

*Leave of Absence**Tuesday April 05, 2011***SENATE***Tuesday, April 05, 2011*

The Senate met at 1.30 p.m.

PRAYERS[MR. PRESIDENT *in the Chair*]**LEAVE OF ABSENCE**

Mr. President: Hon. Senators, I have granted leave of absence to Sen. The Hon. Mary King who is out of the country.

SENATOR'S 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: ARCHBISHOP BARBARA BURKE

WHEREAS Senator Mary Kathleen King 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, 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, BARBARA BURKE, to be temporarily a member of the Senate, with effect from 5th April, 2011 and continuing during the absence from Trinidad and Tobago of the said Senator King.

Given under my Hand and the Seal of the President of the Republic of Trinidad and Tobago at the Office of the President, St. Ann's, this 1st day of April, 2011.”

Oath of Allegiance

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OATH OF ALLEGIANCE

Senator Barbara Burke took and subscribed the Oath of Allegiance as required by law.

BAIL (AMDT.) BILL 2011

Bill to amend the Bail Act, Chap. 4:60, brought from the House of Representatives [*The Attorney General*]; read the first time.

Motion made, That the next stage be taken at a sitting of the Senate on Tuesday, April 12, 2011. [*Sen. The Hon. A. Ramlogan*]

Question put and agreed to.

ANTI-GANG BILL 2011

Bill to make provision for the maintenance of public safety and order through discouraging membership of criminal gangs and the suppression of criminal gang activity and for other related matters, brought from the House of Representatives [*The Attorney General*]; read the first time.

Motion made, That the next stage be taken at a sitting of the Senate on Tuesday, April 12, 2011. [*Sen. The Hon. A. Ramlogan*]

Question put and agreed to.

PAPERS LAID

1. Annual administrative report of the Sangre Grande Regional Corporation for the period October 2008 to September 2009. [*The Minister of State in the Ministry of National Security (Sen. The Hon. Subhas Panday)*]
2. Annual audited financial statements of the Deposit Insurance Corporation for the year ended September 30, 2010. [*Sen. The Hon. S. Panday*]
3. Twenty-Third annual report of the Integrity Commission for the year 2010. [*Sen. The Hon. S. Panday*]
4. Annual audited financial statements of the CEPEP Company Limited for the financial year ended September 30, 2010. [*Sen. The Hon. S. Panday*]

ORAL ANSWERS TO QUESTIONS

Drug-Related Offences

(Before the Courts)

- 35. Sen. Penelope Beckles-Robinson** asked the hon. Minister of National Security:

Could the Minister indicate how many drug-related offences are presently before the courts in Trinidad and Tobago?

The Attorney General (Sen. The Hon. Anand Ramlogan): Mr. President, you may recall this answer was circulated last week but I am reading it into the *Hansard* for the record.

The Trinidad and Tobago Police Service has indicated that there are a number of challenges that made the provision of the data required for a comprehensive response to this question difficult. Key among these is the fact that the information storage system within the Judiciary is not yet fully computerized. As a result, the police service must source the information manually in order to keep its records updated. Officers are therefore usually required to extract the necessary data and supply it for input. This process often results in delays. It is a laborious task and in inputting the information there are therefore difficulties in maintaining current records.

As a result of these challenges, the police service indicated that it was unable to provide comprehensive data to the question asked in Parliament. The police service has, however, kindly agreed to provide the following data which conveys the number of persons, as at December 31, 2010, who were before the courts of Trinidad and Tobago, but only from charges laid between the period January 01, 2005 and December 31, 2010. Hence, persons who were charged prior to January 01, 2005, whose matters were still before the courts as at December 31, 2010, were not included in this information.

It is to be noted that in providing the information, drug-related offences were defined as those offences relating to possession, trafficking, cultivating, importing and exporting of a dangerous drug. According to police records, between January 2005 and December 2010, there were 27,656 narcotics-related cases before the courts. Of those cases, 9,570 or 35 per cent were completed as at December 31, 2010, leaving a balance of 18,086 cases pending before the courts, hence the term backlog.

In view of the foregoing, hon. Senators are advised that, as a result of some of the information management system challenges being experienced within the Judiciary and the Trinidad and Tobago Police Service, it is possible, at this point in time, to providedata only on persons who were charged with drug-related offences during the period January 01, 2005 to December 31, 2010, whose cases, as at December 31, 2010, were pending before the courts.

It should also be noted that the data is limited to cases relating specifically to the possession, trafficking, cultivating, importing and exporting of a dangerous drug. In this regard, police records indicate that, as at December 31, 2010, there were 18,086 drug-related cases pending before the courts of Trinidad and Tobago. I thank you.

Sen. Beckles-Robinson: Hon. Attorney General, I know that the challenges to which you refer would not have been challenges that would have started, certainly under your time, but solving those problems, would that fall under your Ministry, under the Ministry of National Security or under the Ministry of Justice?

Sen. The Hon. A. Ramlogan: Well, it is not a supplemental to this but I would answer it anyway. It may fall under four Ministries perhaps, but led by the Judiciary in particular. But you have the Ministry of Justice, you have the Ministry of Legal Affairs, you have the Ministry of the Attorney General and you have the Ministry of National Security. What we have done, in fact, is to set up an inter-ministerial committee that meets regularly with the hon. Chief Justice and representatives from the Judiciary on an ongoing basis to deal with the administrative and resource problems that affect the administration of justice so that we can, in fact, improve the efficient case management to clear up these backlogs.

In addition to that, I think that the necessity to need to keep statistics is one that has long been recognized by the civil courts. In fact, the annual report from the Judiciary is one that contains statistics and it is fairly up-to-date. So, on the civil side, the Supreme Court of Justice is, in fact, very much up-to-date in terms of the statistics. On the criminal side we may be a little behind. As I indicated, the records are still laboriously and manually kept, but we are moving to transfer the expertise from the IT knowledge that we have gained on the civil side into the criminal side. Reforms are coming with respect to the Magistracy on the heels of the proposed abolition of preliminary enquiries, and when that is done then we are hoping that would free up some resources on the part of the magistrates to attack this backlog and hopefully clear it in due course.

Consonant to that, we would have, of course, a proper record keeping on the part of the criminal justice administrative staff so that we can monitor it to make sure that the resources we inject and invest into the administration of justice, in the criminal justice system, in fact yield the kind of benefits and results we expect.

1.45 p.m.

Sen. Beckles-Robinson: Is this distinguishing between the actual backlogs from the problem the police were identifying, which is the record keeping? What I was asking is that, as it relates to doing the upgrade of that record keeping, whether they are going—that responsibility is going to be yours—well, yours meaning your Ministry or National Security? That is the part I was asking.

Sen. The Hon. A. Ramlogan: Well you may recall, Senator, that we have in fact taken steps to ensure that the Commissioner of Police is now in fact the accounting head for the police service. So that in my respectful view the Commissioner of Police would be the person who is responsible for updating and improving the record keeping facilities in the police service. That will obviously have to be done in consultation with the Minister of National Security as his line Minister. So I would assume that they would be working on that.

**Firearm-Related Offences
(Before the Courts)**

36. Sen. Penelope Beckles- Robinson asked the hon. Minister of National Security: Could the Minister indicate how many firearm related offences are presently before the Courts in Trinidad and Tobago?

The Attorney General (Sen. The Hon. Anand Ramlogan): Thank you, Senator.

Mr. President, the Trinidad and Tobago Police Service indicated that there are a number of challenges again, that make the provision of the data required for a comprehensive response to this question quite difficult. Key among those was, in fact, the information storage system in the Judiciary, again, is not fully computerized. The police service has had to source information manually, officers are required to extract the necessary data and manually supply. The resulting delay and the cumbersome nature of this makes it difficult to actually get real time data.

As a result of these challenges, the police service indicated it could not provide a comprehensive response. Suffice it to say, that the data which was provided conveys the number of persons as at December 31st, 2010, who are before the courts of Trinidad and Tobago, but only from charges laid during the period January 1st, 2005 to December 31st, 2010. Those persons who were charged prior to January 1st, 2005, or whose matters would have been still before the courts as at December 31st, 2010, were not included.

It is to be noted that in providing the information, whilst firearm are used in perpetrating crimes such as rape and housebreaking, firearm-related offences were defined strictly as offences involving possession of firearms and ammunition. According to police records, between January 2005 and December 2010, there are 4,117 firearm-related cases before the courts. Of those cases, 301 or 7 per cent were completed as at December 31st, 2010, leaving a balance of 3,816 cases pending before the courts.

In view of the foregoing, hon. Senators are advised that as a result of the information management system challenges being experienced within the

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Judiciary and the police service, it is possible, at this time, to provide data only on persons who were charged with firearm-related offences between the period January 1st, 2005 and December 31st, 2010, whose cases as at December 31st, 2010, were pending before the courts. It should also be noted that the data is limited to cases involving possession of firearms and ammunition.

In this regard, police records indicate that, as December 31st, 2010, 3,816 firearm-related cases are pending before the courts of Trinidad and Tobago.

I thank you.

Sen. Hinds: Would the hon. Attorney General indicate whether, in light of the data that you have just shared with the national community, the Government has availed itself of any idea as to the number of illegal firearms that exist across Trinidad and Tobago at present?

Sen. The Hon. A. Ramlogan: I will answer it, although it is altogether a different question, Mr. President. I do not think it possible for anyone, except the man above, to know the number of illegal firearms in the country. What I can say is that the police service, through its intelligence gathering mechanisms, has a fairly good idea as to how many gangs there are, and the number of gang-related offences bear a distinct correlation with the number of firearm-related offences. The Anti-Gang Bill, which will come next week, will hopefully have a knock-on, domino effect in lowering the number of firearm offences that are before the court, because the prevalence of the firearms is inextricably intertwined with the presence and the mushrooming of the gangs. So I hope that answers the question. [*Desk thumping*]

Sen. Hinds: Just for the record, I would like to indicate to the hon. Attorney General that there are ways of assessing the issue that I have raised and it has been done in the past.

Sen. The Hon. A. Ramlogan: Mr. President, I wish to thank the hon. Senator. I know that he is a former Minister in the Ministry of National Security. I hope that his rather successful tenure alongside his senior minister, Mr. Martin Joseph would have utilized those statistics and that kind of gathering mechanism to deal with crime during their tenure and they could share it with us.

Sen. Panday: Take that, take that. Take that talk. [*Desk thumping*]

Sen. Hinds: One more, one more.

Mr. President: I hope you have a question. [*Laughter*]

Sen. Hinds: Yes indeed. The question is I hope the hon. Attorney General would clearly recognize that more relevant to him and his Government is the current state of affairs and not that which has happened a long time or any time in the past. [*Desk thumping*]

ELECTRONIC TRANSACTIONS BILL

[Third Day]

Order read for resuming adjourned debate on question [March 15, 2011]:

That the Bill be now read a second time.

Question again proposed.

Bill committed to a committee of the whole Senate.

Senate in committee.

1.55 p.m.

Sen. Panday: Mr. Chairman, the Bill is a 66-clause Bill. Is it possible, in those circumstances, that we will do them in groups?

Sen. Al-Rawi: Sorry, Mr. Chairman. Regrettably, we did not hear the question of the hon. Leader of Government Business a short while ago, addressed to you.

Sen. Panday: Hon. Senator, some amendments were circulated a few minutes ago. Those amendments incorporate the amendments which were submitted on the last day, which the Government has brought on board, so the one which the Government decides to pursue is the last one which has just been circulated. It is not new amendments, but really what the Government has incorporated and taken from the two lists which were supplied on the last occasion.

Sen. Al-Rawi: Mr. Chairman, just in terms of orientation and better facilitation—thank you for that explanation, firstly, hon. Leader of Government Business. I did hear, and my colleague confirmed to me, that the question was whether the clauses, in light of the Bill, being 66, could be taken—

Sen. Panday: I apologize to you. What I had indicated, I had asked the Chairman that since the Bill had 66 clauses, if we could have done them in groups, but we will not in any way reduce the effectiveness of the committee stage.

Sen. Al-Rawi: Understood.

Mr. Chairman: What I had indicated was that obviously where there were amendments, we have to refer to that specific clause. If there are gaps when there are no amendments covering a number of clauses, we would try to take them together. If, however, questions arise relative to a specific clause, we will zero in on that. But if we could pass in bulk any part of the, perhaps, the boilerplate stuff, then we will—

Sen. Al-Rawi: Mr. Chairman, I have a question. I was hoping that in view of the benefit of having been provided a week's grace to consider—and I am sure there was a lot of consideration that went on in light of the contributions—whether there was, in fact, production of a track-changed document to the Bill, because this relates to the issue of taking things en bloc or not, and, respectfully, I think that, firstly, there was enough time to produce a track-changed document; secondly, that all of the Senators would be better equipped to consider the proposed amendments if we could see the context within which they were placed.

So through you, Mr. Chairman, if I could ask whether a track-changed document is available in view of the sufficiency of time and the complexity and importance of this, being originating legislation—

Sen. Panday: I apologize to the hon. Senator that we do not have that. The reason for that is, we were working on it all week and some of the amendments were included up to this morning, and if we had done a track change, it would have been inaccurate.

Sen. Al-Rawi: Mr. Chairman, if I may continue through you, and I mean no disrespect, because, clearly, a lot of hard work has gone into the production of the amendments, it seems to me, from a quick read of the document passed to me literally a minute ago, that we would all be better prepared for able contribution if we could have an opportunity to consider. There are two factors with which anyone ought to consider amendments, respectfully. Firstly, there must be factoring of an adequacy of time for the consideration of amendments, and, secondly, those amendments must be put in a user-friendly fashion. Regrettably, neither of those two conditions is met this afternoon, and I do not know if there is a facility for pause, at least to consider the paper which has just been passed to us. My fear arises in the context of potentially looking to move as quickly as we can through the Bill, and I am concerned that we have an adequate opportunity to reflect upon the proposals.

Mr. Chairman: As you know, Senator, it has been my own position that track changes would certainly help the Senate in its deliberations on the question of amendments. Therefore, we have this opportunity—and I hope that given that the personnel present may take account of the fact that this House is recommending that wherever possible we have track changes to put it into context in order to better enable us to do our work. On the other hand, I recognize the limitations in what Sen. Panday has said, in terms of the timing of the work. I do not, of course, know what software is available to the State relative to doing this, but the truth is that, if you had the appropriate software, then you could create a track-changed document, and with the same speed as you made amendments you could make changes to the track. Therefore, I am hoping that this has not fallen on deaf ears.

Having said that, what I assure you is that, if there are times when we need to take more deliberate consideration of any issue, we can have a suspension at that period. So what I suggest, having gone into the committee stage, we start the proceedings and if and when those occasions arise when more sober reflection needs to be given, that we will deal with it at that time, with the potential for taking—but if we could proceed in the meantime in the interest of being effective and efficient.

Sen. Al-Rawi: Last clarification question. This relates to the amendments circulated by the Independent Senator, Helen Drayton. Just for clarification, have there been any amendments to that, or are we working with the draft circulated last week?

Sen. Panday: Through you, Mr. Chairman, the amendments which the hon. Senator had produced, we have taken them on board and they have been included in this. Maybe as we go along we could consider, if the hon. Senator so desires, those which have not been included.

Mr. Chairman: When we come to the appropriate moment—what I am being told is that it is already incorporated in what has been circulated by the Minister, and if there are those that are not included, if Sen. Drayton wants to continue to take up that issue, we will take it at the appropriate time. So we have one set of amendments, basically, before us and we can introduce, at the appropriate moment—

Sen. Al-Rawi: Sorry, Mr. Chairman. I do not mean to belabour the point, but respectfully, we have two sets of amendments.

Mr. Chairman: What I was trying to say is, I understand the Minister to say that, embodied in the amendments that were last circulated by the Minister of Public Administration, there have been incorporated amendments which Sen. Drayton presented, with certain exceptions, and when those exceptions arise, if Sen. Drayton wants to pursue them, she will raise the point at that time, so that by exception we will deal with those.

Sen. Al-Rawi: Mr. Chairman, I follow clear as day. I just want to make this point because I think it is a very important point. The position, as I see it, is the use of footnotes versus endnotes; the use of referring to material in the body of an affidavit as opposed to relying on annexes alone. Having been passed the amendments literally a couple of minutes ago, that is, a consolidation amendment as it relates to some of the amendments circulated by Sen. Drayton, we are in a disadvantageous position to consider what material, if any, has been left out, because it has not been shown to us that which has been accepted and that which has not.

Mr. Chairman: I believe the Minister has undertaken that when we arrive at any particular clause which they have not taken on board in their amendment, but which is in Sen. Drayton's proposal, it will be drawn to our attention for our consideration.

Sen. Al-Rawi: Thank you, Mr. Chairman. I did not hear the undertaking but I am grateful for it.

Sen. Panday: Mr. Chairman, through you, I wish to inform this honourable Senate that at this point in time we are having some track-changed copies being prepared. It will be prepared in about 15 minutes' time. What has happened, we have CPC doing this work, but the line ministry has to do that work, and they are doing it and it will be here in a short while. So we could commence and in 15—20 minutes' time we hope to have it here.

Sen. Al-Rawi: Mr. Chairman, I do sincerely appreciate the extent of work that is going on. In another place we would have what we call an adjournment to facilitate the request. My fear in starting an exercise and then having to go back is that we would not have fixed our minds upon the substance of the material that has been circulated, or is proposed to be circulated. So I just ask a question, respectfully, whether we are embarking upon a prudent use of parliamentary time at this point in light of proposed amendments yet to come, and I most respectfully enquire—*[Interruption]*. Yes, but I do consider that this is an important piece of originating legislation and, respectfully, this is not the correct manner in which to

deal with amendments. One would have thought that the amendments would have been circulated when we received our Order Papers, for example, so that there could be mature reflection upon the substantial amendments that are being put to the Senate. [*Desk thumping*] So it is either we are given a proper opportunity to consider those amendments now or, respectfully, that the matter be adjourned.

Sen. Panday: Mr. Chairman, I am willing to facilitate my learned colleague and maybe we could start the Data Protection Bill now, if you so desire, and stand down this one, and if the Data Protection Bill occupies all the time, then we will continue this on another occasion so that we will save Senate time.

Mr. Chairman: So you have a proposal before you, that we end this committee stage.

Sen. Al-Rawi: Mr. Chairman, relative to that proposal and continuing upon the line of the appropriate use of parliamentary time, the proposal is, specifically, that we end the committee stage now and start the Data Protection Bill.

Sen. Panday: Yes.

Sen. Al-Rawi: Again, I will come back to a very core point, which would have been raised a little later, and that is, last evening at five o'clock I was given a message that we would not be considering the Data Protection Bill by way of debate today, notwithstanding the fact that all of us were prepared for it and had anticipated it coming on. We were specifically told that the Bill was not going to be discussed today and that we were going to, in fact, deal with a Motion to refer the Standing Orders to the Standing Orders committee.

Sen. Hinds: That is right.

Sen. Al-Rawi: This message was communicated not only to us but to the Independent Bench, and on a quick audit of those persons who came prepared today with hard copy material to refer to, I am reliably informed that notwithstanding the fact that all Senators can stand and give sterling contribution today—because we have prepared—that I, for instance, do not even have my file with me for the very reasons that I have just told you. That is not to say that I am not capable of submitting solid contribution today. [*Desk thumping*] However, we cannot certainly approach the very solid business of a Senate in a roughshod, shooting-at-the-hip fashion.

Now, I do not mean to lay aspersions at my learned friend, the Leader of Government Business, because in preparing for the Motion this morning, coming out of court, coming to pull the quick research this morning on the joint select

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committee, I did a quick audit of persons who have contributed, and the Leader of Government Business is one of the leading contributors on his Bench, so I am sure that the fault is not his. But the problem is that, relative to the issue of using parliamentary time adequately and sensibly, how could it be more sensible to adjourn this discussion to discuss something which we were told not to prepare for?

Sen. Hinds: Crazy!

Sen. Ramkhelawan: Chair, if I may interject—

Sen. Panday: Mr. Chairman, Mr. Chairman—

Mr. Chairman: Sen. Ramkhelawan is on the floor.

Sen. Ramkhelawan: Chair, I think we have belaboured the point, even though we have said we do not want to belabour the point. But may I suggest, in order to improve on our efficiency, that we have the introduction of the Data Protection Bill, which I think Sen. Panday has suggested, and that we move to the Standing Orders—I think all of us are prepared—and it will give us some time. I think we could take it from there; play it by ear. But I think we are wasting a lot of time, quite frankly, on a debate as to whether we should have a debate.

Mr. Chairman: That seems to be an eminently suitable recommendation, Sen. Ramkhelawan.

Sen. Ramkhelawan: So if we move ahead—

2.10 p.m.

Sen. Panday: Is it possible that we do the Data Protection Bill, and do you have any Senator at all to speak?

Sen. Hinds: No.

Sen. Panday: No Senators at all to speak? Could you speak? Okay.

Sen. Ramlogan: Sen. Hinds speaks only for himself.

Sen. Panday: [*Interruption*] Okay, sure, and probably then we could come back. I want to complete this work, and we could come back when I give you the tracking, we could come and do this a little later.

Mr. Chairman, in accordance with Standing Order 53(12), I beg to move that progress be reported.

Mr. Chairman: Hon. Senators, this Senate will now resume, and we will get a progress report.

Senate resumed.

PROCEDURAL MOTION

The Minister of the State in the Ministry of National Security (Sen. The Hon. Subhas Panday): Thank you very much, Mr. President. The committee having met and deliberations having taken place, I humbly submit that this committee stage be suspended until a later time in these proceedings. *[Interruption]*

Sen. Beckles-Robinson: Yes, thank you very much. Mr. President, having regard to the fact that we are not yet on one page, can I kindly ask my colleagues on the Independent and Government Benches that we suspend just for five or 10 minutes so we could move a little smoother. Because we have spent a lot of time and clearly we are not in agreement. It would not hurt us to just suspend for a few minutes, so when we start again—we can speak as we normally do and get an agreement on the way forward; five or 10 minutes, suspension.

Sen. Panday: In order to have the proceedings move quickly, I will have no objection. In the circumstances, Sir, I humbly seek that the sitting of the Senate be suspended for 10 minutes.

Mr. President: What I propose to do is put the question relative to the committee stage, and after that we will take the question of the suspension.

Sen. Beckles-Robinson: Mr. President, I was going to suggest that in our deliberations we will treat with all the matters, the committee stage, the data protection and a joint select committee, and have an agreement for you when you return, subject of course to your approval.

Mr. President: Certainly. Hon. Senators, the question is that this Senate do stand suspended for 15 minutes. In which case, we will return at 2.30 p.m. Prior to that we want that the committee stage will be dealt with later when we return along with other matters to be considered.

Question put and agreed to.

