretation of the legislation by the courts of this land.

Mr. President, Sen. Beckles-Robinson raised a very important point about the breadth and the need and even the desirability of having video evidence dealt with in this legislation. We here on our Bench have open debate amongst us on the rationale and purpose of Bills as we seek to promote thought amongst the hon. Senators. It is my own respectful view, which is slightly different from Sen. Beckles-Robinson, that the video recorded evidence is critical in this legislation for one reason mainly, and that is that the legislative process is a very long one.

On that point, I refer you to the fact that one may ask the question: with the Godfrey Gabriel judgment being delivered on September 27, 2006, why did it take until 2010 for it to come; four years Sen. Panday says, quite rightly? It drives at a deeper point, because, to trivialize that point is to miss the truth of the equation. That is, that in 2008, the legislation was drafted by the Legislative Reform Committee. In August 2008, the Director of Public Prosecutions (DPP) issued comments and recommendations relative to the draft legislation. It then sat on the Order Paper in 2009 and 2010. It is not for one moment that we are to accept that it took four years, of some malingering air in the then government, for this legislation to come. The legislative process—and this takes us back to the efficiency of Parliament—is too long.

On that note, whilst I wish to take the recommendation of my very dear friend and good colleague, Sen. Dr. Balgobin, here is where the politics must enter. Where is the legislative agenda of this Government?

Sen. Panday: Senator, it is coming.

Sen. F. Al-Rawi: I would not say it is coming. The remark was "done". They failed to tell us that it was done and before Cabinet. The legislative agenda, as we have seen, where there was active work from 2008 come forward relative to this Bill, took four years from 2006 and two years from 2008 to come forward.

By this I am saying, most respectfully, to this good Government that there is an inertia that happens in bringing legislation forward that we must factor into the delivery of the result which we intend. It is no longer acceptable for us to offer the "bligh" that Sen. Ramkhelawan so graciously offered when we had our first debate in this Senate by saying that elections were now done and we should give you time. The time for the legislative agenda and its publication to Senators is long overdue. We need to have that here so that the laws of this country are dealt with and that justice will prevail.

Not only is it that we require efficiency in Parliament and that we parliamentarians, who are being paid by taxpayers to deal with the development of their justice system, in this case the criminal justice system, receive a salary, but we are all people of integrity and we wish to make sure that our efforts are not wasted.

I humbly implore the Government of this country to bring the legislative agenda; but, in remembering the inertia problem, also please—and I implore—appoint the state boards fully; not chairmen of state boards with no members. Where is the delivery of all that we wish to happen in the appreciation of the inertia point? How can we allow, as a responsible Opposition, very important points as these not to be made in this context? It applies in this debate in demonstrating the efficacy of the criminal justice system.

Mr. President, my eye is on the 4.29 p.m. and whilst I know I have more time and I have more of my contribution to make, I am not sure how you wish to direct me relative to the break, which I know is imminent. I will continue in my one minute left—I know you will cut me shortly, but I know that you will allow me my time after.

Apart from dealing with the doctrine of recent complaint, I want to deal with a strong point anchored in this legislation of what I call *bonos mores legislatus*. It is properly a malapropism on my part. It is a borrow of Latin to describe good morality amongst legislators. We are legislators. I am watching those 30 seconds. Whilst I am giving you a tease of that now, Mr. President, I wish to continue on that point after we have taken the break. [*Interruption*] I am not yet saved by the bell.

Mr. President: Hon. Senators, it is 4.30 p.m. We will take the tea break and resume at 5.00 p.m.

4.30 p.m.: *Sitting suspended.*

5.00 p.m: *Sitting resumed*.

Mr. President: When we stopped last, Sen. Al-Rawi was making his contribution. I believe he has 11 minutes more to do so.

Sen. F. Al-Rawi: Thank you, Mr. President and hon. Senators. We last left off on a short teaser, one which I sincerely recommend to you, Mr. President, as indicative of the kind of morality which we need to always ensure that we adopt in considering, recommending, debating and then ultimately passing legislation and, in particular, this piece of legislation.

You would recall that I have already recommended to this Senate, for the reason of advancing the interpretation of this particular legislation when it comes into effect, that we incorporate the debates of January 2010 and March 2010, when the first incarnation of this Bill was brought by the Attorney General as he then was, Sen. The Hon. John Jeremie SC.

In doing that, I recommended to hon. Senators that we consider something which I had coined properly as a malapropism: *bonos mores legislatus*. By that I mean good morality amongst legislators or of legislators. You see, we made a solemn commitment on this side that we would not be Opposition Senators for opposition's sake; that we would support, at all times, any legislation brought in the best interest of the citizens of this country. [*Desk thumping*] In this particular case, we do not do so simply because the patrimony of this legislation; the authorship of this legislation, lies with the People's National Movement, but we do so because of those undertakings on our part.

Whilst I have recommended the adoption of the debate which happened in this Senate, particularly in February and March 2010, I must ask you to have caution and, therefore, caution on the record in those aspects which they chose to adopt.

There were six Senators on the Opposition Bench then serving who now occupy a different position—some of them in this incarnation of Government. The six Senators on the then Opposition Bench then made what Sen. John Jeremie SC called strident contributions, which he said were somewhat misguided in their intent. It is important to note than none of the then Opposition Members supported this legislation.

I wish, insofar as setting the record straight as an aid to interpreting this bit of legislation under the rule of *Pepper v Hart* and insofar as we have incorporated that debate by recommendation, to caution this Senate that it should not be commending the recommendations, in particular, made by then Sen. Wade Mark on the debate of the exact terms of this Bill.

In Sen. Mark's contribution to the Senate on Tuesday, February 09, 2010 at page 382—I am quoting from the *Hansard*—he stated specifically with respect to the very terms that have now been brought so capably by Sen. The Hon. Subhas Panday, Leader of Government Business, in respect of the same legislation:

> "This is draconian, dangerous, far-reaching legislation and I would tell you, we cannot take a sledge hammer to kill a fly. That is a classical case of the Government seeking to destroy a fly by using a sledge hammer. We cannot be responsible and the citizens of this country cannot take responsibility for the failure of this administration to take appropriate measures to protect their safety, security and liberty. And now you are coming with anti-democratic measures because of your failure to take the appropriate measures in the last seven to eight years to deal with those issues that you are now confronting and seem to be out of control. We cannot be responsible for that. Therefore, we are not going to be part of any demolition of the rights of the citizens of this country. We are not going to be party to that, whatsoever. So we serve notice on the administration that, do not count on the Opposition for support on measures that will demolish the rights and freedoms of the citizens. We will not be party to that."