2.15 p.m.: *Sitting suspended.*

2.30 p.m.: *Sitting resumed.*

ELECTRONIC TRANSACTIONS BILL

Sen. Panday: Mr. President, I have indicated to my learned friends that I shall assist in having the track copies ready in a few minutes. *[Interruption]* They are here already?

Sen. Nan Gosine -Ramgoolam: Yes.

Sen. Panday: They have been distributed?

Sen. Nan Gosine-Ramgoolam: Yes.

Sen. Panday: They have been distributed. So the track change copies have been distributed, and in those circumstances we shall start the Data Protection Bill, and subsequently we shall complete the committee stage, because the Government would like to complete that Electronic Transactions Bill today. Thank you very much.

DATA PROTECTION BILL

Order for second reading read.

The Minister of State in the Office of the Prime Minister (Hon. Collin Partap):
Thank you, Mr. President. I beg to move,

That a Bill to provide for the protection of personal privacy and information be now read a second time.

Mr. President, I have the honour of laying the Data Protection Bill, 2011, before this honourable Senate. Mr. President, this Bill is not a new one. The aim of the Data Protection Bill, 2011, is to ensure that personal information in the custody or control of an organization, whether private or public, shall not be disclosed, processed or used other than the purpose for which it was collected, except with the consent of the individual, and where exceptions are clearly defined. Simply put the main purpose of the Bill is to put into the hands of the ordinary man more rights and control over how one uses one's personal information and sensitive personal information, and how it is collected, stored, used, shared and terminated by both public bodies, that is Government and private organizations.

Mr. President, the perceived need for Data Protection legislation arose out of a growing use of computers in the 1970s, and a threat to personal privacy that the rapid and easy manipulation of data potentially poses. As a consequence of this, and in response to the increased call for privacy, countries throughout the world began enacting data protection legislation.

The first data protection law came into force in Germany in 1970. This was followed by Sweden in 1973 and France in 1978. Among Commonwealth countries, Canada passed its Privacy Act in 1983, Australia 1988, the United Kingdom initially passed its Data Protection Act in 1984, but it was updated in

1998 to keep in line with the European Union directive of 1995. I will speak briefly on this directive and its impact on our own legislation later on in my presentation.

In an article by William J. Long and Marc Pang Quek entitled “Personal Data Privacy Protection in an age of Globalization: the EU-US Safe Harbor compromise” published in the *Journal of European Public Policy* in June 2002, the authors noted that at present two recent developments have increased the fear of loss of personal data privacy among individuals. Firstly, the information and communication technologies (ICT) used to communicate, store and manipulate data have dramatically increased the level of information generated and exchanged on each individual. Secondly, the globalization of trade and finance has meant that countries find it increasingly difficult to monitor and control the activities of transnational corporations that move data across national jurisdictions.

2.35 p.m.

Allow me, Mr. President, to quote the opening from another article written by Thomas Buchanan entitled, “Development of Measures of Online Privacy, Concern and Protection for use on the Internet” taken from the *Journal of the American Society for Information Science and Technology*, Volume 58(2) of 2007 and I quote:

“Over the past decade, the Internet has become an important and ubiquitous feature of daily life in the developed world. As is often the case, the technology is somewhat of a double-edged sword. Although it may enhance our lives in many ways, as our world becomes an ‘information society’ it also raises new concerns. For much of that information relates to not just things but to people. Information about us is accessed, stored, manipulated, data mined, shared, bought and sold, analyzed, and potentially lost, stolen or misused by countless government, corporate, public and private agencies, often without our knowledge or consent. When we communicate, interact, or even just go shopping—both online and offline—we leave data trails and digital footprints behind us, generating information about our lives and activities as we go.”

From these two references, therefore, one can see the need to have proper legislation in place to protect personal and sensitive information of our citizens, not only in a paper environment but particularly within the online environment. As I mentioned earlier, those on the Opposition Bench would claim that this Bill was flawed when it was first brought to the Parliament in February 2009 under the PNM government, and for that reason it was sent to the Joint Select Committee of Parliament.

Data Protection Bill
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Mr. President, since its last incarnation in Parliament, we have taken the time to properly go through the Bill in detail. Indeed, we took on board the comments made by members of our Government, then in Opposition, together with the advice of the technical officers of the Government, and clarified some issues which were raised and made changes where necessary. The Bill has approximately 23 substantial changes since it was initially debated almost two years ago. While some may claim that we just made cosmetic changes, a comma here, a full stop there, there has been substantial work done.

Mr. President, as I mentioned earlier, in 1995 the European Union issued a directive, 95/46/EC. This directive can be seen as a general framework legislation provision which has principal aims:

1. the protection of an individual's privacy in relation to the processing of personal data; and
2. the harmonization of data protection laws of the member states.

However, preceding the directive of 1980, in an effort to create a comprehensive data protection system throughout Europe, the Organization for Economic Corporation and Development (OECD) issued its recommendations for the council concerning guidelines governing the protection of privacy and trans-border flows of personal data.

The seven principles governing the OECD recommendation for protection of personal data were:

- “1. Notice”—individuals—“should be given notice when their data is being collected;
2. Purpose—data should only be used for the purpose stated and not for any other purpose;
3. Consent—data should not be disclosed without the data subject's consent;
4. Security—collected data should be kept secure from any potential abuses;
5. Disclosure—data subjects should be informed as to who is collecting their data;
6. Access—data subjects should be allowed to access their data and make corrections to any inaccurate data; and
7. Accountability—data subjects should have a method available to them to hold data collectors accountable for following the above principles.”

These international guidelines have had a profound effect on the enactment of privacy laws around the world. Since then, more than 20 countries have adopted the Council of Europe (COE) Convention and the OECD guidelines and widely incorporated them into national legislation, both within and outside OECD.

Mr. President, the National Policy on Data Protection, which was approved by Cabinet in 2005 and this current Bill, are based on the guidelines of the OECD, as well as the European Union and other international institutions.

Before I go into the substance of the Bill, I would like to briefly outline the approach which the Government is proposing to adopt with this piece of legislation. It is important to note that a wide variety of data protection models have evolved over time and exist over the world today. I would like to refer to some excerpts from the book entitled, *Information Privacy: Official Reference Guide for the Certified Information Privacy Professional*. This book is authored by Peter Swire and Sol Bermann, and published by the International Association of Privacy Professionals.

Mr. President, in this book, the authors have highlighted four major legislative world models for data protection which I will go through briefly:

- “1. Comprehensive laws...these laws govern the collection, use and dissemination of personal information in public and private sectors. Generally speaking, a country that has enacted comprehensive data protection laws appoints an official or agency responsible for overseeing enforcement. This official ensures compliance with the law and investigates alleged breaches of the law’s provisions.
2. Sectoral laws...this framework protects personal information by the enactment of laws that specifically address a particular industry sector for example, consumer financial transactions, credit records, medical records... Sectoral laws are often used as a complement to comprehensive laws in order to provide specific protection for particular data.
3. The Co-Regulatory model...this data protection model is a variant of the comprehensive model mentioned above. Under the co-regulatory approach, the industry develops enforceable standards for privacy agencies such as an information or privacy commission.
4. The Self-regulatory model...requires companies to abide by codes of practice as set by a company or group of companies as well as industry bodies, and/or independent bodies as a means to protect data.”

From the models highlighted, the Government has opted for a co-regulatory approach to legislating data protection in Trinidad and Tobago. This is similar to the ones adopted in Canada and Australia. That is to say, while the overarching framework for protection of the individual's personal and sensitive personal information will be protected by the Act, it will also allow for the development of sectoral codes, both mandatory and voluntary, by specific sectors of the country. I will expand on this a bit more and I will deal with those specific clauses later on.

Mr. President, the Data Protection Bill, 2011 has 101 clauses, but I will not burden the Senators by going through each clause. I would, however, briefly go through the six main parts of the Bill.

Part I of the Bill comprises the preliminary clauses including the short title and the interpretation of terms. Within this part, we have included a new definition for "premises" and a new definition for the term "record". With regard to the new definition for the term "record", this was done to maintain consistency with the Electronic Transactions Bill. We have also added the definition of "sensitive personal information" to now include the term "political affiliation or trade union membership".

This part also outlines the general privacy principles of the Bill in keeping with the OECD and EU guidelines. These principles include:

- “1. the responsibility of organizations for personal information under their control;
2. identification of purpose, and gaining of affirmative consent, for information collection;
3. limitation of use and storage of information collected; and
4. accuracy of information collected, and the right of the individual to verify that accuracy.”

Part II of this Bill establishes the office of the information commissioner. Now, initially, the name of the officeholder in the previous version of the Bill was the data commissioner, and I know comments have been made that the change of the name from data to information commissioner makes no difference. However, this is not the case. There is a reason behind the change. The term "data" refers to the lowest abstract or a raw input, which, when processed or arranged, makes meaningful output. Examples of data can be fact, analysis or statistics. In computer terms, symbols, characters, images or numbers are data. These are inputs for the system to give meaningful interpretation.

Information can be explained as any kind of understanding or knowledge that can be exchanged with people. It can be about facts, things, concepts or anything relevant to the topic concerned. In other words, data is a meaningful form that creates information. It is therefore the main responsibility of this office not to deal with raw data, but also how these organizations translate the use of this data into meaningful information, both for the benefit of the man in the street and their own businesses. It is therefore felt that the term “information commissioner” better reflects the work of this organization, hence the change.

Clause 8 outlines that the information commissioner shall be an attorney-at-law within the meaning of the Legal Profession Act, with at least 10 years, standing at the Bar and shall have training or experience in economics, finance, information security, technology, audit or human resource management.

We have now provided for creation of two deputy information commissioners. Given that the office will have responsibility for both the Freedom of Information Act and the Data Protection Bill, it was agreed to authorize the President to be able to appoint two deputy information commissioners so as to allow for a split in responsibilities in dealing with these two important pieces of legislation.

Clauses 9 and 10 of the Bill outline powers and functions of the information commissioner. These include:

1. conducting of audits and investigations to ensure compliance with any provision of this Act;
2. authorizing data matching by a public body or public bodies;
3. making orders regarding compliance with general privacy principles;
4. promoting the development of codes of conduct for guidance as to good practice;
5. promoting the adherence to good practice by persons subject to this Act;
6. disseminating information about the Act; and
7. monitoring compliance with this Act.

Mr. President, under clause 19(1), the information commissioner may appoint officers within the office of the information commission to be inspectors, according to their qualifications, for the purpose of this Act. Further, clause 19(3) states that an inspector shall have the power to deal with all or any of the following things for the purpose of the execution of this Act. These powers include:

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1. to make such examinations, inspections, investigations and enquiries as may be necessary to ascertain whether the Act is being complied with;
2. to examine, either alone or in the presence of any other person as the inspector deems necessary for the purpose of this Act, with respect to the observance of the provisions of the Act or the regulations;
3. to seize and detain, for such time as may be necessary, any article by means of which, or in relation to which he reasonably believes any provision of the Act has been contravened.

It is important to note, Mr. President, that these powers are subject to clauses 20 and 21. These clauses provide that in exercising the powers outlined in 19(3), the inspectors must either obtain permission from the public body or organization, or, failing that, to obtain a court order from the High Court or a warrant from a magistrate.

In other words, in order to get this court order or warrant, the inspectors or the information commissioner will have to show justifiable cause for their request. Let me repeat that, Mr. President, they will have to show justifiable cause for their request.

2.50 p.m.

Please note, Mr. President, that in clause 19(1) the information commissioner would appoint officers to be inspectors under the Act. In the previous version of this Bill, in 2009, the powers rested with the Minister thus opening the door for perceptions of political interference in the appointment of officers to this office. We have therefore closed that door shut, Mr. President, by allowing the information commissioner to appoint his own inspectors.

Also, to maintain the independence of the office, clause 22(1) proposes that the expenses of the Office of the Information Commissioner be met by Parliament and not a Ministry. This clearly demonstrates this Government's commitment to the independence of the Office of the Information Commissioner and I would like to repeat that. Mr. President, this clearly demonstrates this Government's commitment to the independence of the Office of the Information Commissioner.

Part III, Mr. President, outlines the rules to which the heads of public bodies must adhere in implementing the privacy principles outlined in Part I.

Clause 30 of the Bill outlines the conditions under which public bodies can collect personal information. Under this clause, personal information shall not be collected by or for a public body unless—

- “(a) the collection of that information is expressly authorized by or under any written law;
- (b) the information is collected for the purposes of law enforcement; or
- (c) that information relates directly to and is necessary for an operating programme or activity of a public body.”

In essence, Mr. President, public bodies must now have a valid reason for collecting someone’s personal information.

This clause is further complemented by clause 32 of the Bill which states that:

“A public body shall ensure that the individual from whom it collects personal information or causes personal information to be collected is informed of—

- (a) the purpose of collecting it;
- (b) the legal authority for collecting it; and
- (c) the title, business address and business telephone number of an official or employee of the public body who can answer the individual’s questions about the collection.”

Therefore, in the process of collecting an individual’s personal information, the person has a right to question the reason for collecting the information and is provided with the contact information of someone within the public body to whom they can direct any enquiry as to how their personal information is being handled.

Clause 35 of the Bill falls squarely in the area of record management. This clause would now mandate that a public body shall protect personal information in its custody or under its control by making reasonable security arrangements against such risk as unauthorized access, collection, use, alteration, disclosure or disposal. I am sure many of us have had the experience of going to government offices and seeing paper files lying around unsecured. Sometimes these files would contain financial information of someone applying for public assistance or even health or employment information of, say Joan or Jane public. What this clause would seek to do will be to allow the information commissioner, working together with the bodies like National Archives of Trinidad and Tobago, to develop a proper and enforceable record management policy for public bodies.

Also, as we move towards the use of electronic documents, this clause would allow from the backdrop of the development of proper electronic safeguards for the management of electronic records. You see, Mr. President, it is important to emphasize that this Bill treats with both paper-based and electronic information and it must be looked at in that light.

Clause 38 of the Bill would also limit the constraints of public bodies to only the use of information for the purpose for which it was collected unless the individual gives them permission to use it for a different purpose.

When it comes to the processing of sensitive personal information, clause 40 of the Bill states that a public body shall not process sensitive, personal information unless it obtains the consent of the person to whom that sensitive personal information relates. However, sensitive personal information may be provided by a health care professional, for example, doctor, nurse, dentist, for issues relating to preventative medicine and for the protection of public health care and treatment.

Now, Mr. President, someone may ask the question: what about public bodies disclosing your information to other agencies? This is a very serious concern for the ordinary man in the street. Well, clause 41 states that personal information under the custody or control of a public body shall not be disclosed by the public body in Trinidad and Tobago without the consent of the individual to whom it relates. So, in essence, public bodies would be restricted in disclosing personal information to third parties unless you consent to that disclosure; again, Mr. President, more control over the individual's information.

There are exceptions to this, however. When one looks at the Bill, these exceptions where one's personal information may be disclosed to a third party without the individual's consent relate to areas concerning:

- (a) complying with an order for the court;
- (b) by one law enforcement agency in Trinidad and Tobago to another law enforcement within Trinidad and Tobago for the purpose of the enforcement of a written law;
- (c) to a law enforcement agency in a foreign country under a written agreement treaty or under the authority of the Government of Trinidad and Tobago;
- (d) for the purpose of collecting moneys owed by an individual to the Government of Trinidad and Tobago or by a public body to an individual;
- (e) for statistical purposes where the disclosure meets certain requirements; or
- (f) for archival purposes where the disclosure meets certain requirements.

It is important to note, Mr. President, that these exceptions are nothing strange or new; that they exist in similar types of legislation in other jurisdictions. It is not

the intent of this Bill to circumvent the proper functioning which is critical to Government's functioning, but to recognize that there must be a balance, and that is what this Bill attempts to do.

Mr. President, clauses 49 and 50 of the Bill outline that in order for the public body to either share data of a personal nature between one another or a set of data held by one public body to another set of data held by another public body for matching purposes, they must first receive authorization from the information commissioner.

One of the most important clauses of this Bill is clause 52. This clause gives the individual who is a citizen or a resident in Trinidad and Tobago a right of access on request to:

- (a) personal information about the individual contained in the personal information bank in the custody and control of a public body;
- (b) any other personal information about the individual under the custody or control of a public body.

How many of us here can relate to or have heard instances of people going to government offices and trying to obtain personal information on them held by public bodies, and have been refused access? This cannot be so, Mr. President. This clause therefore will give everyone the right to have access to information about them held by public bodies.

Mr. President, clause 57 allows an individual to apply to a public body to correct personal information relating to him when an individual believes there is an error or omission in his personal information. If however, a public body fails to give an individual access to his information or to correct his information as requested, an individual can now appeal to the information commissioner for redress.

3.00 p.m.

Further, clause 60, which is a new clause, states that where an individual has a reasonable belief that the public body is not complying with the provisions of the Act, he may lodge a complaint to the information commissioner. What this clause does is that it allows the ordinary man to make a complaint to the information commissioner if he believes that the public body is not complying with any provision of the Act. Again, the Act puts more power in the hands of the individual who acts as a watchdog on how government complies with the Act.

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Finally, in this part, under clause 64(3), we have given the information commissioner the power to make a decision, either acting alone or through a tribunal with his deputy commissioners, where a matter may be of serious concern or is deemed to be a matter of public interest.

For avoidance of doubt, we have stated very clearly in clause 64(4) that the individual would have the right of access to the High Court to seek judicial review if he is not satisfied with the decision of the information commissioner.

Part IV—in a report entitled: *Personal Data The Emergence of a New Asset Class*, published by the World Economic Forum in January of this year, it is stated in relation to the private sector as follows:

“Private enterprises use personal data to create new efficiencies, simulate demand, build relationships and generate revenue and profit from their services. But in this drive to develop the ‘attention economy’, enterprises run the risk of violating consumer trust. Overstepping the boundary of what users consider fair use can unleash a huge backlash...”

As such, Part IV of this Bill, therefore, treats with the private sector.

Some of the clauses in this part of the Bill mirror those of previous parts, so I would try to avoid repeating the terms of the rights given to individuals. This part of the Bill provides for the information commissioner’s development of a sector-specific code of conduct, including both voluntary and mandatory codes, in furtherance of the private sector’s adherence to the general privacy principles outlined in Part I.

Clause 69 states:

“A person who—

- (a) collects, retains, manages, uses, processes or stores personal information in Trinidad and Tobago;
- (b) collects personal information from individuals in Trinidad and Tobago; or
- (c) uses an intermediary or telecommunications service provider located in Trinidad and Tobago to provide a service in furtherance of paragraph (a) or (b).shall follow the General Privacy Principles set out in section 6 in dealing with personal information.”

All organizations’ employees would be captured by this part of the Bill. Once you have to deal with personal information of another, you are bound by this Bill.

Clause 71 outlines:

“...where, in the opinion of the Commissioner, the public interest warrants the immediate and mandatory development of codes of conduct dealing with the application of the General Privacy Principles to a particular industry, economic sector, or activity, the Commissioner may, by Order, require the development of a code of conduct and set a time limit for its development.”

Also under subclause (2):

“...where there is an appropriate government regulator of an industry, economic sector or activity, the Commissioner may request the regulator to oversee the development of the code of conduct for that industry, economic sector or activity.”

In essence, therefore, the information commissioner would have the authority to require the development of mandatory codes of conduct in relation to the collection, storing, sharing, retention of personal information where:

- (i) there is public interest for the development of such codes; and
- (ii) where a government regulator already exists.

The information commissioner can work with the regulator in developing such mandatory codes. Examples of such sectors would include the banking and insurance sector, which are regulated by the Central Bank and the telecommunications and broadcasting sectors, which are regulated by the Telecommunications Authority of Trinidad and Tobago.

Mr. President, another new clause we included is clause 75, which is similar to clause 52 mentioned earlier, which gives every individual who is a citizen or resident of Trinidad and Tobago a right of access to:

- (1) personal information about the individual contained in the personal information bank in the custody and control of an organization; and
- (2) any other personal information about the individual under the custody or control of such organization.

There was a deficiency in the initial Bill and the Government took steps to amend it.

Clause 79A, which is again a new clause, allows the individual who has a reasonable belief that an organization is not complying with the provisions of the Act to lodge a complaint with the information commissioner; again, giving more

power to the people. This is what the People's Partnership Government is about; giving citizens the opportunity to actively participate in the good governance of the country.

Finally, in this part, under clause 83(3), we have given the information commissioner the power to make a decision, either alone or as a tribunal with his deputy commissioners, where there is a matter that may be of serious concern, or as a matter of public interest. Again, for the avoidance of doubt, we have stated very clearly in clause 83(4) that an individual would have the right of access to the High Court to seek judicial review if he is not satisfied with a decision of the information commissioner.

Part V of this Bill outlines the framework for the management of contraventions of this Act. Notably, while some breaches are considered criminal offences, subject to fines and imprisonment upon conviction, others warrant the levy of civil fines which may be imposed by the courts. A person who commits an offence under this Act is liable upon summary conviction to a fine of not more than \$50,000 or three years' imprisonment. For a conviction on indictment, the fine is not more than \$100,000 or five years' imprisonment. A corporation is liable to a \$250,000 fine for summary conviction and \$500,000 for conviction on indictment.

Part VI: this part of the Bill clarifies that the party will cover the cost of any audit pursuant to Parts III and IV; sets out the provisions for whistle-blowing protection for individuals who assist the information commissioner in the furtherance of the objects of the Act; establishes the jurisdiction of the courts in the administration of the Act; and empowers the Minister to make regulations to further the implementation of this Act.

Under clause 101 we have amended the Freedom of Information Act in the following ways: Firstly, the Bill amends section 30 of the Freedom of Information Act, which deals with personal information being exempt under the Act and brings the Act into conformance with this Bill.

Secondly, section 30(2) of the Freedom of Information Act is further amended by providing that personal information exemption under the Act does not relate to an individual requesting his own personal information under that Act, but such a request would be treated as a request under the Data Protection Bill.

Thirdly, a major amendment is made in relation to section 38A of the Freedom of Information Act, where we have removed the Ombudsman as the functionary to whom complaints are to be made under that Act and instead replaced it with the information commissioner.

Fourthly, we have strengthened the powers of the reviewing authority under the Freedom of Information Act in sections 38A(3) and (4), which authority is now proposed to be the information commissioner. Here we have made the decision of the information commissioner on matters relating to the Freedom of Information Act binding on public bodies and we have given the information commissioner the power to seek a court order to facilitate the enforcement of any provision under the Act.

Again, we are giving legislative teeth to the information commissioner to enforce provisions under the Freedom of Information Act, which the Ombudsman did not have under the current legislation. Furthermore, these two subclauses are new and are absent from the previous Bill.

With regard to the document published by the World Economic Forum, which I made reference to earlier, it quotes one Meglena Kuneva, European Consumer Commissioner, as stating, I quote:

“Personal data is the new oil of the Internet and the new currency of the digital world.”

This is the reality. While it may not be evident for many of us here in this honourable Senate, the reality is that many of our children are more and more connected with the online world.

It is estimated that on average, users globally send around 47 billion emails and submit 95 million tweets on Twitter. Each month users share about 30 billion pieces of content on Facebook. From the data available, younger individuals are more comfortable sharing their data with third parties and social networks. Therefore, one of the crucial roles of the information commissioner would be in the educating of the young ones and parents to the risk involved in these activities and measures to be taken to prevent abuse.

The Government must balance the two competing interests. As noted in the aforementioned World Economic Forum Report, on the one hand it is the role of the Government to protect consumers from the potential misuse of their identity and, on the other hand, regulators balance this mandate with the need to foster economic growth and promote public well-being.

In this new personal data ecosystem, which consists of the individual, private sector and public sector, the balancing act becomes very complex, as it deals with the new value chain of personal information from data creation, using different devices and software, to data storage, analysis, consumption and disposal.

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There currently exist no set international standards for the protection of personal data and privacy. As recent as 2009, at the 32nd International Conference in Data and Privacy Commissioners in Madrid, Spain, a resolution was adopted proposing a draft international standard. However, this is still being discussed and debated. As you may have guessed, as with most international debates, it is usually dominated by the more advanced countries, and, as such, the views of lesser developed ones are often not taken into account. However, with the creation of the office of the information commissioner, the people of Trinidad and Tobago would now have a voice in this arena to ensure that the needs of not only our country but also the region are taken on board.

As we have said before, the Bill is not a new one. The second incarnation of this Bill continues to be relevant to the development of Trinidad and Tobago and the needs of its people. As such, the Bill aims to ensure that in promoting effective government and building a new economic order, we create the enabling environment where citizens feel free to exchange their information in a global communication environment, secure in the knowledge that their personal information is afforded basic and necessary protection.

What this Government has made clear in our manifesto is that our ICT plans would be focused on creating opportunities for our people and enhancing the quality of their lives and to make full use of IT to assist with the elimination of corruption.

3.15 p.m.

Our plan is to make Trinidad and Tobago cyber secure in what we do in that we do all within our power to detect, combat and to protect against cybercrime in both private and public sectors. This Government has committed itself to reviewing all legislation to enable a thriving, secure digital environment. We have the Data Protection Bill, 2011 before us today and in a few minutes we will go to the committee stage of the Electronic Transactions Bill, and later there will be amendments to the Exchequer and Audit Act.

Mr. President, this Government is all about good governance and peoples' participation; we are about ensuring transparency, accountability, participation and effective representation. This Government has thrown the door wide open to national dialogue albeit with a framework of civility and consensus building. We have taken the initiative to build a nurturing culture with one of participation, a culture that can only strengthen our democracy and its processes.

Under the People's Partnership Government all citizens will know that they have a right to participate in the governance of this country. Mr. President, it is about people-centred development where every single person is needed and where every single person can contribute. Mr. President, this country will change under this Government, barriers will be broken down, there will be meaningful dialogue and consultation through participation and involvement, and this will help us to achieve the unity of purpose in our efforts and engender partnerships and trust in our society.

Mr. President, thank you. I beg to move.

Question proposed.

Sen. Terrence Deyalsingh: Thank you, Mr. President. In one of her earlier contributions, I believe it was Sen. Corinne Baptiste-McKnight made a comment that when people are in Opposition they paint the country in a bad picture, and when they are in Government they paint it in a good picture; and I think her faith in politicians that day was severely tested. She is not here, however, I want to reassure Sen. Baptiste-McKnight by stating the following, and by quoting the first line from the calypso that won the 1965 Calypso King Competition, written by Mr. Mervyn Hodge, the Mighty 'Sniper': "Trinidad is my land and of it I am proud and glad". [*Desk thumping*]

Hon. Senator: Penman wrote that, but it was sung by Sniper.

Sen. T. Deyalsingh: Mr. President, in these days of Lent, all of us cannot help but be proud to be citizens of Trinidad and Tobago, because as Christians prepare for lent, as they prepare for the Holy Week to celebrate the resurrection of the Lord and Saviour Jesus Christ, coinciding with that, last week we had the Spiritual Shouter Baptist Liberation Day, which celebrated the repeal of the 1917 Shouter Prohibition Ordinance.

These religious events also coincide with the start yesterday of Nawraatam which is celebrated by adherents and devotees of the Hindu religion, which occupies nine nights of celebration, where we celebrate all that is good in the life, in the universe, the energies that control planetary movements as embodied in the Hindu goddesses like Mother Durga and, Mother Lakshmi. So right now we have the convergence of three religious events, and for that I say: "Trinidad is my land, and of it I am proud and glad." [*Desk thumping*] And later down in the year, normally between October, November and December we tend to have the convergence of Divali, Eid and Christmas. So I hope Sen. Baptiste-McKnight would be pleased that we are lauding Trinidad and Tobago.

Mr. President, from 2.15—2.10 to roughly 2.30 this honourable Senate was plunged into a state of anarchy, and it reminded me of a television series years ago where somebody by the name of Mr. Adam West, who was “Agent 86” was the guest star in a comedy television series called “Get Smart”; where they were fighting chaos and that is what this Senate degenerated into for 20 minutes, [*Desk thumping*] total and absolute chaos. It was a comedy of errors, starting from yesterday—

Sen. Abdulah: Mr. President? Mr. President?

Sen. T. Deyalsingh: Is it a point of order?

Sen. Abdulah: Yes, yes. The—35(4): “...it is offensive and insulting...” to suggest that this entire Senate was engaged in anarchy and chaos and so on, Mr. President, when—

Sen. Hinds: What is the point of order?

Sen. Abdulah: I just raised it. I just raised it. [*Crosstalk*]

Mr. President: Did you say, Senator, 75(4)?

Sen. Abdulah: Thirty five, Mr. President, sorry.

Mr. President: Or 35(4), sorry.

Sen. Abdulah: Both 35(4)—[*Crosstalk*]

Mr. President: I do not believe that the language used by Sen. Deyalsingh was either offensive or insulting. [*Desk thumping*]

Sen. T. Deyalsingh: Thank you very much, Mr. President. It seems that hon. Sen. David Abdulah is in a state of disequilibrium. He does not know whether he wants 5 per cent or 10 per cent [*Desk thumping*], because he stated that the Government is—that negotiations are not in a state of equilibrium. But getting back to the Bill—

Sen. Baptiste-Cornelis: Finally

Sen. T. Deyalsingh:—finally, this Bill—

Hon. Senator: Be relevant, be relevant.

Sen. T. Deyalsingh:—be relevant—February 15, 2009:

“Oropouche East MP, Dr. Roodal Moonilal, leading off the Opposition, was not impressed by what he heard...Accusing the government of ulterior motives in bringing the Bill, Moonilal quipped, ‘This is not the Data Protection Bill but the Data Prevention Bill.’”

Is that relevant enough for you. Sir?

“Siparia MP Kamla Persad-Bissessar muttered her agreement.”

Is that relevant enough for you?

“Moonilal warned against draconian provisions in the Bill such as empowering the Data Commissioner to be a ‘national macco’...”

The same data commissioner that the Minister has just come and said they are putting in—

Sen. Baptiste-Cornelis: It is information commissioner.

Sen. T. Deyalsingh:—data commissioner, information commissioner, same “macco”.

Sen. Baptiste-Cornelis: Oh please! You do not know the difference—

Sen. T. Deyalsingh: This was in an article in the *Newsday* published on February 15, 2009. Mr. President, whether this Act, or this Bill, sorry was a child of the PNM or the UNC-led government coalition, makes no difference. I will attempt to go through the Bill and objectively give my comments on parts of the Bill, which I think need some attention, right.

So I start, Mr. President, the Data Protection Bill, 2011 as amended in the House of Representatives, I read from the first page and I go immediately to clause 8:

“Clause 8 of the Bill would empower the President to appoint a person to be the Information Commissioner who would be an attorney-at-law with at least 10 years standing at the bar and experience and training in economics, finance, information security, technology, audit or human resource management.”

I have two particular problems with that clause so if the hon. Minister can listen to my concerns:

(1) The first concern is, how many people in Trinidad do we really have with this mix of experience and qualifications?

3.25 p.m.

I think the pool may be small. Some may have the training, but would they have the requisite experience? The reason I draw it to the attention of this hon. Minister is that the two deputy information commissioners also need to have the same level of training. I am just throwing that out to you, whether you are casting your net a little too narrowly in having these types of training and experience.

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The other issue I have with clause 8 has to do with audit. The field of auditing has grown exponentially in recent years away from what we might know as typical financial audit/financial forensic auditing. We are dealing with data protection, so we need somebody in audit who is familiar with the protocols and processes in data security, IT governance and IT oversight. I am just hoping that these qualifications are not too restrictive.

Mr. President, my other problem with this clause has to do with the word “or”. I am reading it again from the last year:

“...technology, audit or human resource management.”

My question is: Is it all those previous qualifications or human resource or is it “audit or human resource”? The wording is a little untidy.

Hon. Senator: [*Inaudible*]

Sen. T. Deyalsingh: If it is “or”, what does the “or” there mean? Does it mean all those qualifications or human resource or “audit or human resource”?

Hon. Senator: [*Inaudible*]

Sen. T. Deyalsingh: Thank you very much.

Mr. President, I go on to clause 11 of the Bill. My same comment; we are now looking for three people with these qualifications. I just mention that to make sure that we can staff this body in the way we are supposed to.

Mr. President, page (v), which deals with clause 47 would require government ministries to prepare a privacy impact assessment in respect of any new enactment, system, et cetera. My question is: what is the frequency of the conduct of this assessment and the frequency of the publication? The Bill makes no reference as to whether it is a yearly provision, every six months or every quarter. We need to tidy up clause 47, which deals with the frequency of conduct and the publication of that impact assessment.

The same page (v), clause 50 would require a public authority to obtain the written authorization of the Information Commissioner before matching personal information with other data being stored in other places. Given this Government’s inability to handle the SIA affair; given the continued presence of Julie Browne in that agency, I wonder, can we trust Julie Browne with data? Can we trust them when they crossmatch this data?

In the newspapers this week, one of the Ministers in the Ministry of National Security again admitted to a mistake in the hiring of Mr. Ganpat, who was hired after two days in that same agency. Can we trust the people who store other data

to use that data correctly under clause 50? That is of grave concern. This Government has shown itself to be totally incapable of managing our security systems.

I now turn to page 7 of the actual Bill, clause 6(a). The word “organization” is mentioned very often throughout the Bill. I am asking the hon. Minister, through you, Mr. President, I looked into the explanatory notes and I saw no definition of “organization”. I think we need to have a definition of the word “organization”. What does it mean? It is mentioned very often and it is a bit too nebulous as it stands. Again, it is mentioned on page 8 under (d). It is mentioned under (g) and (i).

I turn to page 9 of the Bill, the office of the information commissioner. The hon. Minister spoke about the change from data commissioner to information commissioner and went on to educate and elucidate us on what is data, what is information and that information was knowledge.

Two things concern me here and I go back to the then Member of Parliament, Dr. Roodal Moonilal. He wanted to know then if this was an independent body. I have the same question now. Is this an independent body? It does not say. The same concern Dr. Moonilal had on February 15, 2009 is the same concern we have today in 2011. Do not trivialize what we did in 2009. Is this going to be an independent body as recommended by Dr. Moonilal or not?

When you read through the Bill, you see the Minister does this and that. I will come back to that later on. I just want to share some information on data. As the hon. Minister rightly said, data is your raw facts, numbers and so on and you crunch that and get information. However, information is not knowledge. Knowledge is what you learn from information and how you apply it to make sure we do not make the same mistakes we made before. Out of knowledge comes learning. So it is data, information, knowledge and learning. That is the hierarchy.

Page 9, again, my same question has to deal with the meaning of the word “or” under clause 8(ii). Is it audit or human resource management? We need to clean that up.

On page 10, clause 9(2)(d):

“authorize the collection of personal information otherwise than directly from the individual in appropriate circumstances;”

If I read that clause again slowly, I wonder if Senators come to the same conclusion that I am probably coming to. It says:

“authorize the collection of personal information otherwise than directly from the individual...”

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[SEN. DEYALSINGH]

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What are we saying here, that other people, that the Government or anybody, can collect personal information from Sen. Hinds about me? Is that what this clause is purporting to say? That is a very dangerous excursion. Personal information should come only from the person. What right or what authority does anybody else have to give personal information about anybody else? So I expect the Minister to look at that. I do not think that is the intention. Who will be providing this personal information on someone else? That is a very dangerous clause. We need to look at it.

I now turn to page 11 of the Bill, clause 10(c).

“The Commissioner appointed under section 8 shall—

(c) disseminate information about this Act;”

In my contribution last week on electronic signature/electronic transfer, I made the comment that these two Bills are sister Bills; they share the same DNA. In enacting legislation that is taking this country to a place—and I used the Star Trek analogy where no man has gone before—we have not entered before in this sphere of legislative excursions, I made the point that there has to be a very serious public and private education programme to be launched.

I would like to refer to a *Financial Times* column of March 07, 2011. “Privacy concerns in clouds”. Here Microsoft is talking about the fact that:

“...75 per cent senior business leaders believe that privacy and security concerns are the most significant risks affecting the adoption of cloud based solutions”.

Although we do not significantly use cloud-based solutions in Trinidad and Tobago, the security concerns are still valid and we have to engage in significant education to disseminate information about the Act.

In preparing for this debate, although yesterday we were told it would not happen and I stopped preparing, eleven o'clock today I was informed via telephone call that we will be preparing. That is what I meant when I said we had chaos here today.

The hon. Minister spoke about the Bankers Association as being regulated under the Central Bank Act. I went on to the website of the Bankers Association of Trinidad and Tobago under their heading, “Consumer Awareness, Customer Rights and Responsibilities”. There are various headings that talk about privacy and confidentiality. The first one is:

“A bank acknowledges that it has a general duty of confidentiality towards a Customer except in the following circumstances:

- where disclosure is compelled by law;”

This is what we are doing now. We are passing a law. I wonder if and when this law is passed how au courant are the different chambers of commerce, business associations that gather and use huge amounts of personal data, about their obligations, rights and responsibilities under this Act. We need a serious consultation taking place and the dispute resolution part of the Bankers Association of Trinidad and Tobago, I think they will have to change significantly to conform with the Act because the Act gives the consumer much more rights than they had previously. I am bringing to the attention of the hon. Minister that part of his remit will be public education.

I turn the page 12 of the Act, clause 11(1).

“The President may appoint no more than two Deputy Information Commissioners...”

Why no more than two; why not one or two? There seems to be a degree of uncertainty as to whether we need one or two. I suggest we look at clause 11(1) to concretize whether we need one deputy or two deputies. As it is here, you will have a fluid organizational chart. One minute you will have one deputy commissioner and next month you have two. I am sure the management people here will find that not to be ideal. The organization chart should be, though not cast in stone, fairly well known. I urge the hon. Minister to look at that.

3.40 p.m.

Mr. President I turn to page 14 of the Bill, clause 16(1):

“Any document required to be executed by the Office of the Information Commissioner shall be deemed to be duly executed if signed—

(a) by the Commissioner; or

(b) outside Trinidad and Tobago, by the person or persons authorized by the Commissioner...to sign...”

I am taking this to mean if the Government wants to execute a document outside of Trinidad, the commissioner could authorize someone. Now my question is, this someone to be authorized could be anybody according to the literal rule in statutory interpretation. Anyone. It could be a taxi driver, it could be the Queen of England; anyone. Is it that we should specify some classes of person like consular officers or something like that to give clause 16(1)(b) a little more certainty? I am just throwing that out for the hon. Minister to look at.

I now turn to page 15, Mr. President, clause 17:

“(1) The Commissioner may employ such persons as he considers necessary...”

But the last two lines of clause 17(1):

“...subject to such maximum limit of remuneration as the Minister may determine.”

And I say that, Mr. President, because when I dovetail 17(1) with 17(5), where we have: “Subject to the approval of the Commissioner, the appropriate Service Commission...” et cetera, et cetera, et cetera, I am unsure between 17(1) and 17(5) whether we have public officers falling under the ambit of service commissions, or whether these are some people hired directly by a Minister. So I need to have some clarification about the dovetail between 17(1) and 17(5). They do not fit nicely and I think it is a serious concern.

Before I move on, Mr. President, under 17(5), if this person is appointed by the service commission then the salaries, I think, should be determined by the SRC. I could be wrong, but then in 17(1), the remuneration is determined by the Minister. So I think we may have a little legal conundrum to look at there and I draw it to the attention of the hon. Minister.

Mr. President, page 17, clause 18(1):

“Subject to subsection (2), the Commissioner may authorize any person...according to their qualifications for the purposes of this Act...”

“to exercise or perform...”

My concern with this section, Mr. President—“according to their qualifications”, very broad term. What qualifications? Who determines the qualifications that we need to look at here? Who is the arbiter of these qualifications? I think that is a very valid point. It is a weakness that needs to be attended to as soon as possible, because it is repeated in clause 19 line three:

“...according to their qualifications for the purposes of this Act...”

So again, the question needs to be asked, what are the qualifications: Business Management, IT, Human Resource, whatever? Who determines that?

Mr. President, I turn to page 18 of the Bill under clause 19(3)(b), second line, just simply to advise in my copy, at least, that there needs to be a space between the words “such” and “premises”. I do not know if you have the same error in

your copy but in my copy “such” and “premises” are one word; just a typographical error to look at.

Mr. President, I turn now to page 21 of the Bill, clause 22 (1):

“...expenses of the Office of the Information Commissioner shall be met out of the moneys provided by...Parliament.”

And I think the hon. Minister said at the time, this was to ensure independence. But as I go through the Bill, I will attempt to demonstrate where this independence which the hon. Minister is trying to enshrine here may not be as it is, but I will demonstrate that lower down. I am just flagging that and I will come back to it.

Mr. President, I turn to page 23 of the Bill under clause 29(d). Mr. President, clause 29—if I go back to page 22, just to deal with what clause 29 is:

“The following information about an individual who is or has been an employee or an official of a public body is not personal information for the purpose of this Act”

And then we go to (d), “the professional opinions or views”. So I just want to make sure that “professional opinions” and “views” are not being held. I hope that is the intent of this. I just want some clarification there that nobody is trying to hold professional opinions or views about anybody. So I just need some comfort there, Mr. President.

Mr. President, I turn to page 25 of the Bill, clause 33:

“Personal information that has been used by the public body for an administrative purpose shall be retained by the authority for such period of time after it has been used as may be prescribed by Order of the Minister...”

You would remember about 60 seconds ago, Mr. President, I flagged the issue of the independence of the Information Commissioner which the hon. Minister sought to enshrine in a previous clause. Now we have here that a Minister by Order shall determine the period of time for which personal information may be held and that is the point I am trying to make. That the independence of this office is not what it seems to be because here you have a Minister issuing an order that determines the length of time information is kept. So this purported independence of the information commissioner is not all that it is made out to be. Why not the commissioner determining that? Why should a Minister, a political appointee, determine that?

Clause 36 of the Bill:

“A public body shall ensure or take steps to ensure that personal information in its custody or under its control is stored only in Trinidad and Tobago and is accessed only in Trinidad and Tobago unless...”

And it goes on to give some exceptions. My contribution to clause 36 is, I have no disagreement with the clause but it is just that recently there was a case in the United States—was it—where one of the oil executives lost his laptop which contained the data, I believe, of thousands of claimants for the oil disaster in the Gulf of Mexico. In England I believe—one or two years ago, there was somebody working in their security services who left his laptop in the tube.

3.50 p.m.

My concerns here are what structures and what protocols are being implemented to ensure that there is continuous backup and remote recovery in times of natural disasters. I know that may not be a part of the Bill. I do not think that we normally include those things in an Act, but I think as responsible Senators and as responsible parliamentarians, we need to do some backward integration with this Bill and see what we need in terms of software and hardware infrastructure to ensure that the intent of the Bill is carried out.

The intent is excellent, but there are going to be very serious backroom issues to address in cases of hurricanes and earthquakes where we have all this data stored, we need to have some sort of remote recovery; we need to have a black box system, like what the planes use, to make sure that the data is stored in a way where it cannot be easily destroyed. That is just a suggestion and a comment for the Government to look at.

Mr. President, I now turn to clause 42(e) which deals with investigative orders—well, let us go back to the top of the Bill. Clause 42 says:

“Except as provided under any other written law, personal information under the control of a public body may only be disclosed—

(e) to an investigative body specified by the Minister by Order....”

It comes back to my earlier assertion that the way the office of the information commissioner is constructed in this Bill it does not guarantee independence, because you have a Minister, again, signing the order. So, when the hon. Minister

speaks about the independence of the office, he needs to read the Bill and interpret what powers in this Bill are being given to a Minister of government. And heaven forbid, if you appoint a Minister of government in the ilk of Mr. Nizam Mohammed.

Sen. Panday: No, we will get one like Calder Hart!

Sen. T. Deyalsingh: That is an old joke now.

Sen. Panday: We will get one like Calder Hart.

Sen. T. Deyalsingh: That joke has gone, its sell-by date gone, do you know how long?

Sen. Panday: Really? It still has purchase. [*Laughter*]

Sen. T. Deyalsingh: Mr. President, through you, based on what we just heard, I would like to suggest to the Clerk of the House to engage the services of a biohazard team so that we can clean up the toxic and malodorous droppings of the seagulls opposite. [*Desk thumping and crosstalk*] But the toxicity of Mr. Nizam Mohammed, the half-life of that will live on for thousands of years.

Sen. Panday: Like that of Calder Hart and Ken Julien.

Sen. Baptiste-Cornelis: Why do you all get so touchy about Calder Hart?

Sen. T. Deyalsingh: Not touchy! Take the man to court. [*Crosstalk*]

Sen. Baptiste-Cornelis: So, you are protecting him, then?

Sen. T. Deyalsingh: Who is protecting him?

Sen. Panday: “I hope you are going to church in Guanapo yuh know!” [*Crosstalk*]

Sen. T. Deyalsingh: So we have dealt with that. I would like to look at clause 44(a) which says:

“the disclosure would not be an unreasonable invasion of professional or personal privacy;”

What is the definition for “unreasonable”? We had similar problems with the Electronic Transactions Bill last week, where there were terms that were very subjective and very broad and could not be concretized and finely tuned. How do we determine what is a “reasonable invasion of professional or personal privacy”? What is reasonable to one person is unreasonable to somebody else.

Mr. President, I addressed the privacy impact assessment and report earlier, so I would leave that alone. That was already dealt with.

I now turn to clause 50(5) of the Bill which says:

“Where the Information Commissioner fails to complete his determination in respect of a data matching request under subsection (3), the public body may apply to the Minister for a determination of the matter.”

Again, the same point, the information commissioner is not really that independent, because the Minister has the authority to impact on his work. So, again, it is disingenuous to say that the office of the information commissioner is independent. It is not, because the Minister—whoever that Minister is—according to this Bill, has numerous opportunities to interfere and regulate the work of the information commissioner.