You see, to be fair to Sen. Mark, he was referring to the fact that this Bill, in his view, which is not a view that we share on this side was—

Sen. Panday: Hon. Senator, would you kindly give way? I humbly submit that you are unfair to Sen. Wade Mark as he was then, and I will have to read the part that you left out. He said: "I am seeing the scales of justice that is not being properly balanced…" That is what we have done today.

Sen. F. Al-Rawi: My friend, the very distinguished Sen. The Hon. Subhas Panday has anticipated me, because the very words coming out of my mouth were "to be fair to". I have faithfully reported the words of the *Hansard.* Secondly, I have stated specifically that I wish to be fair to him, because I hold him in high regard. He is a very distinguished debater and he had the magical ability to call an argument out of thin air. [*Laughter*] What I am speaking about, is the fact that I have commended to this honourable Senate that we look to assist the

interpretation of this legislation as it would be passed by supplementing the debate with the debate which prevailed previously. So, I thank Sen. The Hon. Subhas Panday for giving way to me, albeit that I had given way to him as I always will out of deference to him. [*Desk thumping*]

In returning to my point of being fair to Sen. Wade Mark as he then was, I was saying that Sen. Mark was making the criticism that the PNM, in his view, had brought seven or eight amendments which sought to deal with section 13 of the Constitution, variations to sections 4 and 5—the saving provisions as they relate to fair trials, et cetera. Sen. Mark had said that this specific piece of legislation was draconian. However, he went on to recommend amendments, I would dare say, which form the seat of the very amendment which Sen. The Hon. Subhas Panday had brought today, arising out of the jurisdictions in Australia, New Zealand and Tasmania. [*Crosstalk*] You see, he has taught me well. I have read him thoroughly in the *Hansard* and I appreciate the lessons learnt from my leader opposite.

Mr. President, the point is that, notwithstanding the protestations of very senior members of the UNC as to the effect of this legislation, I wish to openly compliment this Government on adopting the very legislation which they debated strenuously and which they sought to state was rushed; which they sought to state was not in the best interest without consultation of a joint select committee. This brings me to the other point about good morality that we must all observe in this debate as to how we come up with legislation.

In the debate in February 2010, the argument was made that there was a failure to consult the NGOs and that failure to consult the NGOs, coupled with the quickness with which amendments were brought to the Senate—albeit that those amendments were actually put in the context of a marked up document which, as I have suggested, would have aided the contribution—it was the view of the UNC Opposition as it then was, that this Bill should go to a joint select committee to have consultation by all members of society as to the purport and effect.

Indeed, I can state that the position of the People's National Movement was that no such consultation was necessary. I am happy to see that this Government has accepted that point of view and brought the same legislation in the same fashion that we brought then. The point is that, not having had the consultation in the manner in which they had suggested, I just wish for the sake of the record to state that the parts of the contribution which I asked this honourable Senate to adopt in the February 2010 debate on this Bill of the Ninth Parliament is for them to focus upon the results which happened at the end of the day, which is that the legislation, had it not fallen prey to the lapse by the proroguing of Parliament in April 2010, it would have been passed then.

Sen. Oudit: Senator, will you give way?

Sen. F. Al-Rawi: I wish to again compliment this Government—forgive me. I am trying to keep the time short, if the hon. Senator would allow me the point. I wish to commend that we look to the result of the exercise that we are now on equal page and that we have, in fact, adopted the same course and the same measure.

Mr. President, really, what we may also be discussing is the doctrine of recent government, because it seems odd that the Government would take a complete about-face on its position when in Opposition. In fact, I am very intrigued that Sen. Lyndira Oudit should stand to ask me to give way, because in her contribution to the Senate which was, in fact, a very sterling one….

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. S. Panday*]

Question put and agreed to.

Sen. F. Al-Rawi: Mr. President, much obliged. With that procedural hurdle over, I wish to give way to Sen. Lyndira Oudit, because she is somebody whom I hold in high regard and in high esteem. I am sure that her interruption will be a meaningful one that could assist us in this debate.

Sen. Oudit: I thank the Senator for giving way. I just wanted to point out that in the piece of legislation that came before this honourable Senate when we were in Opposition, there are two major differences and I would like to point them out to you. If you have a copy of the amended Bill, 2010 which was debated earlier this year, it says in 15L—one of the concerns I had was with a video recorded statement made by a person under this part is admissible whether or not the statement is made on oath. That was my first issue when I was sitting on that side. In fact, if you look in this new Bill, section C of the Act is amended. If you look at 5B(3) it says that:

> "A person making the video recorded statement under this Part is entitled to make the statement on oath".

The second matter that I was very much concerned about was the actual statement of a video recording of a child shall be made in the presence of an adult chosen by the child. I had issue with that one. If you look further, this particular

Bill on the entire section C from (i) to (iii) gives a much clearer explanation and protects the interest of the child when giving such evidence. So this is not the same Bill that was brought earlier this year. I just wanted to make that point clear.

Sen. F. Al-Rawi: Mr. President, I thank Sen. Oudit for pointing out very material observations, again by way of anticipation, because I had proposed to deal with it myself, but her eyes are very sharp and her mind very intuitive.

5.15 p.m.

That might certainly explain the contribution of Sen. Oudit on February 09, 2010, when she said at page 423, relative to section 15AB, which is before we get to the anticipated point:

> "Section 15AB to me is the most critical flaw, and subsequently the great weakness in this piece of legislation. It says the judge 'shall'—not 'may'—give a 'warning'—not a 'direction'—to the jury…and shall inform the jury that good reason\s..."

That takes me into the sharpness of Sen. Oudit's contribution, because she has again remained on point, up to this point, in her observation as to the differences between this Bill and the one which was brought then. I thank her for that, because it is important that we note those amendments.

Whilst they were not sufficiently articulated, and I am sure not purposely by the hon. Leader of Government Business, I had intended to come to those very two points, because I, in fact, support wholeheartedly the new version that is before us today. I wish to compliment the review of the drafting, as it has now come to us, and to state that we will be supporting that particular amendment. [*Desk thumping*]

Mr. President, there has been tabled an important amendment to clause 4 of this Bill, and there has not been much comment relative to it just yet; that is the amendment circulated by the hon. Leader of Government Business. It proposes the modification of 15AB, subparagraphs (a) and (b), to allow for the introduction of a subparagraph (c), which is the purpose of this amendment, set out in the amendment passed to us.

Whilst I know we will get to this in committee stage, again I wish to state that the consideration of the particular amendment, paragraph (c), which proposes that there be an insertion relative to the direction which a judge shall give, that he shall not warn the jury that a delay in complaining is relevant to the victim's credibility unless there is sufficient evidence to justify such a warning.

I wish to state that this is a very important amendment which is in the right direction, because it contemplates the fact that we in this Bill are seeking to codify in statute that which exists in the common law.

In the common law, for the benefit of those who are not attorneys, I wish to point out the fact that the law in relation to recent complaint is that—and Sen. Panday has dealt with some of this—it must be a voluntary complaint and it must be done shortly after the alleged offence. The word "shortly" I wish to underline at this point, because it speaks to the recentness of the offence. Sen. Panday referred to three important cases which are also flagged in the Blackstone's, out of interest, where the recentness and the timeliness within which what we call the "time fallacy" for the whole negative side of recent complaint was dealt with. Those are the *Rush* case in 1896, the *Ingrey* case in 1900, the *Hedges* case in 1909 and, indeed, the *Birks* case in 2003; the last being a very difficult case in which the authors of Blackstone's commented as one which caused reluctance in the overturning of that particular decision.

In that latter case, again, returning to the humanity of this recent complaint point, the *Birks* matter, which is Cr App R 122, that is Criminal Appeals 2, it was held, albeit with reluctance, and I quote here from Blackstone's 2009:

> "...a complaint made, at the earliest, two months after the alleged offence, was inadmissible notwithstanding that the complainant was only 6 or 7 years old at the time of the offence, that the accused had allegedly threatened her by saying that if she told her mother she would be put in a home, and that the complaint had emerged spontaneously as a result of watching a television programme about child abuse."

That horrific *Birks* case shows us exactly the importance of the legislation we are dealing with today. It was the case of a six- or seven-year-old child abused by a member of the household, with the doctrine of recent complaint, because the recentness had not been dealt with, caused a quashing of the conviction. It is that very point which brought us to the judicial direction set out in the proposed legislation at section 15, the insertion.

We are seeking by this Bill to make it mandatory, hence the use of the word "shall", for a judge to direct a jury in the fashion which the common law says it would normally be done; but whilst we are legislating the issue, we must be careful not to confine the development of the common law. This is a debate that legislators and lawyers have, which I think is rooted to the whole doctrine of the separation of powers and the Judiciary dealing with the supervision of the Legislature and the laws which come out of it.

In dealing with the balancing of power, I have a question in my mind. While first I agree that section C is headed in the right direction, that is the proposed amendment to the Bill, I genuinely would like to be able to reflect upon that with adequate time, so we could make a mature decision, so we do not find that while we are all *ad idem* on the desire to improve our laws and cover lacuna, that we do not unduly restrict the development of the common law and the ability of judges to deal with directions to juries for their own sake.

Mr. President, I wish to point out the fact, and this is the pause for the proposed amendment in the new subsection (c) to section 15AB, as proposed by the learned Leader of Government Business, that the evidence of a recent complaint is relevant as a matter of common sense, as to whether a complainant is a victim or not. That has been codified in numerous dicta, but there is at common law a two-stage test for the jury to follow. Firstly, to decide whether a complaint was really made and secondly, whether it is consistent with the complainant's evidence, and that has been dealt with in the *Lillyman* and *Hartley* decisions.

Essentially the jury has to be directed, but the question is how far do we as legislators go to that direction. That is why I humbly recommend that while we are anxious to put this legislation into gear, the proposed amendment, which we will come to at committee stage, causes me to wish us all to take heed of the need for caution, very, very short pause and, perhaps, a better consultation as to whether we will be going too far in the proposed amendment.

Mr. President, I know that I do not have much time, so I wish to make a few closing summary remarks. Firstly, I support the proposed legislation. Secondly, and forgive me for showing the political colour, I wish to openly compliment the PNM on authoring and fathering the legislation, [*Desk thumping*] but, at the same time, I wish to openly compliment the good offices of the Government now in bringing the legislation with important additions to it, albeit minor, which go towards improving the jurisprudence that guides our lives and the citizens of this country in dealing with the scourge of crime.

When we come to consider the proposed amendment, which I believe is an important one in reflecting upon the judicial direction proposed by the new section 15AB, I recommend that we pause for a moment and consider the impact of that and, if possible—I know I am stretching this—come back to that decision, perhaps on the next Tuesday. At least we could have fine-tuned the language of that proposed subsection (c).

With those short contributions, I thank you for the opportunity to address this House.

Sen. Helen Drayton: Mr. President, thank you for the opportunity to speak on this important piece of legislation. Let me open by saying that I fully endorse this legislation which seeks to introduce the doctrine of recent evidence. It certainly would strengthen the current legislation, as it seeks to protect and bring justice to victims, especially children.

I will be very brief; there are only one or two matters I wish to address. I am certainly asking for clarification with respect to clause 6(3). I will read it very quickly:

> "Where a child gives a video recorded statement under section 15C(1), that statement shall be made in the presence of a person who belongs to one of the following categories of persons chosen by the police officer conducting the investigation into the matter in which the child is a witness"—and it goes on to define the categories.
>
> "(a) the parent or legal guardian of the child;
>
> (b) any person over the age of eighteen years who has custody, charge, or care of the child..."

I wonder exactly what we mean when we say, "care of the child", whether this could be interpreted as anyone in whom the child has confidence. We are saying here that the person will be chosen by a police officer.

Let me explain that I have had reason to intervene, I think it was, at least, on three occasions, when I was involved with a charitable institution. I was called in one case by a neighbour and the other two cases by a family member, where there was suspicion that a child was being abused.

I had decisions to make and I recall that I decided to contact the respective principals of the schools. I did not get much feedback, but what I got was sufficient to let me know that the matter was critical, it was urgent and being dealt with. At least, in one of the instances, the feedback indicated that the child opened up to the principal. I wonder in this case when you say, "care of the child", could that be interpreted as a principal, a teacher or a doctor, as the case may be.

What confused me somewhat was that when I went to the Evidence (Amdt.) Bill, Act 16 of 2009, section 151(f), which speaks to: if,

> "the witness is a child and the video recording was made in the presence of an adult chosen by the witness;"

So, on the one hand, the current legislation is speaking about a person chosen by the child, who is the witness, and in this amended Bill it speaks to a person chosen

by a police officer conducting the investigation. It may be that I am reading this wrong, given the difficulty in trying to piece together all these different amendments. I think that it needs attention and clarification.