Mr. President, I turn now to clause 53(1) and it says:

“A head of a public body may refuse to disclose personal information to the individual to whom the information relates where—

(b) the disclosure could reasonably be expected to reveal information supplied in confidence;”

I suppose that is all right. But clause 53(c) says—“it is evaluative opinion material...” Again, I know that this clause seeks to protect evaluative or opinion material that may be collected in the course of normal business, but it goes back to my earlier concern where we saw that persons other than the individual may be sought out to give information about someone. Again, I just have serious concerns from that previous comment. I do not know if clause 53 subclauses (b) and (c) put up enough barriers to prevent abuse of personal information being given by other parties.

Mr. President, I turn now to clause 64(3) of the Bill, which deals with how disputes or enquiries are to be conducted, and it says:

“Where an enquiry is conducted under this section, it may be conducted by the Commissioner on his own or by a tribunal comprising the Commissioner and one or more Deputy Commissioner.”

So, there is a typographical error there. It should read “Commissioners”, but that is not my real concern. My concern is, here you have a clause to set up a tribunal which can either be one person, two persons or three persons. Is that the intention where you could have one person or two persons or three persons adjudicating? It

says here, “it may be conducted by the commissioner on his own...”. Is that the intention that one person conduct it? But in the case of two persons where you have a deadlock; one person for and one person against, how is that deadlock to be broken? It should be three persons. So could we look at that clause? To have one person making the adjudication, I think it is not the intention of that clause. To have two persons doing it, you are setting yourself up for problems where one person votes yea and one person votes nay. So it should either be one or three persons, and I would suggest three persons, so we could adhere to natural justice. You will always have a decision in three.

Clause 65 says:

“The enquiry by the Commissioner or a mediator and any meetings held by a mediator with parties to the appeal may be conducted in private.”

Mr. President, we know in the past that we have had constitutional crises revolving around the words “may” and “shall”, and this clause says the appeal “may” be conducted in private. Who makes that determination? Is it the commissioner or aggrieved party? If the commissioner determines that it be held in private, but the aggrieved party wants it in public, how do we solve this? That word “may” there, a simple, little three-letter word, in legal circles—I have it on good authority—can cause a lot of problems. So, is it that we want to say “shall” be conducted in private, that takes away the discretion, or do you want to have the discretion or what? If it is “may”, who decides? Is it the information commissioner or the aggrieved party? The clause does not say who makes that decision. So, if it is that the Government wants it to fall under the ambit of the commissioner, it needs to say so expressly. So, I throw that out.

Clause 66 says:

“The individual who requested access to or correction of personal information, the Head of a Public Body concerned and any affected party shall be given the opportunity to make representations to the Commissioner, but none is entitled to—

- (a) be present during;
- (b) have access to; or
- (c) comment on

representations made to the Commissioner by any other person.”

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[SEN. DEYALSINGH]

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Mr. President, this clause, in my layman's, understanding of natural justice, goes against the basic tenets of natural justice. You are enshrining in this Bill that an aggrieved person is not entitled to be present during the adjudication, have access to or comment on representations made to the commissioner. I do not understand the rationale for clause 66.

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. T. Deyalsingh: Thank you very much, Sen. Panday, for your extension. The title honourable rests very well on your head today.

Hon. Senators: Always, always.

Sen. T. Deyalsingh: So, Mr. President, to the hon. Minister, I think clause 66 needs to be revisited, if not, taken out in its entirety.

With respect to clause 67 of the Bill, I have the same problem with the word "may". It says:

"An individual who requests access to personal information, the Head of a Public Body concerned and any affected party may be represented by counsel or an agent."

Who determines whether the aggrieved party has access to counsel or not? Who has that discretion? On what basis is the discretion to grant representation or take away the right to representation? Who determines that? You have serious due process issues and you have serious issues of natural justice here; that little three-letter word "may" again in legal circles.

Mr. President, "Protection of personal data by the private sector". In researching for this Bill, again, I went on to the websites of various private sector organizations locally and abroad. [*Crosstalk*]

4.05 p.m.

I visited the websites of the major commercial banks in Trinidad and Tobago, RBTT, Republic Bank Limited, First Citizens Bank, Scotiabank Trinidad and Tobago Limited, and they all have on their websites privacy statements. But again, once this Bill is passed, the various sectors are going to have to

significantly beef up their privacy statements. And I say that because although the banking sector seems to have their act in order, I visited the websites of three of the larger furniture and appliance retailers—one had a privacy statement; the other one, the home page was more an advertisement to sell mattresses, had nothing about a privacy statement; and the other one had very little. So I am just drawing this to the attention of the national community and these organizations that make up our business sector that this Bill is going to call upon them to significantly look again at their privacy statements.

Mr. President, I also visited the website of an American retailer called Target, a major American retailer, and because the laws there have been in place for so long, their privacy statements are much more sophisticated. They mention the term “cookie” on their privacy statement and it is a technology term, it has nothing to do with eating cookies. You see, Mr. President, I am a big fan of Sesame Street and Cookie Monster was in front a computer one day and a message came up “delete cookie” and Cookie Monster was appalled. So, what is a cookie? Cookies basically are small files that stay on your hard drive and track your web browsing, the sites you visit, how often you visit them, what products you like and so on. And the technology abroad and the laws abroad specifically mentioned “cookies” in their Act and how cookies are to be enabled and disabled. I notice in our Act we do not have it, so I am suggesting to the hon. Minister that the issue of cookies and how cookies are to be used and not used, be look at. Do not get sidetracked by the name. It is a serious issue. So look at the Target website. It gives you a good example of how to do it.

Mr. President, under Part IV, on the private sector, list selling is big business abroad, where companies who collect data sell the data of their customers to other people for uses other than originally collected. So, suppose company A is selling lamps and we collect data and we have a thousand customers, I could sell that to company B, which is selling cars. And they could pinpoint people, call them up, harass them, send them mail, mailshots. We have to be vigilant about list selling, selling people’s personal data and make sure it does not happen here. I am just referring the Government to that, under Part IV of the Bill.

Mr. President, I turn to page 43 of the Bill:

“Notwithstanding section 69 where, in the opinion of the Commissioner, the public interest warrants the immediate and mandatory development of codes of conduct dealing with the application of the General Privacy Principles...”

I made the same comment in my contribution last week on electronic transfers, that this concept of development of codes has to be taken seriously and in that Bill

last week it fell under the auspices of the office of the Minister, but thankfully that has been changed and right now it falls under the commissioner. That is a good development which I have no problem with.

Mr. President, I now turn to page 45. Again, it deals with codes, the hon. Minister, under clause 73(1), where they are developing mandatory codes of conduct. Once this Bill is passed, what is the procedure? What is the policy? How are we going to move forward to engage the private sector in all its departments, in all its divisions: oil and gas, leisure, hotel, banking, insurance, food and drugs, food and beverage, whatever? How is the Government going to engage all these different sectors to develop their own codes? It is a Herculean task and I just want to bring that out to the fore so that they know the size of the task in front of them.

Mr. President, I turn to page 48, clause 77(2):

“where an organization disregards a request under subsection (1) it shall notify the individual making the request,...”

I just want to thumbnail that clause 77(2) and just refer to 78(a):

“where the individual has requested access to or the correction of personal information held by an organization and the organization has refused such request;...”

I am just drawing attention to clause 77(1) to the use of the word “disregard” and in 78(a) to the use of the word “refuse”. I think we should be using the same language because they refer to the same thing—just as our good Senior Counsel would say, just for elegance and just for consistency in language.

Mr. President, I turn to page 50 of the Bill. My same comment on clause 3, the composition of the tribunal, whether it is one, two, or three people. I would not belabour the point I will move on. Clause 84, the use of the word “may”, same comment, I move on.

Mr. President, that basically brings me to the end of my analysis of the Bill. In going over my contribution, I have pointed to some construction errors. I hope they are taken on board. I have pointed out the qualifications required for the information commissioner and his assistants, but my main area of focus has to do with the hon. Ministers assertion that the Bill enshrines the independence of the information commissioner. I think I have presented enough evidence, enough cogent evidence, throughout the Bill to show that whichever Minister, whoever that is, is referred to in this Bill, has the power and the authority to interfere and intervene with the independent functions and the independence of the office of the

information commissioner and I think that is a serious flaw of the Bill that needs to be addressed. *[Interruption]* He did say 23 major amendments, but I only found two.

So, through you, Mr. President, in your winding up hon. Minister, if you could allude to, educate us on the 23 major amendments, I will be happy. Mr. President, we stand ready to support the Bill once we are satisfied that the points we have raised are addressed. Mr. President, with those many words, I thank you and good afternoon.

4.15 p.m.

The Minister of Health (Sen. The Hon. Therese Baptiste-Cornelis): Mr. President, it is with great pleasure that I rise in support of the Data Protection Bill, 2011, which was brought here by hon. Collin Partap, the Minister in the Office of the Prime Minister. Data protection laws are quite common in modern societies and are a matter of fact across the European Union and North America. Their primary intention is the protection of personal data from misuse.

The Data Protection Bill is an important and essential piece of information and needs to be passed—though, if you listen to Sen. Deyalsingh, we should not have this here at all. It seeks, *inter alia*, to protect the privacy of personal and private information of every citizen of Trinidad and Tobago, which is entered into electronic format. It supports the Electronic Transactions Bill we had last week, the one that you are stuck looking at the amendments.

As such, this Bill is grounded in the fundamental principle of protection of personal and privacy information. Yes, Sen. Al-Rawi, I sound excited, but it is much like being frustrated when you all try to convince the population that this is nothing that needs to be done and it was filled with errors. *[Desk thumping]*

Sen. Deyalsingh: Mr. President, point of clarification. I never said that we never did it.

Sen. The Hon. T. Baptiste-Cornelis: “Where yuh get de ‘never did’ part from?”

Again, moving on as usual, this fundamental human rights principle is guaranteed in the Universal Declaration of Human Rights, something to which this country subscribes.

Sen. Panday: You did not know that?

Sen. The Hon. T. Baptiste-Cornelis: No they did not. Before I go into what to tell people about this Bill, which is a data protection Bill and not a Bill about everything under the sun, as Sen. Deyalsingh tried to talk

[SEN. THE HON. T. BAPTISTE-CORNELIS]

about—[*Laughter*] [*Desk thumping*] I am amazed that someone who claims to be born in Trinidad and Tobago, is Trinbagonian, is not confident about the vast abilities of the citizens of Trinidad and Tobago.

I have taught information technology. We have people out there that can do this job, okay; they have it there; “dey there”. They reside in Trinidad and Tobago and we have those abroad, and many from abroad are coming back, because once you are gone, they come back. [*Laughter*] [*Desk thumping*]

Sen. Deyalsingh wondered if we could, but guess what? We can and we will fill the jobs. We will fill the vacancies with proper people. We do not put square pegs in round holes, as you all were master at doing.

Sen. Panday: Yes, yes, yes!

Sen. The Hon. T. Baptiste-Cornelis: Sen. Al Rawi, we are quite confident of the intelligence and capability of persons in our country.

Sen. Al Rawi: What was Reshmi Ramnarine?

Sen. The Hon. T. Baptiste-Cornelis: I do not know. What was Calder Hart? Answer that one and you will get back my answer. Sen. Deyalsingh, you talked about that this required technology knowledge and how people have to be savvy. Guess what? The People’s Partnership Government, “yuh see all of us here real techy savvy”, so we could do this. Maybe you could not, and I understand and sympathize.

Sen. Al Rawi: Talk to the President.

Sen. The Hon. T. Baptiste-Cornelis: I am talking to all of you, because the President understands. You all are the ones who seem confused. [*Desk thumping*] [*Laughter*] So all the back room issues, you get on like if suddenly, “My God, if there is a hurricane, do they know what to do, can they actually protect the data?” Oh my goodness, yes we can; we can protect the data. [*Crosstalk*]

In his contribution he attempted to rehash, albeit unsuccessfully, issues non-related to this Bill. I kept wanting to shout Standing Order 35(5), but I said, “Let de man go on; let him waste his time.” He made the casual, but inaccurate statement, that data and information were the same. At that point I said, “Enough is enough.” [*Interruption*] Yes you did. You said, “Data or information. Oh well, what is the difference?” The thing is, I am an IT lecturer, and that is offensive. [*Desk thumping*]

Depending on the context, the meaning and use of the words differ. Sen. Deyalsingh, both data and information are types of knowledge. So do not tell him it is nothing to do with knowledge, or something used to attain knowledge. It is being able to say that.

Sen. Panday: “Doh beat him, just teach him!”

Sen. The Hon. T. Baptiste-Cornelis: Though many times people tend to use data and information interchangeably, like Sen. Deyalsingh tried, there are many differences between the meanings of those two words. Data refers to the lowest abstract or raw input, which, when processed or arranged, makes meaningful output—something that does not come out from there. [*Desk thumping*] [*Crosstalk*]

Information is a concept and is a process of analysis. Information can be a mental stimulus—absent there—perception, representation, knowledge or even instructions. Yes, take instructions from Sen. Al-Rawi what to say. [*Laughter*] [*Desk thumping*] I could go on and on to identify the differences to Sen. Deyalsingh, but there are lots of IT courses, I used to teach them; UWI has them. I am sure Minister Karim will tell you all about them. Sign up for them, please.

Hon. Senators: Oooh!

Sen. Panday: “Send him YTEPP!”

Sen. The Hon. T. Baptiste-Cornelis: The Senator then went on and on about how the many deputies were needed, and I thought he was getting this confused with “A Deputy Essential”. Do you know that song? I think he was confused there with something else. We are talking about data commissioners and deputy commissioners, okay? So get that right.

Sen. Deyalsingh then went on to draw references to international regulations and was concerned that these things were missing in this Bill. May I reassure him that in reference to the various industries—and I noticed that you called all the industries, “and yuh know what yuh get meh more vex for? Yuh leave health out.” This has a lot to do with health. “How yuh could leave me out?” They will be sector related regulations for what we call “codes of operation”, right? Make sure you get copies of those, of that I can assure everybody.

He attempted to select some random clauses and, in so doing, may have caused those listening to be confused. I think people got confused about what we were talking about. You see the word “may”? Since May 24 he cannot stand that word. [*Laughter*] [*Desk thumping*] So, Mr. President, let me try to educate the

public about this Bill, because you took clauses like left, right and centre that made no sense, and if you did not have that Bill in front of you—“I am sure people home confused.” “People, welcome to what this Bill is about.”

The fundamental principle of protection of personal and private information is clearly stated in clause 4 of the Bill, which provides that:

“The object of this Act is to ensure that protection is afforded to an individual’s right to privacy and the right to maintain sensitive personal information as private and personal.”

Of course, he went on with what was sensitive, but I will go through all of that so he would understand.

In this regard, it is material to note that at clause 2 “personal information” is defined as:

“...information about an identifiable individual that is recorded in any form including—

- (a) information relating to the race, nationality or ethnic origin, religion, age or marital status of the individual;...”—and yes, I am married—or “information related to the education...”—lack thereof, or in particular importance to the Ministry of Health—“the medical...” history of an individual.

I have been waiting for this Bill; I need this Bill to take the Ministry of Health where it is supposed to go.

Moreover, also of particular importance to the Ministry of Health at clause 2, sensitive personal information is defined as information on the:

“(d) physical or mental health or condition;”

We try to keep these things really confidential. We will not expose yours. [*Laughter*]

Mr. President, it is material to note that clause 6 of the Bill establishes the general privacy principles which:

“...are applicable to all persons who handle, store or process personal information belonging to another person...”—such as—

“(a) an organization shall be responsible for the personal information under its control;”

“It says ‘shall’, eh; he stuck in ‘may’.”

The clause continues:

- “(b) the purpose for which personal information is collected shall be identified by the organization before or at the time of collection;

- (c) knowledge and consent of the individual are required for the collection, use or disclosure of personal information;
- (e) personal information shall only be retained for as long as is necessary for the purpose collected and shall not be disclosed for purposes other than the purpose of collection without the prior consent of the individual;”

We needed to put that in, because people like to store information on other people and use it as they want. When I lived in Europe, when you sent your CV and looked for a job, and you did not get accepted for that job, they would tell you, “We will keep your information on file for up to one year”, because it is your choice. You had to write and let them know if they could.

- “(g) personal information is to be protected by such appropriate safeguards having regard to the sensitivity of the information;
- (h) sensitive personal information is protected from processing except where otherwise provided for by written law;”

I know you like to put the law in, so we talk about the law inside of here too.

These provisions are extremely commendable and will serve to legislate the common law principles upon which the Ministry of Health presently operates and abides, or therefore tries to.

By “de” way, people, the Minister of Health is not very sick or has a serious problem. She is well; look her here. I heard rumours. I do not know who did it, to actually pass rumours last night that I was rushed in a critical condition to hospital, such that my mother had to call me in a panic. She was on her way to find out which hospital I was in, and I was home watching television. Do not worry, I will find out who did that. *[Interruption]* “Nah, he would not do that; nah, not Deyalsingh.”

The thing is, this is what we want to stop. We have to ensure that people’s personal and private information and, in particular, medical information related to patients, remains confidential. We have to assure the public of that.

Part II provides for the office of the Information Commissioner. “Yuh hear de word, right? Not data.” Part III provides for the protection of personal data by public authorities and, in this regard, the Ministry of Health and the Regional Health Authorities are subject to this. I love this.

Clause 31 provides that:

- “(1) Where a public body requires personal information from an individual it shall collect the personal information or cause the personal information to be collected directly from that individual.
- (2) Notwithstanding subsection (1), personal information may be collected...”

You asked, “How could you collect it from another source?” What we mean is that personal information—and I will go very slowly so you all could understand—may be collected from a source other than the individual, where, for example:

“the collection of the information is necessary for medical treatment of an individual and it is not possible to collect the information directly from that individual or the collection is necessary to obtain authority from that person for another method of collection...”

In other words, somebody is rushed into the hospital very sick and cannot speak, we can speak to their family to ask them to tell us what the person has; simple.

Sen. George: Common sense is not so common.

Sen. The Hon. T. Baptiste-Cornelis: I was just trying to explain it to them, because they sounded confused. I am here to explain to you all, that is what we do. We help you understand what should have been done that you never could have done.

Clause 3 provides, inter alia:

- (1) A public body shall ensure that the individual from whom it collects personal information or causes personal information to be collected is informed of -
 - (a) the purpose for collecting it;
 - (b) the legal authority for collecting it; and
 - (c) the title, business address and business telephone number of an official or employee of the public body who can answer the individual’s questions about the collection.”

So, yes, you were concerned about some of these websites that were not properly formulated, did not have proper privacy Acts, and “They would have to get in order”. So what, because of the fact that there are websites out there that do not follow proper procedures, we must hold back this law? “Woow!”

Clause 35 provides that:

“A public body shall protect personal information in its custody or under its control by making reasonable security arrangements against such risks...”

And I know, you were, like, “What is reasonable?” Really and truly, in the field of information security, reasonable is you did all that was possible for you to do and nothing has happened. We know that. The FBI, CIA, their headquarters get broken into, does that mean they stop working? But you are telling us that until we can guarantee that nobody in the entire world could hack into our system, do not have one? Come on, you want to keep us in the dark ages? I cannot believe that.

There are going to be risks of unauthorized access, collection, use, alteration, disclosure or disposal, but we will do our best. Do you know what? When the People’s Partnership Government says they do their best, it is more than 100 times better than what you all could have done. [*Desk thumping*]

Further, Mr. President, clause 38 provides that:

“Personal information under the custody or control of a public body shall not, without the consent of the individual to whom it relates, be used by the authority except for the purpose for which the information was obtained or compiled by the public body, or for a use consistent with that purpose, or for a purpose for which the information may be disclosed...”

I am happy, because I used to be in website design, and I have met people who were boasting to me that they had little ads on their websites. [*Interruption*]

Mr. President: Senators, the time is now 4.30. I propose that we take the tea break at this point and we will resume at 5.00 p.m.

4.30 p.m.: *Sitting suspended.*

5.00 p.m.: *Sitting resumed.*

Mr. President: Sen. Baptiste-Cornelis was on her legs when we broke for tea I reckon you have another 30 minutes, Senator.

Sen. The Hon. T. Baptiste-Cornelis: Thank you, Mr. President. It appears that I may have scared off all the Opposition—oh they are running back. Here they come running. You know, I am sorry—

Hon. Senator: They cannot take it. They cannot take it.

Sen. The Hon. T. Baptiste-Cornelis: I think the truth offends them but there is much more truth coming. Mr. President, as I said, clause 38 provides that:

“personal information under the custody or control of a public body shall not, without the consent of the individual to whom it relates”—not the party, not the political party, the individual—“be used by the authority except for the purpose for which the information was obtained or compiled by the public body, or for a use consistent with that purpose, or for a purpose for which the information may be disclosed by the public body pursuant to section 42.”

So why, I kept asking myself, was Sen. Deyalsingh only harping about, he wonders about the Minister’s authority, and what the Minister would do and what the Minister could do? Sen. Deyalsingh, we are talking about People’s Partnership Ministers, I guess—I know you fear if it was a PNM Minister and perhaps they may try to break the rules, but rest assured, we do not try to break the rules, okay.

Clause 40 provides that *inter alia*: “

A public body shall not process sensitive personal information unless it obtains the consent of that person to whom the sensitive personal information relates.”

So, they cannot go releasing anything about Sen. Cudjoe and who she knows, and who she does not know or whatever without her telling them it was okay. [*Desk thumping*]

Sen. Ramlogan: I hope she will give that to me willingly.

Sen. The Hon. T. Baptiste-Cornelis: Right. Notwithstanding this, sensitive personal information may be processed *inter alia* by a health care professional for the purposes of health and hospital care.

So again, Sen. Deyalsingh, how did you read through this entire Bill and leave health out? Is health not important to the PNM government? But then again, as I have discovered, it was not, where it is necessary for preventative medicine and the protection of public health. You know I cannot go on again without talking about this.

Mr. President, I may stray to say this but I was shocked to find out that one of the problems that has been plaguing the St. Ann’s hospital for a very, very long time, is the fact that for some reason the previous administration considered it a

residential place—the St. Ann’s hospital, with over 950 beds, a residential place—and they were on a residential water supply. And they keep harping that, oh, they have no water, it is on the news, “What is the Minister of Health doing?”

The Minister of Health got together with the Minister of Public Utilities and we sent in a team. sent in the CEO, Ganga Singh—the same one that you do not really like but who really works, right—and they discovered it. They were on a residential water supply. Do you believe that? St. Ann’s hospital, and now they are converting them to an essential water supply because, you know what? We fixed the problems that you all left languishing on and on. [*Desk thumping*]

For the purpose of this section, healthcare professional—and a healthcare professional is not just doctors, it is anyone registered under the Medical Board Act, under the Dental Profession Act, under the Opticians Registration Act, the Pharmacy Board Act, the Nurses and the Midwives Registration Act and the Professions Related to Medicine Act. These are the people we are talking about.