That also brings me to the point mentioned by Sen. Beckles-Robinson, where the victim is a child and custody of that child. Therefore, I wonder what is the relationship or the involvement of the Children's Authority in such a situation as it pertains to the custody of the child or someone who will be chosen by the child to witness the video recording.

5.30 p.m.

It also leads to the other question, and that is, how soon would all the other legislation pertaining to children be brought to Parliament and also any outstanding matters pertaining to the Children's Authority? If I may add to what has already been said, I would not dwell on the matter of a parliamentary agenda, but, what I would say, it appears to me that there needs to be a White Paper established, after careful review of the criminal justice system, including a framework of sentencing. I think that would advise or inform the Executive as well as Parliament with respect to priorities. Otherwise we seem to be having, if I may use a term, legislation on the go. Where is the framework? It is not just a question of an agenda but how we are prioritizing the critical pieces of legislation.

With that, Mr. President, those are my comments and I certainly would like some clarification with respect to the matter I mentioned.

Thank you.

The Minister of Planning, Economic and Social Restructuring and Gender Affairs (Sen. The Hon. Mary King): Mr. President, I would like to thank the Senators in the Senate who are lawyers who have really given us a much clearer understanding of the law. As we know it we are not lawyers and therefore I do appreciate the depth to which some of our contributors went this afternoon to help us.

We also agree on this side that laws which are coming to the Parliament we really should have them consolidated before they come, because it is very painful to go back to the 1800s, perhaps, and try to trace, and of course we cannot do that effectively in a short space of time. So I do agree with that suggestion and I am sure our hon. colleagues on this side will try to comply.

On clause 6, I just wanted to reiterate one or two of the things which will be happening which may not be in the Bill but which are very important to the effective implementation of the Bill. Clause 6 which makes provision for the

admissibility of evidence given by video recording—and it is restricted in this application to the recorded statement of who is required to be present in court and to proceedings for an indictable offence or for the summary trial.

In many cases, you know and I know that this will most likely include children and young adults, and, therefore, in the planning for the development of the society we are actually looking at ensuring special training for the police interviewers, because we know, particularly with young people and children, you need to have special training and you need to be very gender sensitive, this will be leading up to a policy where we will actually institute an "Investigative Interview Policy", so that we can come up to scratch. This is happening in many countries where they do have an investigative policy with training for specialized skills within the police service, within the social services as well, social workers and those NGOs that happen to be involved in the issues dealing with women and children.

Now I also understand—at least I have been assured today that we already have regulations pertaining to the security of the videos and the tapes, because, in many countries they have installed and instituted security systems where they have two videos and one audio; one is a master and the video is locked up. I have been assured that is already in place and therefore we do not have to add it in this Bill, which was one of my concerns.

Sen. Al-Rawi: Thank you for giving way. If I could assist my learned friend, Sen. King, I can refer you to the Chief Justice, that there are rules, in fact, created, supporting exactly what you said, for the benefit of us all. Those rules do exist, it does include the audio tracks, there is a defined mechanism and those rules will be published shortly, via the Chief Justice, as to maintenance and the integrity of recordings and where they are kept, how they are kept, et cetera, so just by way of assistance.

Sen. The Hon. M. King: Thank you very much. That was one of my concerns when I did start to read the Bill and go back into what had happened before and I did not quite see it in this Bill, so I am glad to know that it is in place.

My main reason for contributing to this Bill today is to also include and to let the general public know what we are doing as far as a Ministry of Planning, Economic and Social Restructuring and Gender Affairs, and we are very involved in the analysis of the Millennium Development Goals and there is a lot of reference in the Millennium Development Goals to eradicating poverty and having proper quality of life, and, of course, the gender issue, the violence against

women and those kinds of issues which have to be very seriously taken into account in this country, because, you know, we do have a major problem of violence; not just here, but we do have a particular problem of violence which includes the gangs and gang violence. A few of us are actually doing analysis of gangs and hope to produce a paper very soon, so that we could also contribute to what we have to do to try to control the growth of this scourge, as we would call it.

So, in the Ministry of Planning, Economic and Social Restructuring and Gender Affairs, we are looking at gender mainstreaming issues; we are looking at gender-based budgeting and how budget projects within ministries affect gender, how they affects men. Gender is both, you know. [*Laughter*] Most people say gender, women, but that is not the way we in our ministry look at gender: We are looking at the issues that pertain to men, issues that pertain to women and we would be going from ministry to ministry with a team which is being trained now on gender-based budgeting.

In gender mainstreaming, Mr. President, we are looking at all the laws in Trinidad and Tobago as they impact upon family life; gender generally, and specifically, to do with violence and the workplace—how we can have gender equity within the workplace. So we are looking at all aspects of life in our nation and hoping that, through this gender mainstreaming work that we are doing, we could bring about a more equitable society. One of the laws that we have actually started and will be soon bringing to Cabinet—one of the laws we have actually been looking at—is the labour law maternity leave and we are examining the possibility of paternity leave so that there will be that support within the family structure at times, especially when there is a new addition to the family, the bonding issues and all of those things pertaining to the paternal instincts, and, what we have to do to strengthen those families. So we are doing a lot of work within our ministry and we will, as I said, be bringing to Cabinet first of all, a lot of suggestions for the amendment to some of the laws.

I wanted to specifically look at the recent publication of the UN on violence and violence against women, and on which this Bill today is going to obviously have some serious beneficial effect for the country and for our women. The Secretary General, Ban Ki-moon has recently brought to the fore—this is one of

the Millennium Goals, as well as the work against violence against women—and he has stated very categorically that violence against women—I want to read this if you do not mind:

> "Violence against women must be prioritized at all levels—it has not yet received the priority required to enable significant change."

In his interpretation it is a problem of leadership and an issue of political will.

Political will is critical and I think the fact that we have got a Senate today where everyone who has spoken said: "We support this Bill", I think this is a show that we [*Desk thumping*] in this country have matured to the point where we are working in the interest of Trinidad and Tobago and not in the interest of any one party, and I really applaud the Senators for that.

The Secretary General has given some ideas on how he would address the problem. He has identified the goals, a group which he has formed—"UNITE: to End Violence Against Women" and it is a campaign which he is hoping to take to all countries and hoping by the year 2015, which is in five-years' time, that we can have certain goals identified and working towards adopting them.

So I would just list what he thinks are important and which we at the Ministry of Planning, Economic and Social Restructuring and Gender Affairs have taken on board and we are going to work to try to achieve these particular goals. The first one is to:

- Adopt and enforce laws to address and punish all forms of violence against women and girls. I am sure he meant also boys because we know it exists, but all forms of violence against women, girls and boys who may be at risk.
- Adopt and implement multi-sectoral national action plans, which is exactly how what we are doing in our Ministry—bring about the social restructuring that we are actually working towards.
- Another issue which is very important, and he states, is to strengthen data collection on the prevalence of violence against women and girls.

Now, we had a contribution today where, yes, on the surface you had some numbers, but that could be the tip, the 10 per cent of the iceberg, and therefore real analysis and real data collection have to be done, which are not done. We have the Central Statistical Office under the Ministry of Planning, Economic and Social Restructuring and Gender Affairs, and that whole unit is being revamped, revitalized and retooled. So we do hope to be able to, from the police, from the

hospitals, from the homes, from all the NGOs that work in these areas, collect data from them so we will get some real data. Of course, there will always be bits—that there will be gaps, but the work will start and that is our aim to actually have more real live data.

- The fourth goal is to increase public awareness and social mobilization.

Obviously, public education and getting as many people as possible involved in the work of the Government and the country is important if we are really going to move on.

So in many ways we are taking the issues, the work that we do, to the public. As a matter of fact, tomorrow we have the launch of the work that is going on in the economic restructuring unit of my Ministry in that we will be having a meeting which will invite the public to be aware of what we are doing.

- And of course, the fifth goal, address sexual violence in conflict.

So, Mr. President, I think with the Millennium Development Goals in view and the work that has to be done, including what has been identified by Ban Ki-moon of the UN, I think our Ministry is really taking a holistic approach to social restructuring and development, and we hope to have a real focus so that we can bring about gender equity, because that is what—I think if we had more gender equity we would probably have less of the problems that we have.

So with those few words, Mr. President, I thank you.

5.45 p.m.

The Minister of National Security (Sen. The Hon. Brig. John Sandy): Thank you, Mr. President. I, too, would be particularly brief, having regard to all that has been said this afternoon. However, I was heartened and relieved to hear Sen. Beckles-Robinson indicate to us that she herself had some problems with the document. I am no lawyer and she is an esteemed lawyer, so at one time I was concerned with my ability to comprehend, but having heard her, I am much more relieved now.

Sen. Panday: That you are a brilliant man. [*Laughter*]

Sen. The Hon. Brig. J. Sandy: As I said, Mr. President, I would not go into too much of what was said before, but my heart remains with the victims with respect to rape and criminal assault, not only females, but our young boys as well. We have had instances within recent times to even observe the effect of men of the cloth as far as the pedophile activities with young men, and victims are

traumatized for life. They are traumatized to the extent that sometimes they are withdrawn; it is difficult for them to speak about it and you would find that in most instances when they are made to appear in court, sometimes they are unable to face the perpetrator.

This afternoon someone was speaking about a situation where the victim recognized the person by his smell and that smell probably would have stayed with her for years. That aspect of traumatization lives with that individual and affects that individual throughout life. Sometimes marriages are broken as a result of situations like that. Even in the court of law you would have defence lawyers who would badger witnesses, you know, without any concern for the emotions being experienced by those victims. As a result of that, testimonies are shaky, and, more often than not, you would find in situations like that, the perpetrator goes free.

With respect to the doctrine of recent complaint, I was happy to learn that what we are about to present now would eliminate that, in that, you would find that regardless of how long that crime would have been committed, that victim would remember it as though it were yesterday, and I applaud the draughters in that respect. As well, we are looking at the home aspect of it; we are looking at the parent aspect. Sen. Beckles-Robinson spoke about the parenting aspect of it and what happens in the home. It is so endemic that the mother—although the child sometimes reports to the mother, the aunt or the grandmother, they do not believe. Sometimes they believe, but they say things like, "Well, he is the breadwinner of the family and we have to live with it", and they turn a blind eye and we end up in situations, sometimes, where that child becomes pregnant and bearing a child for her stepfather in the mother's home.

Those are the types of things that we have to live with and those children have to grow up with; you know, the uncles who would come and sometimes not rape them but fondle them and interfere with them and they grow up with that kind of hate for men and things like that, because, when they tell their parents, they do not believe. The incestuous aspect of it goes on and on, particularly in the rural districts. We know of families, they go on and on, perpetrating situations like that and those children now are emotionally tainted for life.

You cannot imagine a more heinous and beastly crime than rape. It takes away everything from that individual, to the extent that a number of victims would tell you, "I would rather die." They want to kill themselves. That is the extent of what this does to the victim.

I would not dwell much more on that, but, with respect to the video recording of evidence, you would find that in a number of instances there is intimidation by the perpetrators of criminal activity. In a number of instances you would find that there is a witness who would have seen what happened but they are scared to come forward, for obvious reasons. They are threatened; witnesses are killed. We have got to place people in witness protection programmes and it interferes with the administration of justice. On a number of occasions you would find that someone would be killed in the midst of witnesses but they are scared to come forward, for obvious reasons, and the message is sent to them.

A few years ago there was the woman police in Morvant who was killed and members of her family killed; in Gonzales, just about three or four months ago there was the murder of a family as well. These people were murdered because it was said that they were informers. So you find that in a number of instances people would have witnessed crimes but they are afraid to come forward, and here is where the police are on this new drive to try to get into the communities and win back the trust of the people, so that with them we can start solving some more of our crime. It is the fear of elimination, as far as witnesses are concerned.

You find that there are instances when, initially, they would give evidence and then when they come to court there are bouts of amnesia and that is because of the intimidation by perpetrators of the crime. They would know the killers but they are afraid to come forward and say. So it interferes with the fair trial and the administration of justice and, as such, I welcome the input of the video aspect of it.

These are some of the things that we would achieve from that with respect to the jury actually seeing that witness giving evidence. You would find that their emotions come to the fore. Sometimes someone answers a question, and, because of the manner in which they behave, you can determine whether that question is properly answered and you get a feel that the person is telling the truth or not. There is the building of sound cases and reduction of lawsuits against the State. You would find the accused cannot deny that element of confidence. There is also the protection of rights of the witnesses or the police officers themselves. It would allow the court to see what takes place, so the witness cannot accuse the police officer of maltreatment or anything like that.

So it works both ways. Sometimes you hear of brutality to get witnesses to answer questions and things like that, in the investigations, and these things can be denied, but, once we have the footage of it, we can recognize whether that is so

or not. There are also behavioural patterns and mannerisms that would suggest to the jury or to the judge whether the answers or the responses are coming accurately or if there was some misunderstanding in the past. Sometimes witnesses would say, "Well, we never said that," but, once we have it on film, it cannot be denied.