And yes—when we went on the break, inside there, they told me that I was fiery, Mr. President, and “why I so upset”, and it is not health that we are doing, and we are doing data protection. Do you know what April 7 is? April 7, Mr. President, is World Health Day, this week, two days from now, so of course health is on my mind. I cannot help but talk about health. I am the Minister of Health, whether you all like it or not; live with it.

Mr. President, it is material to note, clause 41 provides that:

“Personal information under the custody or control of a public body shall not be disclosed by that public body in Trinidad and Tobago without the consent of the individual to whom it relates...”

So again, why are you harping on the Minister, the Minister cannot break that rule. It is there—

“except in accordance with sections 42, 43, 44 and 45”

And you went through those, and you found some typographical errors, thank you very much. The next time we would make sure that you check them first, right?

The exception to this is provided at clause 42, which provides:

“Except as provided under written law, personal information under the control of a public body may only be disclosed—” for example, to the Attorney General of Trinidad and Tobago, the Hon. Anand Ramlogan who you all love to harp on, you know. You always want to mention where he is, where he is not. But I am

going to ask you, where Sen. Hinds? Where is Sen. Pennelope Beckles-Robinson? Where is Sen. Dr. Lester Henry? Where is Sen. Faris Al-Rawi? Are the two of you all that are left to face me?

“for the purpose of or in connection with, legal proceedings involving the state, where such disclosure”—Mr. President, here comes Sen. Al Rawi, running in—“such disclosure is reasonably required in the interests of fairness”. We missed you, we missed you. Okay.

Sen. Al Rawi: I went to get the AG.

Sen. The Hon. T. Baptiste-Cornelis: You went to hear the AG? Oh, you went to get him. Oh, I thought you were still eating, because I saw you still eating when I left.

Clause 45 provides, Mr. President, that notwithstanding—focus I am talking. Be quiet, please—I beg of you, I did what you wanted. I did not say the words you do not like me to say, so do remember—

Hon. Senator: Take it easy, Therese.

Sen. The Hon. T. Baptiste-Cornelis: It provides that notwithstanding—because this is the part he said it did not have and I want to let him know that notwithstanding sections 42, 43 and 44—medical information is really protected. Do you all know it shall not be disclosed by a public body without the consent of the person to whom each single piece of that information relates to or by the order of a court? So, there is no way anybody, no Minister, nobody, could touch someone’s medical information without their consent and I am happy about that. I am happy as the Minister of Health I can try to guarantee people that their medical information, their private information is secure.

I am asking people, Mr. President, to go and get their HIV status, find out what they are. Some people are afraid. Right now we have the blood donor campaign on. People have told me they want to be a blood donor but they are fearful because they know when they go to become blood donors—because we screen you to make sure that you do not have HIV—they may find out that they have it. They are afraid not if they find out they have it because they know that we have drugs that we could help them with. They were fearful that perhaps people would find out that they have it. And it is a fear that is all over the world, and we are trying to show them that we will try our utmost, using every single, reasonable thing we can do to protect people’s personal information.

Mr. President, Part IV of the Bill will provide for the protection of personal information by the private sector. Part V of the Bill sets out the offences under this Act and Part VI of the Bill will set out all the miscellaneous provisions.

Mr. President, this Bill as I tried to go through it—because we thought that we would be nice, we would not go through it clause by clause, because we wanted to give the overall perspective of this Bill and again, I have to commend Minister Hon. Collin Partap. He did an excellent job. But then, we had Sen. Deyalsingh who came and picked this clause and picked that clause and his obsession with “may” will never go away. Okay.

Mr. President, this Bill will provide the necessary legal framework that will support the Ministry of Health’s ongoing and planned information and communication technology projects for 2011. You all really did not expect me to go into the Ministry of Health and not try to put IT inside there. We are running with a system where there are multiple records for one patient, stored in different rooms, stored in different hospitals. We are trying to get this to come together.

Firstly, Mr. President, the Ministry of Health is presently undertaking the roll-out of phase 1 of its information and communication technology infrastructure. By the way, Sen. Al Rawi, I said phase 1, not phase 2. So do not come and say, oh, we copied the PNM because we are in phase 1. Right, which will bring local area connectivity within each public health sector, as well as basic—imagine we still have to bring this basic information and communication technology equipment to cover the current needs. And when I say basic, I mean more PCs, printers and servers. I mean people are calling me and telling me that they could not even fax something into a hospital area because that hospital said that they did not get a fax machine. We would tell them get the fax machine. People had to actually travel to hand in these things.

5.10 p.m.

Yes, they could bring in the copies, and now with the beautiful Electronic Transactions Bill, the fax would hold. This project is, in fact, well on the way, 83 per cent local network cabling completed; 41 per cent of the expected information and communication technology equipment fully rolled out. Moreover, the whole roll-out is expected to be completed by the second quarter of 2011. Notice, I said expected, because I know what goes on, and if no unforeseen hurdles are brought about by somebody telling somebody that they should have some kind of strike, or flu, or whatever, suddenly develop, we would be able to go strong.

Mr. President, noting that currently 34 health sector sites are interconnected via the Government's backbone—again, do you know who we worked with on that? The Ministry of Public Administration via iGov. The Ministry of Health expects to expand on this interconnectivity, because it is needed. We need to connect all of this information. If we want to connect all of this information, we need to have legislation to control this connection. It is simple. We want to connect, Mr. President, these 34 health sector sites to all 187 public health sectors by mid 2012 in preparation for the roll-out of the health information management system.

Mr. President, the main guiding principle for all the health business systems related projects is one patient, one record; meaning that relevant medical information would be available at any time for more effective and informed treatment regardless of the location of the public health care provider. This is what progress is about. We have to move. We are progressive people. They keep wanting to find meanings for PP; progressive people, placing priorities. This medical information would be available on what we call a need-to-know basis to medical professionals with the consent of the patient.

In this regard, Mr. President, I am very pleased that the Cabinet has already granted approval for the open tendering for the application software necessary for the implementation of our health information management system. When fully implemented, this health information management system would achieve connectivity and integration among the Ministry of Health and the Regional Health Authorities, give the Ministry of Health greater oversight; consisting of components such as clinical management system—Mr. President, we do not have that—of laboratory systems and of pharmacy systems. The Ministry of Health, HIV/AIDS Surveillance Platform Project which services eight sites related to different aspects of HIV/AIDS treatment and prevention will enter into its third year of operation in 2011.

Mr. President, when we heard recently about the Government's plans for NACC, we had a big uproar from other people saying that we do not care about those with AIDS. They go on as if nothing else was existing when all we were trying to do is streamline our care and focus our care. We do not duplicate. *[Interruption]* We consolidate, and full automation of this reporting requested by the international donors is expected to be implemented in 2011.

We have people giving funding to this and we cannot give them their reports. We want to be transparent and accountable, show people where their money has been utilized, as well as the expansion of this system to approximately 40 sites involved in what we now have as voluntary counselling and testing clinics. We are taking the testing and the counselling out to the people. Moreover, the Ministry of Health's, e-health pilot project has implemented basic electronic patient record functionalities in three sites. Yes, I would admit this one, it happened under your regime—Siparia District Health Facility, St. Joseph Health Centre and the Morvant Health Centre. The software used was developed internally by the Ministry of Health Information and Communication Technology Unit and includes the management of the e-health cards.

The next step in this project includes centralization of the database in line with the Ministry of Health's one patient, one record. So when Sen. Al-Rawi goes to Tobago on holidays or Sen. Beckles-Robinson—

Sen. Panday: In his yacht.

Sen. The Hon. T. Baptiste-Cornelis: In his yacht?

Sen. Panday: Yes.

Sen. The Hon. T. Baptiste-Cornelis: Okay, I do not know about that one.
[Laughter]

Sen. Al-Rawi: I aspire.

Sen. The Hon. T. Baptiste-Cornelis: You aspire. When they go to Tobago, if something—please God forbid that—should happen, the information is there, rather than what we have now with no one knows what has happened. We are talking about this one-patient, one record, for which the data sharing ground rules are being discussed with the Regional Health Authorities. And that is what I meant by the codes of operation, because it is going to be different according to the industry you are in.

The financial industries which I used to work in, have those different codes of practice. We would have our codes of practice. Information and the transfer of information, the collection, dissemination reflect on the industry where it is. You cannot just blanket it like what you wanted to do. We see as the expansion to other sites, the framework rolled out by this project is being used as a benchmark for the introduction of information and communications technology in everyday

[SEN. THE HON. T. BAPTISTE-CORNELIS]

health care services delivery. We do believe that we have to look at people's primary care by standardizing workflows and procedures as well as seeking the most effective way to expose staff to an information rich environment.

Do you know what the Opposition did? When I came in and we looked at the IT department, we recognized it needed beefing up, we recognized, sometimes, in some places, we had square pegs in round holes and we decided to reengineer the IT, and suddenly, "oh, the Minister of Health get rid of IT people". So was it that what you wanted me to do? Go in there, see that the IT area needs enhancing and just say "Ah, leave it there"? We cannot do that. That is not the way we operate. We operate to move this country further. You know, none of them would look at me. They are all looking down. It is amazing!

Sen. Al-Rawi: We are taking notes.

Sen. The Hon. T. Baptiste-Cornelis: Taking notes? I would pass you these. You could read it after. [*Laughter*] Therefore, these Ministry of Health information—[*Interruption*—I would give you a copy, have no fear.

Sen. Deyalsingh: I cannot read.

Sen. Al-Rawi: We do not read.

Sen. The Hon. T. Baptiste-Cornelis: You cannot read or write?

Sen. Al-Rawi: We do not read in Parliament.

Sen. The Hon. T. Baptiste-Cornelis: Why do you self-confess that "nah". "Doh tell people you cah read an write, nah". The people think you could do something. Let them believe that "nah". [*Interruption*]

Now, Sen. Al-Rawi you are fibbing there. "Doh" read in Parliament, okay. Next time I would call you out.

Therefore, these Ministries of Health information and communications technology projects are in keeping—[*Interruption*] do not worry—with the principles and guidelines laid down in the Data Protection Bill. I need this Data Protection Bill for health, to take health forward. So yes, that is why you may find, "Oh, she is so exuberant over it. They say is the colour of the clothes she have on. Doh wear red again." [*Interruption*] Red is the blood donor drive. I keep telling you I see you wearing red as your balisier tie. If you want to join the drive, say so. [*Laughter*]

Mr. President, a geospatial information system is also expected to be implemented to support the operations of the Ministry of Health Insect Vector

Control Division during 2011, and the knowledge management system is currently being implemented. In respect, Mr. President, six departments are already included in this system and all others are expected to be included by the end of 2011. The Ministry of Health is working you know, but I guess you are not expecting that.

Further, Mr. President, consolidated financial information from all the Regional Health Authorities is expected to be centrally accessible through the Ministry of Health's financial management information systems business portal, to be implemented during 2011. Mr. President, do you know why we need to get this consolidation? To find out things that make no sense. I recently found out one particular RHA actually does not own its own ultrasound machine. That RHA instead outsources ultrasound services. Three days a week they outsource it. I asked why that RHA did not buy their own ultrasound machine. You know what they said? It was too expensive. Do you know how much they said it was costing for one? They said it would cost them \$600,000 to buy one, so they could not buy it, so they preferred to outsource it and get service three days a week. I said, "How much the service you are outsourcing three days a week costing?" They said \$300,000 a month.

Sen. Panday: "Oooh!"

Sen. The Hon. T. Baptiste-Cornelis: So I do not know what economics class they went to. I am still trying to figure it out.

Sen. Panday: Not in yours. Not in yours. *[Laughter]*

Sen. The Hon. T. Baptiste-Cornelis: It totally—*[Crosstalk and laughter]* maybe that is why it took—I do not know. *[Interruption]* This portal will afford real time access to information that was agreed to be shared in the standardized framework based on the already implemented, completed chart of accounts to give greater oversight.

Right now, as I said so many times, my permanent secretary meets with the deputy chairman once a month to try to keep this oversight and see what is going on, because what we have found out, yes the Regional Health Authority Act gives a lot of authority to the RHAs, and a lot of things were happening which the people at the Ministry of Health were just not aware of. *[Interruption]* Therefore, these Ministry of Health information and communication technology projects would be subject to the principles and the guidelines laid down in the Data Protection Bill. For example, as they relate to the protection of personal data by public authorities and the use and disclosure of same, because you see things

happening that should not happen. I saw recently in a weekly newspaper some bill that was sent by some private hospital to some RHA and it ended up in the newspaper. That is wrong.

Mr. President, the business process re-engineering exercise for the human resource department of the Regional Health Authorities is ongoing. Next week they have more. We are doing business process re-engineering. We keep looking at ourselves. The day you stop learning is the day you stop living, and I guess we have seen the death of the PNM. Sen. Beckles-Robinson, sorry, I did not mean you because I do think you were good even though they rejected you. I do think you were good. [*Desk thumping*] But I have to admit by them not picking you, it was good for us, “so what you want me to say?” You were their only hope and they have tossed you aside. [*Interruption*] But then again, do they respect women? We do not know. [*Laughter*]

Mr. President, as I said, the business process re-engineering exercise for the human resource departments of the Regional Health Authorities has been completed and the implementation of the new computer-ready processes is expected to be completed during 2011 as part of our Ministry of Health’s human resource information systems project. In addition, the Ministry of Health human resource department is expected to increase the utilization of the Government of Trinidad and Tobago’s integrated human resource information systems by training all needed officers and expanding this work station base. We are doing all of that. To tell you how much we like this learning, starting from Friday coming, we are going to be having something called “lunch and learn” where we would be transferring knowledge to everybody, [*Interruption*] because I want to transfer knowledge. [*Crosstalk and laughter*] I also would be training people too.

Sen. Panday: Sen. Deyalsingh would be the first man. [*Crosstalk and laughter*]

Sen. The Hon. T. Baptiste-Cornelis: Finally, the Ministry—I cannot go down to the level you want me to come down to. That is remedial. I cannot go down “dey”. [*Laughter and desk thumping*]

Finally, the Ministry of Health’s costing of health services exercise—and we are costing all these health services—will benefit from information gathered, through the different health business systems which would allow for better health care service provision management, because I want to be able to provide everything for the people, but I have to properly cost it. You would be amazed—we offer medical aid—Mr. President, at some of the requests I get coming in for medical aid and you would get five different requests and sometimes five different amounts for the same thing.

Then people ask why it takes long. We have gotten—when you send in a medical aid request, we have shortened it to three months, you know. Before it was six months to one year. I would like to get it shortened, but sometimes we have to do all of these checks to make sure. Because what I am responsible for is not my own money you know, it is taxpayers' money, and that is important and that demands transparency and accountability. [*Desk thumping*]

Mr. President, therefore, in light of what I have said before and in keeping with the international and the regional best practices and trends in this highly electronic era to establish frameworks for the protection of the privacy of personal and private information—wait a minute, cookies.

Sen. Panday: He is a cookie monster. [*Laughter*]

Sen. The Hon. T. Baptiste-Cornelis: He was concerned that the Bill did not talk about cookies. [*Interruption*] You know, the thing is, in this age of technology, as again, I would give you some help, do you know that when you buy your—I am sure you have antivirus software on your machine. You do not know what that is? I think I would have to do a little training session with him, right? [*Interruption*]

The antivirus software allows you to say whether or not you are willing to accept cookies. They do that, you know. Do you know why they did that? Because they did not want people “macoing” into your business and that is what—we would expose them. We would tell people about the cookies. We would tell them about the cookies—“It eh nothing to do with cookie monster—nothing to do with cookie monster”, and the cookies are actually little files they put on. Now there are good cookies and bad cookies, so you do not want to block all of the cookies. So you have the chocolate chip cookie or the vanilla cookie, right? You do not want to block all, because some cookies are useful to say, yes, you have returned and yes, you do not have to log everything back in. Some cookies are the “maco” cookies. You know the “maco” cookies?

5.25 p.m.

I know, if you see—“Al-Rawi start to—look, he looking up to this, the maco cookies.” The “maco” cookies are a bit—the ones that want to look into you and see where you are going and what you are doing—otherwise known by some people as the PNM cookies. [*Laughter*] But do not worry, there is software to block them. You just have to click. You know how people voted you all out, one little vote? A little click and you could block them.

So moving on, I have no hesitation whatsoever, Mr. President, in supporting this fantastic Data Protection Bill, 2011—Yes, and you are telling me about, “you only find two amendments.” He has the list of 23, he will show you. Obviously, again, the reading and writing affect him—which at the end of the day will enable the Ministry of Health to achieve its mandate, Mr. President, of a nation empowered to live long, healthy, happy and productive lives under the People’s Partnership Government. [*Desk thumping*]

Mr. President, this Bill will address data collection, data storage and data processing. The significance of this cannot be underscored. In the other chamber, Mr. President, the then Minister of Information, back in the days when he said he was a Minister of Information—we knew it was misinformation, right? The hon. Neil Parsanlal, in speaking on the Data Protection Bill—because I went to look. You all love to quote Minister Vasant Bharath, so I say I had to find something and it was hard to find something good from “all yuh”. “It was real hard.” [*Laughter*—by the last Government, stated on Friday, February 13th, 2009, so you quote February 15th, right, and you want to know why Minister Moonilal say this, and why the MP at the time, Mrs. Kamla Persad-Bissessar, agreed. They realized what you all were saying was never going to happen. You all talked first. You forget that part. You like to bring what we say. Put what you all say too “nah”.

He said, Mr. President, and I am going to quote here:

“The idea of data protection and the issues associated with it, that is data collection, data storage, data processing, is nothing new. However, the environment in which we currently exist is much different to that of a few years ago.”

Yes, we can say that again here, because they are not here anymore, “yep”.

“Technological advancements, for example, both locally and globally, have drastically changed the way in which we access and process information. There is a need, therefore, we believe, to ensure that our citizens are protected against the unauthorized collection, the unauthorized use and the unauthorized disclosure of their personal and sensitive information, except in circumstances that are clearly outlined in the Bill.”

Of course, he did not mention the “macoing” they were doing; for some reason he left that out.

History will judge our predecessors in government, by those exulted intentions and pronounce on whether they governed our country by those ideals that he claimed you all had. The fact though, that the People’s Partnership is now in office, Mr. President,

even before the then Data Protection Bill reached the Senate for debate, is testament to history's verdict of what they did. They did not deliver. Cannot, will not, will never deliver! [*Desk thumping*]

The People's Partnership, Mr. President, has shown that it will govern with transparency and a commitment to the ideals of good governance. This commitment is demonstrated by the speed with which we have enacted and continue to enact significant pieces of legislation that protect our citizens while providing for good governance. And you see all those health Bills that just stayed there? Guess what? "They coming this year." So you want something on the legislative agenda? "Check everything health have. We coming for everything, because we fixing health." [*Desk thumping*]

The Data Protection Bill, 2011, is one such piece of legislation and you can be assured that the People's Partnership Government, through its legislative agenda, which they keep claiming they do not know about, will continue to provide excellence in governance for the citizenry of Trinidad and Tobago.

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

The Minister of Science, Technology and Tertiary Education (Sen. The Hon. Fazal Karim): Mr. President, I want to thank you for the opportunity to join the debate on the Data Protection Bill, 2011. Today, as I stand before this honourable Senate, I am pleased to say that as a Government we have demonstrated our resolve to the pronouncements made in the manifesto of the People's Partnership. [*Desk thumping*]

Before I commence, I want to reel into the substance of the presentation, I wish to congratulate the hon. Prime Minister, Mrs. Kamla Persad-Bissessar, [*Desk thumping*] and our Minister of State in the Office of the Prime Minister, hon. Collin Partap, [*Desk thumping*] for bringing this legislation to this Senate at this time. As a responsible Government we pledge to, and I quote:

"Review all existing legislation, to enable a thriving, secure digital environment, specifically, the Data Protection Bill, Electronic Transactions Bill, Amendments to the Telecommunications Act, Amendments to the Exchequer and Audit Act."

Mr. President, this is not a "wouldda", "couldda", "shouldda" Government. This is a Government that serves and delivers. [*Desk thumping*]

Mr. President, my esteemed colleague, the hon. Collin Partap, pointed out in his presentation that the Data Protection Bill before us is part of a two-pronged legislative approach by this Government to better facilitate and promote electronic government and access to government services. I came across an article recently, which talks about this whole aspect of privacy in *Time Magazine* of March 21st, 2011. The editor, Richard Stengel, was saying that,

“Most people believe in the right to privacy, and nearly as many believe this right is enshrined in the Constitution. It’s not—at least, not explicitly.”

And he goes on to say,

“...how our online data is being bought and sold highlights one of the most vexing issues of our time; the tension between privacy and convenience”—Mr. President, we have all witnessed the fact that—“the Internet has changed both individuals’ and society’s definition of privacy. Privacy isn’t dead”—he said—“but it’s evolving. The old saying was that your name should be in the Newspaper...”—twice: “once—when you’re born”—and the second time—“when you die. But today a private person is often defined as someone who has fine-tuned”—his or—“her Facebook...”

Mr. President, what is very unfortunate as we talk about this Bill, is the fact that our hon. Attorney General had to stand here to answer two questions this evening, questions 35 and 36, and had in a sense to apologize to this nation for the fact that he could not have given the comprehensive answer that he would like to give in a government of today, which was preceded by one that spent millions of dollars in national security. [*Desk thumping*] And was talking about developed nation status, and we are in the 21st Century and we do not have access to up-to-date real time systems, electronic information. What he had to say was that there were challenges of the information management system.

5.35 p.m.

I want to make some reference to the fact that the need for data protection is one of a human rights issue to privacy. The issue of data protection cannot be discussed without underscoring the fact that if it ensures privacy, then it upholds one of the fundamental human rights and treatments: the right to privacy.

The right to privacy is not only enshrined in the Constitution of Trinidad and Tobago but also in the Universal Declaration of Human Rights, the European

Convention on Human Rights and the American Convention on Human Rights. Moreover, the right to privacy is acknowledged by professionals in the form of confidentiality. Therefore, data protection is necessary as it upholds and acknowledges that right to privacy which the Government is not only bound by its local Constitution to protect but also by international conventions. Hence, the absence of data protection is a blatant disregard of one of the basic rights of the citizens of Trinidad and Tobago.

In Trinidad and Tobago, the need for data protection is epitomized by the contravention of this Government's personal privacy under the watch of the SIA. In doing so, I would like to share with you two articles that make reference to this breach. The *Express* of November 12, 2010 speaks as follows. Opposition leader, Dr. Keith Rowley, soundly condemned the invasion of privacy by the Security Intelligence Agency. The SIA spied on not only himself but also President Maxwell Richards. The quote below lends credence to this statement, and I quote. He says:

“I can't tell you how I feel to know that the prime minister in the Cabinet”—the then Prime Minister, of course—“of which I served, was having information which I consider (pause)...; I can't tell you how I feel to know I was the subject of that, but I suspected it...but the confirmation now leaves me very saddened,” he said.

“I was surprised at some of the other names because one cannot accept that the President is subject to the listening post of some junior officer or a senior officer in a back building somewhere. I did not think that was happening in my country.”

And that was happening under the PNM regime.

“Rowley said the Opposition stands ready to support the required legislation to deal with this issue of interception and wiretapping. He said had this legislation, which was drafted since 2007, been put in place, then this ‘shame’ and ‘embarrassment’ would have been avoided today.”

I wish to also, in that regard, in talking about confidential information and the privacy of information and people's welfare, relate to two other instances. The Minister of Works and Transport, the hon. Jack Warner, now the acting Prime Minister of Trinidad and Tobago, in an *Express* article of November 17, 2009, said the phones of his close relatives were wiretapped by the SIA.

“Warner said his sons Daryan and Darryl, and his wife Maureen, were all, at one point, under surveillance.

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He made the comments while speaking with the media after a campaign launch by the Telecommunications Services of Trinidad and Tobago on Monday at the Courtyard Marriott in Port of Spain.”

Mr. Warner continues, and I quote:

“I am very angry and very bitter because while I am aware my phone was being wire-tapped, I did not know my family, too. I did not know my sons and my wife; I did not know they were being tapped. I am a public figure so okay, I pay the price for that, but my family too...how do you justify that?’ Warner asked.

‘I am angry because Mr. Manning thinks he is above the law, but nobody should be able to break the law as he has and I believe if it’s anyone who should be punished and punished drastically, it should be Mr. Patrick Manning and all those who support him.’”

ARRANGEMENT OF BUSINESS

The Minister of State in the Ministry of National Security (Sen. The Hon. Subhas Panday): On that point, Mr. President, I beg to move that the debate on this Bill be adjourned to a later date in order to start the committee stage of the Electronic Transactions Bill.

Agreed to.

ELECTRONIC TRANSACTIONS BILL [THIRD DAY]

Bill committed to a committee of the whole Senate.

Senate in committee.

Mr. Chairman: Senators, there ought to be before you the consolidated Bill with the tracked changes, so I propose that we work from this document.

Clause 1 ordered to stand part of the Bill.

Clause 2.

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

Sen. Gosine-Ramgoolam: Mr. Chairman, I beg to move the following amendment as circulated.

- “A Delete the definitions of ‘certificate’ and ‘certification service provider’;
- B In the definition of ‘Electronic Authentication Service Provider’, delete the words ‘and includes Certification Service Providers’”.

Sen. Al-Rawi: Mr. Chairman, through you, could I humbly recommend that we defer consideration of this amendment for clause 2 as we may yet propose amendments relative to definition clauses as we move through the rest of the Bill. So subject to convenience, of course, if this particular clause 2, insofar as it relates to definitions, could be left to the end, it may be that we could achieve a little better ground.

Sen. Panday: No objection, please, Mr. Chairman, save and except that, apart from the definition, when one looks at “Electronic Authentication Service” one would see that the word “provider” a common “p” has been deleted and a capital “P” has been inserted.

Mr. Chairman: So we have one further amendment? The definition of “Electronic Service Provider”, the word “Provider” is now capital “P” in place of the lower case “p”.

Sen. Al-Rawi: Sorry, Mr. Chairman. If I could just repeat again, the proposal for the deferral of the amendment. I take it that you have put it on the record that those are the amendments standing and now that that has been put on the record, I again recommend the deferral of clause 2 insofar as definition clauses may yet be further amended.

Mr. Chairman: We have on the record that Sen. Al-Rawi has recommended we defer consideration of clause 2 until later. The question is now being put before this committee, nonetheless, that clause 2, as amended, stand part of the Bill.

Sen. Panday: Mr. Chairman, what the hon. Senator is indicating, if we could stay it for—

Mr. Chairman: I thought you did not want to do that.

Sen. Panday: No, I have no objection.

Mr. Chairman: Oh, I see. I gathered the reverse. So clause 2 is now going to be stood down until we have dealt with other parts of the Bill.

Clause 2 stood down.

Clause 3 ordered to stand part of the Bill.

Clause 4.

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

Sen. Baptiste-McKnight: Mr. Chairman, I note that clause 4 refers only to public, a public body. Does this mean that other than public bodies would be compelled to accept documents in electronic form?

Sen. Panday: Mr. Chairman, clause 4 relates to clause 3. “This Act binds the State.” So it is, “Notwithstanding section 3, nothing in this Act shall by itself compel any public body to accept or issue any document or information in the form of electronic records.”

Sen. Baptiste-McKnight: No, that is not my concern. Clause 3 is fine, but clause 4 as it stands talks only about public bodies. What is the status of non-public bodies?

Mr. Chairman: I take it to mean that they can be compelled to provide documents to the public. That is what is intended, that despite the State being bound by it, the State nonetheless cannot be compelled.

Sen. Baptiste-McKnight: It says that nothing in this Act will compel the State.

Mr. Chairman: Yes.

Sen. Baptiste-McKnight: But does it mean that the other bodies are therefore compelled too?

Mr. Chairman: Yes, it does.

Sen. Panday: Mr. Chairman, if one looks at clause 7, you will see that it relates to non-public bodies.

Mr. Chairman: So clause 4 is only intended to relate to the State.

Sen. Panday: To the State.

Mr. Chairman: Okay.

Question put and agreed to.

Clause 4 ordered to stand part of the Bill.

Clause 5.

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

Sen. Panday: Mr. Chairman, this amendment was proposed by Sen. Drayton and the argument in the debate, she had indicated that this phrase is otiose and, as such, it was unnecessary and the Government has accepted the amendment by the hon. Senator.

Sen. Al-Rawi: If I may enquire, through you, Mr. Chairman—

Sen. Panday: Mr. Chairman, the amendment reads as follows:

- “5(a) Delete the words ‘the appropriate use of’;
- (c) Delete the words ‘authorities’ and ‘agencies’ and replace with the word ‘bodies’ wherever they occur;
- (d) Insert after the word ‘;’ the word ‘and’;

Again, that was an amendment put forward by Sen. Drayton which has been accepted by the Government.

5.50 p.m.

Mr. Chairman: So the question is that clause 5 with the amendments as circulated—

Sen. Panday: Mr. Chairman, before we go on, if one looks at (d) you will see after the word “records”, “and” has been inserted.

Mr. Chairman: Yes, I did see that.

Sen. Panday: Apologize, Sir.

Sen. Al-Rawi: Mr. Chairman, if I may, through you, enquire of the Leader of Government Business, perhaps the hon. Minister herself and those assisting, how is the concept of dealing with fraud as a stated purpose to be avoided, is to be dealt with under this Bill if at all, the avoidance of fraud?

Sen. Panday: There is the Cyber Crime Act.

Sen. Al-Rawi: The Computer Misuse and the Cyber Crime Act, they are two separate pieces of legislation which I am well familiar with, but in the debate and in discussions for recommendation for the hon. Minister to consider, we had advocated in particular, as a stated purpose consideration of the avoidance of fraud as one of the stated purposes, as we saw for instance in the Electronic Transactions (Singapore) Act, 2010. Then annexed to that, and this would come a little later and may help me to be a bit more brief when I come to those submissions, to understand how the dichotomy between electronic signatures and digital signatures as they may relate to, in particular, private, public key usage may factor.

Sen. Panday: I have been informed that Part IV of the Bill, clause 31(1), outlines the framework, Part IV (31)(1).

Sen. Al-Rawi: Mr. Chairman, whilst that does provide some guidance, the fundamental core before coming to the root of the proposed amendment, if I could

come to the policy behind what I am saying, the policy that I am driving at is, one, a statement that this Act is intended to better protect against fraud in electronic transactions, so that is one as a stated purpose under the Act.

Sen. Nan Gosine-Ramgoolam: This is not about preventing fraud, we have other pieces of legislation, this is about transactions, and while we may have some issues, we have other pieces of legislation like the Cyber Crime Act to deal with the issue of fraud, but we do have guidelines.

Sen. Panday: This is really setting up the framework for electronic transactions.

Sen. Al-Rawi: What I am driving at, and I am sure the lawyers amongst us would appreciate this, there is criminality as one section of the law, and then there are civil actions of fraud. So cybercrime as the medicine to deal with fraud only relates to criminality. What I am driving at is the concept of fraud in the civil realm, which is in itself a very complicated and burdensome thing as I am sure the hon. Leader of Government Business will well appreciate.

So what I am looking at insofar as we are in the heart of this legislation driving at electronic contracts, I am looking to understand if the Government has taken on board the suggestion that the civil law realm of fraud can be factored in this legislation, because we are specifically dealing with contracts in this legislation, and it is my humble recommendation, as we have seen in the models originating in Asia, in particular the Electronic Transactions 2010 Act of Singapore, that a statement as it relates to fraud would be very useful in limiting the amount of litigation that is going to arise relative to contracts which are at the heart of this Bill. So I am drawing a distinction between crime and the civil law.

Sen. Panday: My advice is that this does not deal with that aspect. What this does, it deals with the issue of setting up the framework for transactions.

Sen. Al-Rawi: Yes, and I take the point. So does the Singapore Act, for example—

Sen. Panday: This is similar to the Singapore Act.

Sen. Al Rawi: In the Singapore Act we have got 61 sections of framework legislation that specifically factor the concept of fraud in transactions, and the Act is intended to mitigate and militate against fraud, as it arises in the civil law.

Sen. Panday: As I said again, this does not remove the liability under the normal civil law. Contracts under civil law will have their remedies.

Sen. Al-Rawi: Well I am not driving at remedies, if I may be a bit more—

Sen. Panday: With the greatest respect, if there is a breach of contract you will be looking for remedies.

Sen. Al-Rawi: Yes.

Sen. Panday: Whether it is fraud or any breach of contract.

Sen. Al-Rawi: If I may ask perhaps, and this is—we are dealing with original legislation, framework legislation to start something—accepted. If I could take you perhaps to the purposes and construction set out in the Singapore Act by way of an example at section 3 of that Act which deals with the purpose of their legislation: their short framework of legislation as is ours. At Part III(d) it reads, and I quote: “to minimize the incidents of forged electronic records intentional and unintentional alteration of records and fraud in electronic commerce and other electronic transactions”—by providing for it in the legislation itself. It would be apposite to the Government’s stated interest of moving this country into the realm of a hub for electronic transactions, and inspiring confidence in the system. So it is my humble submission that we should certainly consider in the stated purpose of the legislation a statement relative to forgery or fraud or to elements that live in the civil areas as opposed to the Cyber Crime Act.

Sen. Panday: My instructions are that those issues and concerns of yours have been dealt with in Parts III and IV of this Bill.

Sen. Al-Rawi: Parts III and IV of the Bill.

Sen. Prescott SC: Mr. Chairman, may I join, just for the moment please?

Sen. Panday: And also 5(b), if you look at 5(b).

Sen. Prescott SC: Mr. Chairman, I had made the observation during my contribution that the Bill purports to provide protection to consumers, in particular Part IX. There really is a clear lack of a provision that makes it—forgive me it was Part VIII—an obligation on the vendor of services to protect the customer, and I suppose that is not surprising, but it is for the State to offer the customer protection. And I was suggesting that whereas we are very new to this world of e-commerce—and I hope I am right in saying that—there are many of our citizens who are going to find themselves going after the “city of gold”, because it has been offered to them, and there are service providers who will by deception take

advantage of those customers. So even if we want to move away from the language of fraud, could the Government tell us what is the protection that consumer has against being ‘gypped’—if that is a word—of his money by deception, by a consumer for whom there is no legislative prohibition?

Sen. Panday: My advice on this has been that that is within the purview of consumer affairs as it stands under the Ministry of Legal Affairs. As I say, we are setting up the framework given the equivalence to electronic transactions with the same as those of paper transactions.

6.00 p.m.

Sen. Prescott SC: It is not going to add to the debate, but I am not convinced that we are addressing the question we are asking. We know what the Government has set out to do, which is to establish a framework. Now is the time to say, “And we shall protect our citizens by introducing an amendment to this Act or some other Act”. I prefer this one, which speaks directly to the vendor deceiving the buyer.

Sen. Panday: As I said, what this piece of legislation does, Senator, it merely sets up the framework. The other aspect which you have spoken about will be under the other piece of legislation of consumer protection, under the Ministry of Legal Affairs.

Sen. Al-Rawi: Mr. Chairman, I thank the hon. Leader for the explanation thus far. In the interregnum, I have had a chance to look through Parts III and IV of the Bill. Part III deals with contract formation and default provisions, and Part IV deals with electronic signatures. Part III is a restatement in electronic fashion of the stand and principles that relate to contract formation, offer, acceptance, intention to create legal relations, et cetera, and goes down to, particularly, things which include the postal rule or habitual residence, et cetera. It does not go any further into dealing with the maladies of a fraud or of gypping, as Sen. Prescott SC, my learned Senior would have just put it.

Part IV deals with electronic signatures, which is a de minimis standard statement of what electronic signatures look like. The conjoined effect of those two Parts, that is, Parts III and IV, do not take us, respectfully, into any realm of protection for the consumer, which is a stated intention of this originating piece of legislation.

Secondly, a statement, most respectfully, that consumer legislation is meant to take care of the ills which we fear, is bald at best, but lacking in any content and I draw reference, specifically, to the difficulties which contract lawyers face when we look to the Unfair Competitions Act or Misrepresentation Act. We find in the law of contract, when we are in civil litigation, that it would be by far better to have a stated purpose in the originating legislation because it would hold more force and, by that, we can also import better precedent albeit from persuasive jurisdictions.

So I am very concerned that the legislation as drafted, firstly on a *de minimis* standard, and secondly, just on the putting in electronic clothing statements of contract law, does not go to the heart of consumer protection, and I am hoping that the Government would hear me on that and look to inclusion of a very simple term of the type that we have seen in the Singapore Act, 2010.

Sen. Gosine-Ramgoolam: Mr. Chairman, this piece of legislation is a transaction legislation and, therefore, the protection as far as it goes is reliability and validity of the transaction. This is not a Bill to treat with fraud. There are other pieces of legislation and other agencies responsible for fraud. We all know legislation depend on each other; otherwise it is not only going to be a Transaction Bill or Act. It is going to be a Fraud and Transaction Bill and Act.

Sen. Baptiste-Mc Knight: Mr. Chairman, as an uneducated layperson, can I ask whether there are fraudulent transactions?

Mr. Chairman: Fraudulent transactions?

Sen. Baptiste-Mc Knight: If such a thing as a fraudulent transaction exists? Because if this Bill deals with transactions and there is such a thing as a fraudulent transaction, then perhaps it could be included somewhere here. I tried to make the point in my statement, but obviously I did not get it right. I am concerned that if this is to protect me, I want to be protected from fraud. Thank you.

Sen. Dr. Balgobin: Mr. Chairman, if I may? I am sure we are in for an exciting set of discussions about the various parts of this Bill, but I wonder if I could ask perhaps somewhat dispassionately—I have listened to the discussions—whether it would really injure the interest of the Bill to include a section that says that, “This Bill also helps us to minimize fraud”. Section 3(d) from the Singapore Act says:

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“To minimize the incidence of forged electronic records, intentional and unintentional alterations of records, and fraud in electronic commerce and other electronic transactions;”

Now we know that this is not the sole purpose of the Bill. However, the Bill actually does attempt to treat with some of these things. So I think that is a strength of the Bill. It may not be a weakness. So, I wonder whether the Government would consider just including that in the statement of purpose because I do not think that it weakens the legislation.

Sen. Panday: As a matter of fact, that mere statement does not add anything. Also, to answer Sen. Al-Rawi, if one looks at clause 5(d) and (e), and in particular (e), it sets out the purpose of the legislation to:

“promote public confidence in the integrity and reliability of electronic records and electronic commerce, and to foster the development of electronic commerce through the use of electronic signatures to lend authenticity and integrity to correspondence in any electronic medium.”

So it answers your concerns.

Sen. Prescott SC: Mr. Chairman, may I once again, a propos of what Minister Ramgoolam was saying, clause 59 speaks to false information being the source of an offence. This Bill really does contemplate—there are people who are going to do criminal things, and one of them will be to provide a consumer with false or misleading information. What we seem to be urging on this side and, also, Sen. Faris Al-Rawi, is that we expand the criminal provisions to include one that speaks to someone losing his money by being deceived by a provider. It is not good enough, as this Bill does, to say, in clause 57, you simply rescind the contract if you are not satisfied. We are saying that clause 59 can be expanded to say, “Equally it is an offence to obtain money by deception from a consumer”.

Sen. Panday: That will be dealt with in the cybercrime legislation.

Sen. Prescott SC: I do not know what it provides. Can you assist us?

Sen. Dr. Balgobin: Mr. Leader of Government Business, the thing is, you have already done it. It is already here.

Sen. Panday: Pardon?

Sen. Dr. Balgobin: It is already in the Bill. You are not changing anything substantive. It is already there. You are already providing protections and remedies and so on. It is already in several parts of the Bill. There is consumer protection; there is this notion under clause 59, but the section immediately before clause 59, Part VIII, is “Consumer Protection”; and Part IX is “Contravention and Enforcement”. It is all there. So, I do not think you would lose anything just by

putting in something on the front end, if you wanted to consider doing that. I think the promise that you would do it would probably work.

Sen. Panday: Our instructions are that section 59(a) deals with the point in time when you are being authenticated and 59(b) deals with the situation of the consumer.

Sen. Prescott SC: And I am saying, clause 59(a) gives you the platform from which to say “by way of an additional offence”, that if by deception you were to mislead the consumer and get his money in your hand, then you have committed a further criminal offence, not only giving him false information but misleading him into parting with his money.

Sen. Panday: My advice is that it is outside the scope of this legislation. This legislation intends to set the framework and those issues will be dealt with in another piece of legislation, namely the cybercrime legislation which we hope to bring.

Sen. Prescott SC: Mr. Chairman, Sen. Dr. Balgobin and I are saying, make a promise that you will do it and we will be satisfied.

Sen. Panday: “The last time I did that, my wife beat meh.

Sen. Prescott SC: Give it another shot.

Sen. Panday: But we will give you and I take it we shall endeavour to—
[*Interruption*]

Sen. Ramlogan: Senator, permit me to indicate that the cybercrime legislation is, in fact, under active consideration by the Ministry of the Attorney General. Such legislation will be coming. Obtaining moneys by deception as a generic crime will in fact find its way in a fine-tuned form in the cybercrime legislation. So rest assured, any criminal issues pertaining to this particular Bill will be addressed in a separate Bill, which is the cybercrime legislation. So I want to say that by way of a general comment, but the criminal law aspects relating to this, those are matters which have been reserved for the cybercrime legislation because it will cover many other issues as well.

Sen. Al-Rawi: Mr. Chairman, first of all, I am very comforted by the quality of debate, but I wish to make a few observations. The first observation is that the discourse that is ongoing right now really revolves, yourself as an attorney-at-law, albeit acting in the capacity as Chairman; the learned Leader of Government Business,

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who himself is a very seasoned attorney-at-law; the hon. Attorney General who is an attorney-at-law; my learned Senior Sen. Prescott SC, who is an attorney-at-law and me. I will add Sen. Dr. Balgobin as a bush lawyer because he is a very good one. But my point is that—[*Interruption*—no, but he has not contributed just yet. Sen. Hinds and Sen. Beckles will pipe in.

Sen. Panday: You will not be punished if they are not included.

Sen. Al-Rawi: But the first point is that, undertakings of the type that we have heard are very good when we talk amongst ourselves, particularly as lawyers, because we know that when we give an undertaking to the Judiciary, it is as enforceable as—[*Interruption*]

Sen. Panday: An injunction.

Sen. Al-Rawi:—an order of the court, or an injunction of the court. Regrettably, in dealing with originating legislation of the type that we are dealing with now, I have no faith that that undertaking can be actioned just yet. And, as a responsible parliamentarian sitting on the Opposition Bench, I would need and ask for the Government to descend to further particulars.

Secondly, I wish to state that, because we are dealing with a very core concept principle of fraud, we have gone along the natural inclination point, which is to go along fraud as a crime. My initial point was dealing with fraud as it is related to civil law. There is a distinction between the two and the two ought to be treated separately as they are in law.

Thirdly, the hon. Leader of Government Business was dead on correct in his anticipation of the efficacy of drawing an amendment of the type of section 3(d) of the Electronic Transactions Act of Singapore, 2010, in that, he correctly anticipated that mere inclusion of a statement that these laws and the purpose of these laws are to better defend us against fraud is not enough, and that devil lies in the detail to come, which I would have come to, in the prescriptions as they relate to digital signatures.

I did preface what I was about to say by pointing out that Part IV of the Bill as it relates to electronic signatures, simply, is a de minimis standard prescription in this particular piece of legislation; and the refrains by way of echo on this side of the Parliament's Chamber in the course of the debates that we have had over two days and now today the third, have been that we ought as a policy decision to

move to the more secure standard and use of a heavier prescription of digital signatures by way of private public key usage of asymmetric cryptotechnology.

So, the hon. Leader of Government Business was correct in anticipating that it is the detail of the security of the digital signature which is paramount when one considers prescriptions against fraud, whether they relate in the criminal context or in the civil context.

6.15 p.m.

So perhaps, if I may ask, having made those few observations, is the Government going to be vehemently opposed to a beefing-up of the de minimis standard for electronic signatures, or would it be prepared to listen to the move towards a public/private key prescription aspect?

Now, before I get an answer, I would also like to point out that we have four attorneys sitting at the side of my learned Senior, the Leader of Government Business, all of whom are providing to him answers which he repeats to us by way of instructions. So, we are in a very unusual situation where the drafters of this legislation being four attorneys sitting to my right, who have not contributed to this debate, and who have not provided any form of authority as to where the legislation comes from, are directing the process. [*Interruption*] I am not attacking them, I am pointing out that when the Government makes a statement that its “instructions are”, and the instructions appear to me to be coming from legal advisors sitting to my right, then I get concerned that none of the debate that we have been having, have been factored as it relates to a core policy concept of a better standard for digital signatures as opposed to electronic signatures.

Sen. Panday: My advice is that your concerns have been dealt with in an amendment which you can find in clause 31(1) and then (3) and (4), so you are well taken care of.

Sen. Al-Rawi: Could you take us through those, perhaps?

Sen. Panday: No, no, no, when we reach there we will deal with it. We want to move on.

Sen. Al-Rawi: Well then, they being consequential clauses which affect the palatability of the present clause, it would be disingenuous to say, “Accept this clause, vote it in and then come down to the other points. I am just asking for satisfaction.