So there are a number of areas there that would add to the court's input as far as coming to conclusions with respect to verdicts by your jury and, as such as, as I said earlier on, I welcome that piece of legislation and I also welcome the opportunity to contribute.

Thank you very much. [*Desk thumping*]

The Minister in the Ministry of National Security (Sen. The Hon. Subhas Panday): Thank you very much, Mr. President. First of all, I wish to thank and to congratulate everyone who has participated in this important debate and I want to say that the contribution of everyone was not only of a high standard but it came from their hearts. [*Desk thumping*] As Sen. Beckles-Robinson has indicated, it appeared to be difficult, and even as a lawyer she indicated that she found difficulty in interpreting the Bill before us, yet you could have had persons coming here and contributing in the manner in which they contributed and for that we must say both congratulations and thank you. [*Desk thumping*]

Having said that, I want to say thanks to Sen. Beckles-Robinson for being a good counsel to me, in that, she indicated that she did not want to point fingers at persons, which I had done, when I identified taxi drivers, maxi-taxi drivers and uncles. I want to unreservedly withdraw that, in that, I meant no disrespect or had any intention to identify anyone—[*Desk thumping*]—and really to delete and substitute, "anyone who has the intention or the propensity to act in such a manner". [*Desk thumping*] Thank you very much, Senator. I want to apologize for doing that, probably because of my previous incarnation.

As I said, I understand the inconvenience and the trauma that some of us had to go through in putting two Bills together and to keep cross-referencing. What Sen. Al-Rawi had indicated was that we should put the Bill and highlight the amendments so that it would make it much easier for people to understand what they are doing. I shall make those recommendations to the Law Commission or to those who are in authority. [*Desk thumping*]

I want to also join Sen. Al-Rawi when he said that he wished to incorporate into this debate the debate of February and March of 2010. I myself have read those notes and I thought that they were really good contributions and, as such, in the matter of—what is the matter again? *Pepper v Hart*?

Sen. Al-Rawi: *Pepper v Hart*.

Sen. The Hon. S. Panday: *Pepper v Hart*; that when the lawyers come to interpret they could go to these contributions to help in interpreting. I myself had that at the back of my mind when I was making my presentation, so that it could have been used in that regard.

Sen. Al-Rawi indicated that the legislation takes a long time, because, in 2006 there was the judgment and it came before the Parliament four years after and Sen. Al-Rawi indicated the process and the procedure that have to take place. I want to indicate to this honourable House that we have formulated a list of pieces of legislation which we hope to bring, but legislation, I agree with you, is a very long, difficult and drawn-out process. For example, you have to get your ministries to get the policy together; you take a policy to Cabinet; Cabinet accepts or rejects the policy. If the Cabinet accepts the policy, then it goes to the Attorney General's office; it goes to the Law Revision Commission, then it goes to the Chief Parliamentary Counsel. It goes from one place to the other.

6.00 p.m.

After that is completed—which might take months—it then goes to the Law Revision Committee (LRC), and the Law Revision Committee may find difficulties and may have to send it back again, either to Cabinet—and it keeps going to and fro to get it right. Like any other government, we are going through that teething process, hence the reason you have not seen the full-fledged piece of legislation. However, soon you will see pieces of legislation coming and I hope that will please the concern of Sen. Drayton.

Sen. Al-Rawi also indicated—there is no problem in playing politics or exercising your political right when you attacked Sen. Wade Mark, when you indicated that he shot down the legislation. The piece that I wanted to read which you said you were coming to and which you never came to, I think I should—[*Interruption*]

Sen. Beckles-Robinson: He left that for you.

Sen. The Hon. S. Panday: Pardon!

Sen. Al-Rawi: I had to leave it to you, hon. Leader.

Sen. The Hon. S. Panday: Thank you. I think I should read it into the record, the reason they did not support it. He was speaking about section 15AB where the judge has to give the directions. He says:

> "I am seeing the scales of justice not being properly balanced here. Therefore, I would like to put forward some sweeping amendments as it relates to this particular provision. I believe, just as the judge is being directed to inform the jury not to use delay as a basis to discredit the victim, we should also be cautious in terms of the judge using that same power to inform the jury that the credibility, reliability and consistency of the victim's statement could also be in question and, therefore, you have a balancing of the scales of justice. As it stands… I can see where innocent people could be in trouble."

And based upon that contribution we did the research and we went to New South Wales legislation and found that balance that Sen. Wade Mark was looking for and we have brought it to the Parliament. I am happy to hear that you are in agreement with it, and that it will be supported. However, when we go to the other stage of fine-tuning the legislation if there is anything, we shall indeed be amenable to any adjustments.

Sen. Drayton wanted to know what is the position of a child in the case of care. My humble view is that if one is interpreting legislation, if we could use the ejusdem generis rule. Ejusdem generis means if you have a number of statements, that the last one falls in line with the former. So when we say care, custody and control, all go in one, with custody at the top and we are moving down. Custody, I humbly submit, could deal with a case where you have custody, legal or de facto; where there is a document from the court giving parents legal custody; or where in normal circumstances, there may be no documentation, but the mother has de facto custody without a legal document. Charge, I have been advised by the honourable advisors, can apply to a situation where a child is in school and the principals and teachers are in charge of the children.

I thought that while you were speaking, you alluded to that direction. Your concern was with care. I have been advised that care could extend to a situation where the child is put in care of a social worker. It might be in the custody of someone else, or it could be in custody of the same person; it could be in the custody of another person, but in the care of the probation services maybe, or some social worker. That is my advice as to your concerns. If you are still not fully convinced, I am willing to seek advice to satisfy your queries.

The other issue which the Senator spoke about was the Bill before the court today. In section 15C(3):

> "Where a child gives a video recorded statement under section 15C, the statement shall be made in the presence of a person who belongs to one of

the following categories of persons chosen by (a)"—and we were saying, we are going to amend it to say—

"somebody of the rank of inspector, instead of police officer, conducting an investigate in the matter"—[*Interruption*]

Sen. Drayton: "…by someone in whom the child has confidence". I just wondered how the police officer is going to select that person. But it also seems to have conflicted with the parent legislation.

Sen. The Hon. S. Panday: Thank you very much, Senator. Therefore, Senator, what has happened is, I know that this slipped you because of the way legislation is drafted, where it is said, for example:

"The Act is amended in section 15I—

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

(b) by renumbering subsections (1), (2), (3)…"

It goes on like that.