Sen. Panday: Well, if that is your attitude, we will put it to the vote. If you are saying that we are disingenuous, then we will put it to the vote.

Sen. Al-Rawi: Sure. If you wish to put it to the vote and that is the attitude, then so be it.

Sen. Hinds: Mr. Chairman, I was hoping to gain the attention of my very affable friend.

Sen. Panday: Do not call me affable at this hour! [*Laughter*]

Sen. Hinds: You do not look it but I still choose to call you that. My friend, the purpose of this committee meeting is for us to rationalize the issues and settle them. My friend, the learned Senator pointed out something and you directed him to clause 31. He then asked if we can have a look at it. It is only proper, that we do.

Sen. Panday: We are reaching there in a short while.

Sen. Hinds: I am asking you, please. Do not lose your patience. I know it is getting late in the evening, but be patient, because the purpose of this exercise is for us to get it right so, be patient, and you have a team of very able experts sitting with you.

Sen. Panday: And they are very helpful to the committee.

Sen. Hinds: Okay, and you need to set the tone. They must not become impatient so you need to set the right tone. Sen. Al-Rawi, let us take a look at clause 31 for all of our satisfaction and see how it fits.

Sen. Ramlogan: Mr. Chairman, I just wanted to respond to the comments made by Sen. Al-Rawi.

Sen. Hinds: Hon. Attorney General, before that, could we just settle this—

Sen. Ramlogan: No, let me just deal with this. Mr. Chairman, it would not be correct, in my view, to allow the records to reflect the comments made by Sen. Al-Rawi without correcting them.

Firstly, the technical staff to the left of the Leader of Government Business are not all draftsmen or persons who were involved in the drafting, there are also involved technical advisors who are involved in the policy-making process with respect to the legislation.

The second point I want to make is that it is not correct to say that they did not participate in the debate and therefore they are not competent to give any advice to us

on this matter. In fact, if my learned friend notices, the staff from the Ministry of the Attorney General, as well as the Ministry of Public Administration, have been faithfully and diligently and with all dedication sitting right there [*Points to the north platform of the Chamber*] throughout this debate, listening to us, whether we make sense or not, patiently taking notes, so that they can make informed contributions and give genuine, meaningful advice to us. So I do not think that the criticism is warranted.

Furthermore, I just wanted to point out, on the idea that we have not been willing to listen on the last occasion, permit me to say for the record, we adjourned in the middle—at the beginning of the reply by the hon. Minister of Public Administration, and we adjourned for the purpose of taking a step back and collating all of the comments that were made, and we had formed a team. That team headed by the senior draftsperson from the Chief Parliamentary Counsel, Ms. Ida Eversley, that team, in fact, met with the Ministry of Public Administration and all of the comments made during the debate, they considered them and they factored it, and these are the amendments they came up with. So it would not be correct to suggest that we are not listening.

Our policy position, for the last time, with respect to the criminal aspects of this particular Bill, our position is we will deal with those issues in cybercrime. With respect to the civil law issues raised, the common law requirements for fraud are well known and well established, and there is absolutely no need to take into account any separate consideration for this particular Bill. That is the policy position of the Government. So, we put it to a vote now based on our policy position as informed by the comments made during the course of this debate.

Mr. Chairman: I propose at the moment—it is now 6.21 pm—that the committee stage now will be suspended and the Senate will resume to deal with the Procedural Motion so we can get on with this House. Thank you.

Senate resumed.

PROCEDURAL MOTION

The Minister of State 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 the matter at hand.

Question put and agreed to.

ELECTRONIC TRANSACTIONS BILL

Committee resumed.

Mr. Chairman: Before we broke for the Procedural Motion, we were considering clause 5 as amended based on the amendments that have been circulated. I now propose to put the question.

Sen. Al-Rawi: Mr. Chairman, I am sorry. Before you put the question, there is a fundamental difference offered by my learned friend, the hon. Attorney General. He has compared apples to oranges as they relate to the applicability of the common law to electronic contracts as opposed to written contracts because it would not be correct to say, by any measure of the mind, that a signature on a de minimis basis as prescribed by Part IV of this Bill, could be comparable to that of an original signature.

And if I give an example, if we were to accept that, there being a de minimis signature, and if you compare the definition clause as to what a signature is under this Bill, it could be by way of a forged email tagline: The hon. Anand Ramlogan, the hon. Attorney General of Trinidad and Tobago sent from some unknown person, one could argue that the contract was properly formed under the provisions of Part III. It would not be open in defence to the contract being forged to now say, take that signature and take it to a forensic expert—not under the criminal law, Mr. Chairman, but under the civil law as we do in wills or as we do with contracts at times—take that signature to a forensic expert and let him put it under a microscopic analysis for weights and balances and measures.

6.25 p.m.

We go to the only man in Trinidad and Tobago, Glenn Parmassar, and we get him to analyze the signature. How could it possibly be comparing apples with apples to say that the civil law standards as they relate to fraud could apply equally when one considers the de minimis ease with which one can apply a signature and therefore conclude a contract in the electronic environment? Respectfully, I do not accept that the common law civil standards, as they relate to fraud and protection of consumers in a fraudulent—issues as they relate to fraud in the civil law, can be dealt with under this legislation. We have a huge lacuna that we have created.

Sen. Panday: Senator, I think we are confusing ourselves.

Sen. Al-Rawi: How?

Sen. Panday: We are not speaking about a signature, which can be scanned.

Sen. Al-Rawi: No, no, no, I am not talking about that. If you read the

definition “electronic signature”—

Sen. Panday: The signature is a mechanism.

Sen. Al-Rawi: No, no.

Sen. Panday:—which say—what I sent you have not changed from the—

Sen. Al-Rawi: No, no.

Sen. Panday: This is the advice from our advisors.

Sen. Al-Rawi: This is why this sort of Bill should go to a joint select committee.

Sen. Panday: “No, man. Yuh wasting time!”

Sen. Al-Rawi: Because the concepts are important concepts.

Sen. Gosine-Ramgoolam: That is a deliberate attempt to send it to a joint select committee.

Sen. Al-Rawi: It is not a deliberate attempt. This is originating legislation that has serious consequences and we cannot take it glibly.

Mr. Chairman: Obviously, there may be many more incidents that you can refer to, but would one not just plead *non est factum*, relative to say that—

Sen. Al-Rawi: Yes, Mr. Chairman, but what one would be denied, there would be a presumption that the contract is there and it is that presumption that I am trying to pin down here, in the same fashion as we pin down offences in clauses 59 and 57. Why are we half-baking the thing?

In the civil law, as it relates to the contract formation and the execution of the contract, there would be remedies available there for a physical signature that are not applicable in the electronic environment. What I am saying is, by taking it in a standard, recognized in the courts of Singapore, there has been a lot of litigation on this point, hence the reason for the move from the 1998 Singapore Act to the 2010 Act. It is not as if I am reinventing the wheel.

Sen. Panday: When we reach clause 31, we will deal with that. We intend to move on.

Sen. Hinds: Let me approach it a little differently.

Sen. Panday: When we reach clause 31, we shall deal with that issue. We want to reach at least clause 31.

Sen. Al-Rawi: There are 14 years of litigation experience on the issue in another jurisdiction, Mr. Chairman. Are we to take no knowledge of that? Fourteen years of litigation experience on the very point that I am talking about, and we in Trinidad and Tobago are to take that approach? Respectfully, Mr. Chairman—

Sen. Panday: I would not say that you are disingenuous to bring that kind of argument before the Senate.

Sen. Hinds: Take for an example, Sen. Prescott SC had raised a point earlier in relation to clause 59.

Sen. Panday: “Wait until we reach there nah man!”

Sen. Hinds: Sen. Prescott SC—

Sen. Panday: It seems to be a deliberate—

Sen. Hinds: The point that is under review now is the question of the criminal elements of the Bill. Sen. Prescott SC had raised the issue in clause 59 and pointed out that it is an offence herein, if someone:

- “(a) files information required under this Act that contains false or misleading information;
- (b) provides a consumer or a user of an electronic authentication product with false or misleading information,”

He said, okay, but if that provision of false information, the falsifying of information, leads to the person passing their money, he was then told, having suggested that, that passing of the money would be treated with under cyber legislation or some other legislation. If those are the—

Sen. Panday: We have very long to reach that.

Sen. Hinds: Just a while. If those are the facts, what we will be seeing here then is, you will charge for the misleading information under these provisions and charge separately for some other offence that caused him to part with his money.

The point Sen. Al-Rawi, I suspect, is attempting to make, or would have made, is when, you are dealing with the contractual arrangements in the electronic realm, the evidence and the circumstances are going to be very different from other considerations outside of the electronic realm. That is what he is saying.

Sen. Drayton: Could I make a suggestion, please? I understand—

Sen. Panday: We are trying to deal with Parts II and III, creating the equivalency.

Sen. Drayton: Could I make a suggestion?

Sen. Panday: Sorry, Senator.

Sen. Drayton: The question I want to raise is to try and help in this matter, while I understand the valid comments and suggestions that are being put forward. Should that be dealt with under another section, because we are really on to clauses 5 and 7?

Sen. Al-Rawi's request to deal with or postpone discussion on electronic authentication, as it relates to certification of service providers, et cetera, will be dealt with at a later part in the Bill, which is where a lot of that debate will come in, because a lot of the fraud has to do with the signatures, authentication, certificates and things as such. I want to suggest that we can move on and, under the relevant section, we deal with that matter. I think a very valid point is being raised and I think we can look at it then.

Sen. Panday: My instructions are that will be dealt with in clause 31.

Question put and agreed to.

Clause 5, ordered to stand part of the Bill.

Clause 6 ordered to stand part of the Bill.

Clause 7.

Question proposed, That clause 7 stand part of the Bill.

Sen. Panday: Mr. Chairman, I beg to move that clause 7 be amended as follows:

Delete the words after "retains"—"documents, records or information, to use, provide, accept or retain in an electronic form"—"and insert in its place:

"(a) documents;

(b) records; or

(c) information,

to use, provide, accept or retain these in electronic form."

Mr. Chairman, before I move on, may I give Sen. Drayton some comfort. "(a) documents" and "(b) records" in that part of the clause has been taken on board from Sen. Drayton.

Sen. Drayton: I know that, Mr. Chairman, thank you, but, I do have a problem and issue with clause 7(2), which I do not think is clear, and in my respectful view I think that could lead to some confusion; particularly with respect to interpreting “past conduct”. I had suggested that clause 7(2) be deleted entirely and I had suggested a replacement. I really do not know how you interpret here, “past conduct”. Is it one transaction or two transactions within a year will constitute “past conduct”?

Sen. Panday: Sen. Drayton, our advice is that your amendment was not taken on board because, as it stands here, it conforms with international best practice and this can be seen in the Singapore 2010 Act.

Sen. Drayton: But did that Act define “past conduct”?

Sen. Panday: No.

Sen. Drayton: “Customary practice”?

Sen. Al-Rawi: Just a very minor point; in the second line, to assuage Sen. Drayton’s positions, I do not think we should narrow ourselves by defining either “past conduct” or not. It is usually interpreted by the courts, in the circumstances of the situation, if the interpretation is on. I myself felt quite comfortable with it as drafted.

I am just wondering in the second line:

“(2) Notwithstanding subsection (1), with regard to parties in a transaction...”

whether we wanted to say “to a transaction,” which is the way we usually phrase it in practice.

Sen. Panday: That is really editorial and we would have no problems in adopting that.

Sen. Al-Rawi: “To” and “in” sometimes have some difficulties in interpretation.

Sen. Panday: Thank you so much.

“Notwithstanding subsection (1) with regard to penalties to a transaction...”

Delete “in” and put “to”.

Question put and agreed to.

Clause 7, as amended, ordered to stand part of the Bill.

Clause 8 ordered to stand part of the Bill.

Clause 9.

Question proposed, That clause 9 stand part of the Bill.

Sen. Drayton: The inclusion of the term “data message”—

Sen. Panday: Senator, may I humbly go before you on this one? Mr. Chairman, I beg to move that clause 9 be amended as follows:

In the first line, “the legal requirement that information” after the word “information” insert a comma.

Sen. Drayton: The term “data message” seems to be very superfluous, because if you look at the definition for “electronic form” and “data message”, you would see that “electronic form” includes “data message”. To me, anywhere this is mentioned—incidentally it is also in clause 8. You need to refer— if you look at the definition of “electronic form”, saying here:

“record or data message is presented in electronic form,”
but “electronic form” is already defined.

Sen. Panday: I apologize to you. As far as we look at the interpretation, there is no definition for “electronic form”.

Sen. Drayton: But you have defined “electronic”.

Sen. Panday: Yes, but not “electronic form”.

Sen. Prescott SC: Sen. Panday, while you contemplate on it, can you distinguish between storing by electronic means and storing in electronic form?

Sen. Panday: Pardon?

Sen. Prescott SC: I was enquiring whether you could distinguish between storing by electronic means and storing by electronic form, if they are not distinguishable.

Sen. Panday: One is a process.

Sen. Prescott SC: Well, you have now confused me, and I am sure that is not what you intended to do. What I understand Sen. Drayton to be saying is that the definition of “data message” speaks of things being stored by any electronic means and, therefore, when you, in clause 9, speak of data message presented in electronic form, unless those words mean something different from data stored by electronic means, it becomes superfluous.

Sen. Panday: Our advice is that to do so would invalidate the applicability of the Bill.

Sen. Gosine-Ramgoolam:—to a substantial amount of subjects intended to be captured. If we delete the words “data message” this would invalidate the applicability of the Bill to a substantial number of subjects intended to be captured. As a result, by omitting the term “data message” the necessary legality granted to this substantial portion of subjects may be voided.

6.40 p.m.

Mr. Chairman: So the question is that—

Sen. Al-Rawi: I did not understand—sorry, Mr. Chairman. Not that I did not understand that, I understood what the hon. Minister said, but as to what it means in relation to the question was another point. I think that—if I understood my learned Senior, Sen. Prescott, SC well, he was asking whether it was superfluous to use the phrases “electronic form” versus “electronic means”. I think that is what Sen. Prescott was asking—

Sen. Prescott SC: Yes.

Sen. Al-Rawi: I did not catch it that he was asking for the deletion of “data message” because I agree with the hon. Minister that that would run to the root of one of the purposes of the Bill.

Sen. Panday: Sen. Drayton, we bow to your wisdom and we have been advised that the words “data message” can be replaced by the word “document”.

Sen. Al-Rawi: Is that in both?

Sen. Panday: Yes please, Sir—

Sen. Al-Rawi: Are you sure? Because—

Sen. Panday: (b) line 1 and line 3, please, Mr. Chairman.

Sen. Gosine-Ramgoolam: It said “record” or “documents”.

Sen. Dr. Balgobin: I am now confused.

Sen. Gosine-Ramgoolam: He always does.

Sen. Panday: Well, you must follow me.

Sen. Al-Rawi: Mr. Chairman, if that is going to be the case, just before, albeit a noble concession on the hon. Leader of Government Business’ part but, may I enquire then—and this is why I had actually left out the definition section for last, or suggested it to be left out for last. We would then go back and look to the definition of “data message” as it is currently constructed, and also then think of

the use of the word “document”—is that what the consequential effect of accepting the removal of “data message” is to be?

Sen. Gosine-Ramgoolam: That is why data message is the universal set—

Sen. Al-Rawi: Yes. So, I myself did not have any difficulty with the use of the word “data message”—

Sen. Gosine-Ramgoolam: Why do you limit yourself to “documents”?

Sen. Al-Rawi:—mainly because there was a definition of “data message” in clause 2.

Sen. Panday: I am further advised that in line—1, 2, 3, 4—line four also delete “data message”. Yes sorry, sorry, sorry Sir.

Sen. Al-Rawi: May I ask the Leader of Government business why?

Sen. Dr. Balgobin: Yes. Could I just interject here with just a simple question that I am having some difficulty with? Assuming that there was some logic to this at the outset, what would be the difference between “information or a record in electronic form” versus a “data message”?

Sen. Panday: Could you kindly repeat, Sir?

Sen. Dr. Balgobin: What would be—if I look at clause 8, I mean Part II, clause 8 on page 7—

Sen. Panday: Yes

Sen. Dr. Balgobin:—first line, what is the difference between “information or a record in electronic form” versus “a data message”? Because they are defined, so I think the genesis of the confusion is whether we are referring—the two terms refer to same thing or not?

Sen. Prescott SC: Well done, Dr. Balgobin.

Sen. Dr. Balgobin: Oh, I thank you. I do try my best sometimes.

Sen. Ramkhelawan: Mr. Chairman, while we deliberate on some of these things, since this is original legislation as far as we are concerned, I myself do not have a problem if something is superfluous. I will have a problem if it is contradictory in nature, so if you have reinforcements in the legislation, I am not too concerned about that. I think we might be spending too much time trying to cut and chip if there is reinforcement. I prefer to deal with the areas where there is clear contradiction, so that we could get some clarity in—

Sen. Panday: Our advice is that there is no contradiction.

Sen. Al-Rawi: Mr. Chairman, just for the record, I am not for the removal of “data message”—good; (1), and (2) “data message” as it is defined in Part II is very broad and very helpful because it includes graphic, video and other aspects.

Mr. Chairman: With duplication he has no problem but if we refine it and—

Sen. Al-Rawi: But it is more than duplication—

Sen. Drayton: Mr. Chairman, I have no problem.

Mr. Chairman: What do you want to do?

Sen. Panday: So, Sen. Drayton—

Hon. Senator: We leave it.

Sen. Panday: Do you have any problems?

Sen. Drayton: No.

Sen. Panday: Thank you.

Sen. Panday: Mr. Chairman, the amendment is only the comma in line one.

Mr. Chairman: By insertion of that comma after the word “information” in line 1.

Sen. Panday: Clause 9 line one after the word “information” insert a comma and—

Question put and agreed to.

Clause 9, as amended, ordered to stand part of the Bill.

Clause 10.

Question proposed, That clause 10 stand part of the Bill.

Sen. Drayton: Chairman, I had submitted an amendment here, because the clause in the margin is defined as “the provision of information”. When you are dealing with sending information via electronic means, and we are speaking of contracts, are we just dealing with the “provision of information” or the “delivery, provision and delivery”? Because to send information via electronic means does not necessarily mean that it has been provided, because of the nature, the fragility of technology for all sorts of reasons, that information may not have been provided at all or delivered. So, I had suggested an amendment here, since the context of the clause deals with a legal requirement.

Sen. Panday: Sen. Drayton—you want to go? Okay, go ahead.

Sen. Gosine-Ramgoolam: Yes, that clause, Sen. Drayton, we looked at it, but it was not considered because the suggested recommendation, it does not treat with the substantive element that the existing clause can achieve, and that may have a considerable negative effect. Because your recommendation was:

“Where information is required by law to be delivered, dispatched, given or sent to, or to be served on, a person—that requirement is met by doing so in the form of an electronic record provided—that the originator of the electronic record states that receipt of the electronic record is to be acknowledged and the addressee has acknowledged its receipt—”

That is your comment—

Sen. Panday: And in addition to that, the original clause that was drafted requires the information “received” to be able to be stored by the receiving party for subsequent use and reference—

Sen. Gosine-Ramgoolam: Yes.

Sen. Panday:—the issue of sending is to be dealt with in clause 24.

Sen. Gosine-Ramgoolam: Twenty-four.

Sen. Drayton: Twenty-four?

Sen. Panday: Yes.

Sen. Drayton: So that the delivery part—

Sen. Gosine-Ramgoolam: Yes.

Sen. Panday: Yes.

Sen. Drayton:—has been dealt with?

Sen. Gosine-Ramgoolam: Definitely, we did take that up.

Sen. Drayton: In what clause?

Sen. Panday: Twenty-four.

Sen. Gosine-Ramgoolam: And 25.

Sen. Panday: And 25.

Sen. Gosine-Ramgoolam: Sending and receiving; that is sending and receipt.

6.50 p.m.

Sen. Panday: Senator, this clause really deals with receiving and retaining.

Sen. Drayton: Okay, if I have any concerns under 24, I will raise that.

Clause 10 ordered to stand part of the Bill.

Clause 11.

Question proposed, That clause 11 stand part of the Bill.

Sen. Drayton: Mr. Chairman, I beg to move that clause 11 be amended as follows:

Delete the words “data message” wherever they occur within the clause.

In view of the previous decision on data message, that can be withdrawn.

Amendment withdrawn.

Clause 11 ordered to stand part of the Bill.

Clauses 12 to 15 ordered to stand part of the Bill.

Clause 16.

Question proposed, That clause 16 stand part of the Bill.

Sen. Drayton: I beg to move that clause 16 be amended as follows:

Delete the word “as” occurring after the words “shall be; “

Delete the words “as a message containing a non-electronic signature” occurring after the word “effective”.

I had suggested that the word “as” occurring after the words “shall be” be deleted. It reads currently:

“A copy of a data message containing an electronic signature shall be as valid, enforceable and effective as a message containing a non-electronic signature.”

To my mind, that is assuming that a message containing a non-electronic signature would necessarily be valid or enforceable.

Mr. Chairman: I thought it meant neither more nor less. That is what I took it to be.

Sen. Al-Rawi: What is meant by “message”? I am sure “message” is intended to capture—

Sen. Panday: It is not meant to capture anything; it is data message.

Sen. Al-Rawi: If we can pause and think of that for a moment, “message”, did we want to say “document” or something else? I understand what we are trying to say, but I am looking at the palatability in law; in a very specific looking glass sense.

Mr. Chairman: You have an email that has a non-electronic signature. I think the message was in that wider—

Sen. Al-Rawi: I think you said it very correctly; no more or no less valid than something that was actually signed, but when one thinks of what can be signed, it is usually in the context of evidence.

Sen. Baptiste-Cornelis: We are talking about electronic signatures. I can send you an email without an electronic signature, but I can have software that puts on electronic signatures, so that there is no doubt that it came from me. We are not talking about signature as in signing.

Sen. Al-Rawi: That is not the point I am on.

Sen. Baptiste-Cornelis: What are you getting at, because it is covered there?

Sen. Al-Rawi: Calm down! Dealing with the concept of “message”, the clause is driving at putting an electronic signature at no more or no less a standard than a written signature, a physical signature. I am not on about the signature at all; I am on about the use of the word, “message”.

Mr. Chairman: Medium.

Sen. Al-Rawi: That is what I am on about; nothing to do with signature and whether it should be digital or electronic or anything like that. I am on about the concept of message, an undefined term, “message”.

Sen. Gosine-Ramgoolam: Are you saying you want the word, “document”, instead of “message”?

Sen. Al-Rawi: Truthfully, I do not know what I want, but I know that it jumps out at me.

Mr. Chairman: “document” does capture everything in common parlance.

Sen. Panday: Then we can delete the word, “message”, and insert the word, “document”, and that will solve the problem.

Sen. Al Rawi: I would think so.