If you do not spend a lot of time in cross-referencing, then you can easily lose something, not as a result of anyone's incompetence or oversight. But if one looks at page 10, subsection (3), it says "by deleting paragraph (f)", and when one goes back to the Act of 2009, paragraph (f), is the witness is a child and the video recording in the presence of the adult chosen by the witness. So it has been deleted. What happened is that the legislation is evolving at such a fast rate, that we cannot really keep up. We ourselves find difficulty in keeping up with the number of deletions and the number of insertions.

The other question Sen. Drayton had asked was about the Children's Authority. I have been advised again, that the Children's Authority kicks in after this process has been completed. This is the investigative stage of the process, and it is only when you move from this stage, the other stage, Children's Authority will kick in.

The other question that you asked, is there any other legislation pertaining to children which is due? I want to indicate to you that I shall check that out and report to you.

Finally, I want to congratulate Sen. Brig. John Sandy, not because he is my boss but because he made a very profound statement which enlightened this honourable Senate as to the various arguments which were being put forward,

when we were viewing this legislation, as basically touching the female. So we were saying, oh, it is gender biased. I, myself, argued that it appeared to be gender biased and the statement that Sen. Brig. Sandy had indicated, has opened our eyes. It tells us now not only is it about female, it is also about male. So this sexual legislation is all encompassing; it encompasses both sexes, male and female. I want to commend you, Sir, for also saying that.

So with these few words, Mr. President, I want to thank you very much, and to thank all Members for participating in this debate. [*Desk thumping*]

Mr. President, I beg to move.

PROCEDURAL MOTION

The Minister in the Ministry of National Security (Sen. The Hon. Subhas Panday): Mr. President, in accordance with Standing Order 9(8), I beg to move that the Senate continue to sit until the completion of this matter.

Question put and agreed to.

EIVDENCE (AMDT.) (NO. 2) BILL

Question put and agreed to.

Bill accordingly read a second time.

Bill committed to a committee of the whole Senate.

Senate in committee.

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

Clause 4.

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

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

In the proposed section 15AB—

(a) delete the word "and" in paragraph (a);

(b) delete the full stop in paragraph (b) and substitute the words "; and"; and

(c) insert the following paragraph after paragraph (b):

(c) not warn the jury that a delay in complaining is relevant to the victim's credibility unless there is sufficient evidence to justify such a warning.".

6.15 p.m.

Sen. Al-Rawi: Mr. Chairman, I have a contribution to make, for the consideration of hon. Senators. Perhaps I should give the logic of where my contribution is coming from. The run-up to this wicket, if I may use this expression, section 15AB, which is a fairly long one and which ends with the words "the Judge shall" on page 7, goes on to (a) and (b), inform the jury that they make a good explanation. Those two are always going to be consequential and necessary. Perhaps we could consider, instead of the (a)/(b) format, renumbering the (a) there to (i), keep the word "and" and then renumber (b) as (ii). We can introduce (c) as the letter (b). I say that because (c) is really a proviso clause. You are now appealing to the judge's discretion. You are saying, if there is sufficient evidence to justify—I am thinking aloud now—provided that, in the event there is sufficient evidence to justify such a warning, the judge shall not warn that the delay in complaining is relevant to the victim's credibility.

Sen. Panday: Based on that argument, earlier you had indicated this codification would prevent the development of common law. I humbly submit, that the argument you have made now, where it is a proviso, allows for the development of common law. I accept what you are saying. We have no objections to the amendment you have.

Sen. Al-Rawi: I really put it out as food for thought. I am borrowing, for the way to say this, a Christopher Hamel-Smith style in court, which is to articulate what you are thinking as opposed to a proposal. I am not quite sure how the effects of the proviso would ride. If I were living in an idyllic world, I would have liked to look at statutory interpretation texts relative to the application of the provisos. There are a number of them we could source, but just in terms of general thought because I am not proposing an amendment per se.

For instance, what you have said is very compelling and I have no argument with that. My difficulty is that I am not quite sure what it should read. I agree that we are headed in the right direction. I think there is need for it, but there is this countervailing balance that we need to adopt between the codification common law and not restricting judicial interpretation. That is the difficulty I have without better guidance. Perhaps my learned Sen. Prescott SC could assist in this area.

Sen. Prescott SC: Mr. Chairman, I am thinking whether the proposed subclause (c) is meant to prohibit the judge or to permit him to warn this jury if certain circumstances exist.

Sen. Panday: It is to permit him to warn the jury in circumstances; and the circumstances have been spelt out.

Sen. Prescott SC: It is always good not to tell a judge he should not do something.

Sen. Panday: Pardon?

Sen. Prescott SC: It is probably better never to tell a judge that he should not do something. If you were to say, using what I understand to be Sen. Al-Rawi's approach, that (b) as he suggests should be "provided where there is sufficient evidence to justify a warning, the judge shall warn the jury—

Sen. Panday: Where there is sufficient evidence?

Sen. Prescott SC: —to justify such a warning, warn the jury—

Sen. Panday: Where there is sufficient evidence to justify such a warning, warn the jury—

Sen. Prescott SC: —that a delay in complaining is relevant to the victim's credibility. In that way, if I may follow from Sen. Al-Rawi, the entire new clause will read, after the words "the judge shall", "(i) give a warning; and (ii) inform".

Sen. Panday: Please repeat.

Sen. Prescott SC: Clause 4, which speaks to section 15AB, where it is broken down into subparagraphs, Sen. Al-Rawi had suggested, and I agree with him, that what now stands as (a) and (b) should become (a)(i) and (ii). They will be forever joined. Then you will insert your new (c) as (b) and so the entire thing will read:

"The judge shall—

(b) provided that there is sufficient evidence to justify such a warning, warn the jury that a delay in complaining is not relevant to the victim's credibility."

If Sen. Al-Rawi is satisfied with that, that will be my suggestion.

Sen. Moheni: This adjustment seems to mandate to the judge that the jury be advised or warned in the event there is sufficient evidence; but in the event there is not sufficient evidence, what happens then? Is it left to the discretion of the judge whether or not the jury should be warned?

Sen. Prescott SC: If you go back to what is now (a) and (a)(i), he starts off by giving a warning where there is delay in complaining. The warning is that that delay is not necessarily that the allegation that the offence committed is false. The

judge is saying that, generally, the fact that someone has delayed will not necessarily mean the allegation is false. If however, the judge sees sufficient evidence that this person's credibility is at risk, delay being the factor, he, under the new (b), should warn the jury. So he deals with evidence of delay under the new (b), and, where there is no evidence of delay or not enough to be concerned about the credibility of the witness, he will treat with it under (a)(i)and (ii).

Sen. Beckles-Robinson: Mr. Chairman, there is no issue of disagreement on the Bill. It is the same point I was making before about the complexity of the Bill. Ideally, we should give the draughters the opportunity to have it corrected. If we come next week, it will take us—having gone through the committee stage, there is no issue as to disagreement on the Bill. We want to make sure that—and that is exactly what I was saying—we give them opportunity to make sure that the Bill is properly draughted in relation to those two things. There is no disagreement in terms of working through it. You just want to make sure that the draughters get the opportunity to get it right, unless you are intent on passing it today.

Sen. Panday: That is the same point the draughters are making. It seems to me impossible to do it the way we are saying. Maybe we should give them some time because of the complexity of the—

Sen. Al-Rawi: Mr. Chairman, if I could also add—thanks first of all to the learned Senior Counsel, Sen. Prescott, in whom I repose much confidence although I am usually against him in court. The point is that, first of all, I cannot see that (a) and (b), as they are currently set out there, as we propose to become (i) and (ii)—subject to discussion and agreement, of course—could ever be divorced. That is the reason we are suggesting it; that the new (b) take into account the proposed (c).

I want to throw in one more thought for consideration. First of all, the premise and the reason we are proposing it this way is that we do not want to have a mandatory direction to the judge. We would like to preserve the development of the common law and, specifically, the judicial discretion.

Secondly, the proposed (c) on the amendment circulated speaks only to delay and perhaps should also speak and/or to absence of complaint. Subclauses (a) and (b) on the Bill speak in the context of absence and delay. I did not want to let the fact that we are dealing with both absence and delay slip out of (c).

Sen. Panday: You are saying that the present state should encompass what is in (a) and (b) above.

Sen. Al-Rawi: The last point is just to join and echo what Sen. Beckles-Robinson was saying, and that is to give deference to the legislative draughters

who considered far more than we have and to allow us to come back to committee stage—not wanting to shoot anything down or have any prejudice suffered—to consider with a little bit more care the consequence of the scope of the amendment. I do not want to repeat it, but the *Diaz* Court of Appeal case really tells us that we ought to know the law and we deem to know it. With that sort of sincere obligation, I would really prefer to err on the side of caution.

Sen. Panday: In those circumstances, the housekeeping would be that Tuesday 26 would be the last Tuesday in the month, that would be Private Members' Day. We seek the indulgence of the person at Private Members' Day to give—

Sen. Ramkhelawan: It is not the last.

Sen. Panday: Is Tuesday the fourth Tuesday? It is just a matter of housekeeping.

Sen. Ramkhelawan: What are you suggesting?

Sen. Panday: I know that Tuesday, if it is the fourth Tuesday, will be Private Members' Day. That is the day of the Opposition and/or Independents. We humbly suggest that you indulge us by giving us some time to complete this Bill prior to the commencement of Private Member's Day.

Sen. Ramkhelawan: If this happens to be the only clause that we need to deal with, let us leave it, go on to the others and make the corrections. I do not see anybody would be objecting.

Sen. Panday: Thank you very much, Sir.

Sen. Ramkhelawan: We can go on to the other clauses.

Mr. Panday: In the circumstances then, we shall return to clause 4.

Clause 4, by leave, deferred.

6.30 p.m.

Clause 5.

Question proposed, That clause 5 stand part of the Bill.

Sen. Al-Rawi: Mr. Chairman, is there an amendment to clause 5?

Sen. Panday: No.

Sen. Al-Rawi: Oh, I see, my apologies, sorry.

Sen. Ali: Mr. Chairman, just a marginal note. It says section 15I and that should be section 15C is amended.

Mr. Chairman: That is how it appears in my copy, Senator, the marginal note. [*Crosstalk*] The Senator was saying that there is a marginal note and it should be section 15C amended. I am saying that in my copy it says that. Can we go through that again?

Clause 5, as amended, ordered to stand part of the Bill.

Clause 6.

Question proposed, That clause 6 stand part of the Bill.

Sen. Panday: Mr. Chairman, I beg to move that clause 6 be amended as follows:

In the proposed section 3, delete the words "the police officer" and substitute the words "a police officer of or above the rank of Inspector who is not directly concerned in".

Sen. Drayton: I am just going back to the matter pertaining to the child and the video. Could it be addressed in the regulation that the person chosen that this is a person the child is comfortable with? Would that be addressed in the regulation or could it be addressed in the regulation?

Sen. Panday: I am advised that the rules of the court will address that issue. However, I am not certain, and, since we have to come back on Tuesday, in the interim, I shall do some work to try to be as accurate as I can.

Sen. Drayton: Thank you.

Mr. Chairman: So we will defer that clause 6.

Sen. Prescott SC: Mr. Chairman, permit me. I just wish to add my support to that approach. I am merely intervening to say that I am supporting that recommendation, that we defer that aspect of it to determine in whom the child has confidence. I am supporting that approach.

Sen. Panday: Thank you.

Mr. Chairman: It seems to me, Senators, that perhaps we could go back to the Senate and leave back the Preamble and the two clauses that are still requiring work on them.

Sen. Baptiste-Mc Knight: Mr. Chairman, let us finish as much as we can so that we do not eat up too much of Private Members' Day.

Clause 6, by leave, deferred.

Preamble ordered to stand part of the Bill.

Sen. Panday: Mr. Chairman, I beg to move that we report the progress on the Bill.

Senate resumed.

The Minister in the Ministry of National Security (Sen. The Hon. Subhas Panday): Mr. President, thank you very much. With respect to Standing Order 53(12), I wish to report that progress in the committee stage of this Bill has been made. However, two clauses have been deferred. I humbly seek your leave to sit on the next occasion to complete the proceedings.

Question put and agreed to.

ADJOURNMENT

The Minister in the Ministry of National Security (Sen. The Hon. Subhas Panday): Mr. President, thank you very much. I beg to move that this Senate do now adjourn to Tuesday, October, 26, 2010. On that day is Private Members' Day, and it is now, to the Private Members to decide what would be discussed on the next occasion, and to humbly request that this Bill be completed prior to the commencement of whatever matter they engage us in on Private Members' Day. What would be discussed?

Sen. Ramkhelawan: Motion No. 1.

Sen. The Hon. S. Panday: Mr. President, I have been informed that on Tuesday, October 26, 2010 when the Senate sits, the debate will continue on Motion No. 1, in the name of Sen. Subhas Ramkhelawan, which was in progress.

Question put and agreed to.

Senate adjourned accordingly.

Adjourned at 6.38 p.m.