Sen. Panday: I know you do not know what you want, but I think this might be—

Sen. Al-Rawi: I know I genuinely do not know what I want, but I know it jumps out at me as not being right.

Sen. Gosine-Ramgoolam: “document” will solve the problem.

Sen. Baptiste-Cornelis: If you just say “document”, you are referring to the actual document attached. The data message will be the entire email. The attachment is the pdf. That is the entire message. It is more than just the document. The data message will be the email with the attachment.

Sen. Al-Rawi: For clarification, what I am on about is, in the context of litigation, when an issue arises as to something being a message as opposed to a document. I am looking at the distinctions as to where a mischief can arise.

Sen. Baptiste-Cornelis: If we go to just the document, we are negating the content of the email. I can send you a document attached to an email and the email says something that is relevant.

Sen. Al-Rawi: Let me put it this way. A message conveys that you are actually conveying something. A message is to someone whereas a document may be of a lesser standard. It could be an innocuous thing. It could be a transaction trail.

Sen. Baptiste-Cornelis: You want to lower the standard?

Sen. Al-Rawi: Yes, I do, so that the use of a signature on to it is at a lower level. It is specifically to lessen the standard.

Sen. Prescott SC: Mr. Chairman, I would like to join in this, please. Can the Leader of Government Business or the Minister tell me: is it that a judge now gets the following direction that he will accept as valid any document whether or not it bears an electronic signature? Is that what clause 16 is saying, that from henceforth a judge of the High Court shall accept as valid any document which bears an electronic signature or a non-electronic signature?

Mr. Chairman: What is meant is that all the law related to contractual evidence, as to whether a contract exists, will be similar whether or not it is in electronic form or non-electronic form.

Sen. Prescott SC: So we will now have two different kinds of transactions. There are electronic transactions that have specific laws pertaining to them and

there are the ordinary commercial transactions based on the old approaches where non-electronic signatures are used. Do they have a different law applying to them?

Mr. Chairman: The law remains the same.

Sen. Prescott SC: In that case may I ask that Senators look at the language of clause 16, “simply reflecting a copy of a data message containing an electronic signature, shall be valid, enforceable and effective.”

Mr. Chairman: I suggest, if we look at the law as it stands now with a written signature, I may nonetheless say that I have not created a contract between the parties, non est factum, whatever else. You do not want to take away the legal principles that relate to whether or not a contract is formulated just because we have gone to a non-electronic form of signature.

Sen. Panday: We maintain the equivalence.

Sen. Ramlogan: This is really more or less a validating measure to plug the gap. However, for the purposes of private transactions that require signatures—suppose the transaction requires an original signature and you have an electronic one, this will validate it. That is why I said before that the common law requirement for contract formation and so on has not changed. For example, we did not have fax machines, there was the postal rule; but when fax machines came about in this country, we did not pass a law to say how you would form a contract by fax. The common law is a living instrument and technological changes, insofar as they are incorporated into commercial transactions and dealings, the common law courts will deal with that. Insofar as the criminal element goes, we will deal with it in cybercrime legislation.

Sen. Prescott SC: In that case, Mr. Chairman—and I understand where the hon. Attorney General is going—Sen. Drayton has said do not present legislation that compares the electronic signature with the non-electronic. If you want electronic signatures to be regarded as valid, say so. Do not say they are as valid as something else because the standard by which it shall now be judged will be that other thing. So say: “A copy of a data message containing an electronic signature shall be valid”.

Sen. Ramlogan: That is what it says.

Sen. Prescott, SC: No. It says as valid as something else; as valid as Carnival Monday. Why compare it to oranges?

Mr. Chairman: My own concerns, Sen. Prescott, if we just made the formula as simple as you said it, the judge will not be able to use the current laws applicable to whether formation of contract made the contract valid. He would be compelled, once you had an electronic signature, to say the contract is valid.

Sen. Prescott SC: Excellent! May I say, therefore, that all we tell the judge is that it is valid for all purposes of electronic transactions? Is that what we are after?

Sen. Ramlogan: One transaction may involve both electronic and non-electronic. There may be an addendum to a contract.

Mr. Chairman: The law sought to incorporate all the law of contract without having to repeat all of it, saying that the law of contract continues to apply relative to electronic signatures, just as if it were a non-electronic signature.

Sen. Prescott SC: May I ask one more question to clarify for myself? If two parties were inclined to enter a contract, one sends his electronic signature and the other his original signature, it appears that we are saying such would constitute a contract at law anyway. The fact that one person has actually applied his pen and the other has—

Mr. Chairman: Provided it met all the criteria for determining that the contract has been formed.

Sen. Prescott, SC: I remain very wary, Sir. But then the dinosaur logic probably is stepping in.

Sen. Al-Rawi: I understand the intention of the clause. “Message”, if I can just zero in on it, is intended to achieve a description in the physical world—

Mr. Chairman: I think we had gotten past where we agreed to “document”.

Sen. Al-Rawi: I was not sure we had agreed to “document”. Thank you.

Sen. Panday: Mr. Chairman, I have been advised that the word “document” might be too restrictive.

Sen. Al-Rawi: Because it is meant to be the same as a data message. That is the point I was going to make just now. The problem is that the data message is a much broader thing, video recording, picture.

Sen. Panday: After “document”, we would like to insert “, record or other communications containing a non-electronic signature”.

Sen. Al-Rawi: Insofar as data message contemplates books, plans, maps, drawings, diagrams, pictorial or graphic work, photographs, audio, video recording, machine readable symbols—we can stop there; the rest are electronic—I am asking whether communication would take care of a picture.

Sen. Panday: Our advice is, yes. It would be all inclusive.

Mr. Chairman: The question is that clause 16 be amended by deleting the word “message” in line 2 and replacing it by the words “document, record or other communication.”

Question put and agreed to.

Clause 16, as amended, ordered to stand part of the Bill.

Clause 17.

Question proposed, That clause 17 stand part of the Bill.

Sen. Panday: Mr. Chairman, Sen. Drayton, has submitted an amendment. Senator, your amendments are valid. They were taken into consideration. However, they would be included in an amendment to the Evidence Act.

Sen. Drayton: I suppose we will just have to take that as an undertaking. It is just that I felt that inasmuch as in the side bar you are speaking about admissibility and evidential weight and you have included a clause that is very weak in the context of admissibility and evidential weight—as you said, if it is a promise you are making.

Sen. Panday: I make it on behalf of the hon. Attorney General.

Sen. Hinds: The Senator’s amendment was taken. I thought I would have seen it in the present Bill, but I will take it in the Evidence Act at a time undefined.

Question put and agreed to.

Clause 17 ordered to stand part of the Bill.

7.05 p.m.

Clause 18 ordered to stand part of the Bill

Clause 19.

Question proposed, That clause 19 stand part of the Bill.

Sen. Prescott SC: Mr. Chairman, before you commence discussion on clause 19—I hope I am not out of place—Sen. Drayton has circulated that a recommendation for a new clause 19 which appears to fit into Part II. So I wanted to pre-empt discussion on the existing clause 19 and ask whether Senators will consider that amendment as circulated by Sen. Drayton. It appears to me that it is worthy of consideration.

Mr. Chairman: Oh, I see. So this is an additional clause?

Sen. Prescott SC: Yes. Has the Leader of Government Business or the Attorney General looked at it? It says that:

“An expression in a law whether used as a noun or verb, included the term ‘document’, ‘record’, ‘file’, ‘submit’, ‘lodged’, ‘deliver’, ‘issue’, ‘publish’, ‘writing’, ‘print’—and I am including the word “retrieve” “or words or expressions of similar effect shall be interpreted so as to include or permit such form, format or action in relation to an electronic record”—and I am adding “or electronic document.”

So that one would treat with those words as being both nouns and verbs. There will be no need to get into interpretation at all, providing that the language we are using relates to electronic documents or electronic records.

Sen. Panday: As you say, hon. Senator, it is a valid contribution, however, our advice is that clause 53 attempts to deal with that issue.

Mr. Chairman: What I understand of the procedures, Sen. Drayton and Sen. Prescott. SC, is that new clauses are taken at the end unless, of course, it—

Sen. Prescott SC: We are guided.

Sen. Drayton: So this will be dealt with? [*Crosstalk*]

Mr. Chairman: I am not sure that it will be but I am saying that is the procedure.

Sen. Panday: Pardon, Senator?

Sen. Drayton: You are saying that this will be dealt with at the end of— [*Interruption*]

Sen. Panday: At 53, also the other clauses which we have already, in addition to that, dealt with, for example, clause 7.

Sen. Drayton: Well, if you say we will deal with it at the end—because I have looked at 53 and I am not quite satisfied, unless I could get some satisfactory explanation well then we could deal with it at the end or unless the Government wish to deal with it now.

Sen. Dr. Balgobin: Mr. Chairman said at the end.

Sen. Drayton: Mr. Chairman said at the end? So the end.

Sen. Panday: Hon.Senator, we accepted your amendment in 19(b). We inserted after the word “its”, “legal effect, validity or enforceability”.

Mr. Chairman: Just to make it clear, I was not saying that the Government side would deal with the new clause 19 later on, I was merely saying as a procedural matter according to the Standing Orders, if you want to introduce a new clause, we must deal with that after we have finished all the clauses in the Bill.

Sen. Drayton: Okay.

Mr. Chairman: So the question now is—Sen. Prescott, you had a—

Sen. Prescott SC: Sir, I am saying that I appreciate your guidance.

Mr. Chairman: I appreciate the guidance I have got too. [*Laughter*]

Question put and agreed to.

Clause 19, as amended, ordered to stand part of the Bill.

Clause 20.

Question proposed, That clause 20 stand part of the Bill.

Sen. Drayton: In view of the previous discussions I have no problem.

Question put and agreed to.

Clause 20 ordered to stand part of the Bill.

Clause 21 ordered to stand part of the Bill.

Clause 22.

Question proposed, That clause 22 stand part of the Bill.

Sen. Panday: In 22(1) line one, after the word “concluded” insert “or a transaction undertaken”.

Question put and agreed to.

Clause 22, as amended, ordered to stand part of the Bill.

Question put and agreed to.

Clauses 23 to 25, ordered to stand part of the Bill.

Clause 26

Question proposed, That clause 26 stand part of the Bill.

Sen. Panday: Mr. Chairman, Sen. Drayton had submitted an amendment which stated that—it has been suggested that the word, “address” at line four be deleted and replaced by the words, “place of business”. The Government has accepted that.

Mr. Chairman: Is it both places? Because it is “originator’s address” and then the “addressee’s address”. [*Crosstalk*]

Sen. Panday: “Addressee’s address”, sorry.

Mr. Chairman: The thing about place of business on the other hand, you may have individuals who enter into a contract that may be from their address and not a place of business. I am just concerned about that.

Sen. Drayton: So I think that is what my amendment was trying to capture. Yes it is both.

Sen. Gosine-Ramgoolam: Reflect both place of business and habitual residence.

Sen. Al-Rawi: Well “address” being broader and safer. I would have stuck with address alone.

Sen. Gosine-Ramgoolam: Yes! “Address” takes up place of business as well as your habitual residence because that is the universal term, “address”. It could mean your business place or your residence.

Sen. Al-Rawi: Actually my submission is that I agree with it as originally drafted as opposed to the amended version.

Sen. Gosine-Ramgoolam: That is right, so we did not change that.

Mr. Chairman: Sen. Drayton? Sen. Prescott?

Sen. Prescott SC: Once again, may I ask the usual question? Are we speaking about an email address? [*Laughter*]

Mr. Chairman: Good question. I think it meant physical.

Sen. Prescott SC: I beg your pardon?

Mr. Chairman: In the context of 28, I thought it meant physical.

Sen. Prescott SC: So information or record in electronic form can be sent to my post box? [*Crosstalk*]

Sen. Gosine-Ramgoolam: Twenty-six.

Sen. Panday: Twenty-six, Mr. Chairman.

Sen. Prescott SC: Does 26 mean that information in an electronic form can be sent to my physical mailbox at my house? Sorry, am I being heard?

Mr. Chairman: If I have a laptop—

Sen. Prescott SC: Excuse me, Sir?

Sen. Drayton: I think that is why I had recommended that that be deleted.

Sen. Prescott SC: So sorry, may I ask the question again; does 26 refer to email address?

Mr. Chairman: I think it is a very good question, Senator.

Sen. Prescott SC: Well Sir, may I take it beyond that now, thank you very much, and invite an answer from those who know better?

7.15 p.m.

Mr. Chairman: I suspect, because there is a deeming provision there in line three, I think it is supposed to be physical. So, what it is saying is wherever you may have your laptop, and from wherever you may send it, it would be deemed to have come from your physical residence or your place of business.

Sen. Al-Rawi: I thought the opposite, the distinction being the difference between an IP address, because your laptop would have one unique IP address whether you are in New York or in Trinidad as opposed to a physical address. Sen. Prescott's question is, what is the distinction, if any, that we are to draw here?

Mr. Chairman: I think part of this may treat with the question of where is the contract made, for instance, and the deeming provision is that your physical address would be used as a determinant as to where you carried out this correspondence from, even though you may be in New York with your laptop.

Sen. Deyalsingh: Mr. Chairman, if we look at clause 26 and juxtapose it with clause 28, because clause 28 deals with the physical habitual residence; is it that clause 27 should be interpreted to just be an IP address?

Mr. Chairman: Clause 26 was intended to be place of business.

Sen. Panday: Our advisors have indicated that it should be amended thus:

“Unless the originator and the addressee agree otherwise,” delete “information or a record in electronic form”, because once it is sent it is a data message. So we would delete “information or a record in electronic form” and continue— “a data message is deemed to be sent from the originator’s place of business and to be received at the addressee’s place of business.”

Sen. Al-Rawi: And then clause 28 takes care of it.

Sen. Gosine-Ramgoolam: And then clause 27 would take care of the electronic aspect.

Mr. Chairman: So, you are taking out “information or a record in electronic form or” and you are substituting for “address” “place of business” in both places.

If I may go through the amendment, clause 26 is amended by deleting the words in line 2 “information or a record in electronic form or” and also by deleting the word “address” as it appears in lines three and four and replacing it with the words “place of business” in each case.

Sen. Hinds: Is there any change in the side note?

Mr. Chairman: It is really after where is the place of sending.

Sen. Hinds: No change in the side note: “Place of sending and receipt of information or record”.

Sen. Panday: Delete “information or record” and insert “data message”.

Sen. Hinds: Yes, thank you.

Sen. Panday: We thank you for your contribution, Sir.

Sen. Hinds: I thank you as well for listening unusually. [*Laughter*]

Mr. Chairman: The side note is amended to read: “Place of sending and receipt of data message”, and in the substantive clause 26, delete the words in line 2 “information or record in electronic form or” and delete the word “address” as it appear in lines three and four and replace it in both places by “place of business”.

Question put and agreed to.

Clause 26, as amended, ordered to stand part of the Bill.

Clause 27.

Question proposed, That clause 27 stand part of the Bill.

Sen. Drayton: Yes.

Sen. Panday: This has been addressed in clause 26. Thank you very much, Senator.

Mr. Chairman: We have accepted the amendment?

Sen. Panday: Yes Sir.

Mr. Chairman: Sen. Drayton, do you still have some concerns or not?

Sen. Drayton: I think clause 26 was different actually from clause 27. What I had suggested here, for instance, under clause 27(a) is that we are speaking about:

- “(a) the principal place of business of the originator or the addressee of the data message, or.
- (b) if the originator or addressee of the data message has no place of business, then the habitual residence of the originator or addressee of the data message...”

Sen. Panday: Hon. Senator, that has been dealt with in clause 28.

Sen. Drayton: In clause 28?

Sen. Panday: Yes, please, Senator.

Sen. Drayton: Okay, all right.

Sen. Panday: Thank you so much.

Question put and agreed to.

Clause 27 ordered to stand part of the Bill

Clause 28.

Question proposed, That clause 28 stand part of the Bill.

Sen. Deyalsingh: Mr. Chairman, at last week's debate there was some discussion from Sen. Dr. Balgobin and myself as to whether we should be using digital signature as opposed to electronic signature.

Mr. Chairman: Senator, when I looked at the definition of the word “electronic” it says:

“‘electronic’ means being in digital or intangible forms...”

So they used the word “electronic” but “electronic” means being in digital or intangible form.

Sen. Al-Rawi: Mr. Chairman, may I suggest that clause 28, is perhaps agreeable to all and we could agree to that and then come to the policy point on digital and electronic?

Sen. Panday: Sure.

Clause 28 ordered to stand part of the Bill.

Clause 29.

Question proposed, That clause 29 stand part of the Bill.

Sen. Al-Rawi: Mr. Chairman, the bugbear “by way of genuine discussion” is, whether we ought to accept a de minimis standard for electronic signature. I accept that electronic includes digital—

Mr. Chairman: It just does not include, it means.

Sen. Al-Rawi: Yes, it means. I am using it in the concept of the discussion of the terms in the law as it prevails at present. So, electronic being digital, causes me no concern. What I am on about is how secure is the system of protection relative to the signatures that we use, and do we descend into a tighter adoption approach for public/private key, asymmetric crypto type of technology? In other words then, do we take onto ourselves a higher standard for public versus private key acceptance signatures? That is the key for me. That is essentially a policy decision which obviously originates in the Government, and which I hope to persuade them into accepting a higher standard as opposed to the lower standard.

Sen. Ramkhelawan: Mr. Chairman, if I may, I would just like to add to the thoughts of my learned friend and, that is, when you look at more updated legislation, what you see is that there is a definition—and we refer all the time to the Singapore legislation—for electronic signature, but there is also a definition for digital signatures. They are both there. I think the reason is that it is expected

that the digital signature provides a higher level of defence and insulation and it is closer to—this is in layman terms—or less able to be forged than an electronic signature which is broader. I feel we have settled in to this point that digital signature is a subset of an electronic signature, but there is a differentiation.

Mr. Chairman: What I would like to suggest, Senator, legally, as I look at it anyhow, they have used the word “electronic”, so it did not matter what they called it. They could have called it Timbuktu, and it says this means being in digital or intangible, that is the higher standard.

Sen. Ramkhelawan: Mr. Chairman, I accept that point. It means that, but we do not have a definition for “digital”.

Mr. Chairman: Or, I see.

Sen. Ramkhelawan: That is what I am saying.

Mr. Chairman: It goes on to say with the capability of creation, storage in magnetic, electronic, wireless, optical and biometric and so on.

Sen. Al-Rawi: Mr. Chairman, it is not so much the present technology by which we label “electronic”, be it digital or some other form of evolving technology. The literature relative to this discussion suggests that it is open to countries to accept a lesser standard because it takes care of technology neutrality. Indeed, that is what the Minister prescribed to us, and that is replete in a number of jurisdictions as a prescription method as to why one should not confine oneself to a strict description of a type of technology as at today’s date.

Sen. Panday: India had that problem where they had to—

Sen. Al-Rawi: In their Information Technology Act, 2000, and I did look at that as well in detail. I looked at all of the amendments in India, in particular, because they started their Information Technology Act as early as 2000, and they have had a system of amendments coming forward. What I am on about, though, is the prescription of a digital signature as defined in the Singapore Act by way of an example. When you look at the strict interpretation of asymmetric crypto functions and hash functions, they are also technology neutral, but they go to a higher standard.

Sen. Panday: You see, using electronic signature, we have widened it for members of the public. We agree with you on the last point, and we are saying that has been taken care of in clause 31.

Sen. Dr. Balgobin: I concur with Sen. Panday's observation. I think that as it was originally put forward there were gaps. I think we ought to understand two things; one has been said very clearly and one was implied for reasons that would become clear when I make it explicit. The first is that there is a globally accepted distinction between what is an electronic and what is a digital signature. They are not synonymous. Our Bill has come up with a very broad definition of an electronic signature. However, it has tightened considerably by the time we get to the amendments of clause 31.

Now, before I commend the Government on that, the thing that was implied but really not stated, and the concern that we had expressed earlier on in the initial clauses of this Bill, really come into sharp relief now, and that is, you do not want to create an identity theft industry here, and this legislation can, in fact, assist in doing unless the cybercrime legislation and so on comes quickly. You are, in fact, creating the framework for this.

Now, in a previous clause, what we saw was that electronic signatures are given equivalence to handwritten ones, and so the standard should be at least as high. That is the rub. The standard for the electronic signature ought to be at least as high as for a person physically standing there and signing something.

What I would say is that in looking at the amendments, I gather that clause 31(1) as amended contemplates this, having had the benefit of the debate, and it has tightened it a fair deal. So I would fall on the side of getting to clause 31(1) and taking the debate there. I am satisfied that our comments on the matter have been received by the Government and the adjustments have been made. I am satisfied with it and I am supportive of it as well.

Sen. Drayton: I support that as well in looking at clause 31(1).

Sen. Panday: Thank you very much, Senators.

Clause 29 ordered to stand part of the Bill.

7.30 p.m.

Clause 30.

Question proposed, That clause 30 stand part of the Bill.

Sen. Drayton: Mr. Chairman, I find the words, the terminology, "or is as reliable as appropriate", very weak language from a technical point of view.

Sen. Al-Rawi: It is confusing for the legislation.

Sen. Drayton: I think so. [*Laughter*] I should say unbecfitting for legislation and I suggest that those words be deleted. And again, if you go to 31(1), which I know is now amended, where it has put in the necessary criteria for the integrity of electronic signatures, I just wonder whether you need that phrase at all.

Sen. Panday: Hon. Senator, although I agree with you in terms of elegance, my advice is that clause 53—it must be read in conjunction with clause 53 and then clause 31 strengthens the whole system.

Sen. Nan Gosine-Ramgoolam: Mr. Chairman, I think in addition to what Sen. Panday said, this clause is designed to ensure that there is flexibility. The current clause as drafted is more flexible and more easily allows for both distinctions in the form of signature, the nature of future technology, because we do not know what future technology will be all about and an expansion of categories of records to which particular forms of signature might be attached.

Sen. Drayton: Well, I agree with all of that. I think that is the intent and, okay, if it is described as just inelegant language and not very bad language.

Sen. Panday: Senator, we shall satisfy you. We will delete clause 30, line 1, 2, 3, 4, after the word, “integrity”, from the word “or” straight down to the end, and insert in its place “as set out in section 31(1) or as prescribed under section 53(3).”.

Sen. Drayton: Thank you.

Sen. Nan Gosine-Ramgoolam: You are welcome.

Mr. Chairman: The question is that clause 30 be amended by deleting in line four and onwards the words “or is as reliable as appropriate, given the purpose for which in the circumstances in which the signature is required” and replacing them by the words “as set out in section 31(1) or as prescribed under section 53(3).”.

Question put and agreed to.

Clause 30, as amended, ordered to stand part of the Bill.

Clause 31.

Question proposed, That clause 31 stand part of the Bill.

Sen. Panday: Mr. Chairman, in 31(a) as circulated—

Mr. Chairman: The question is that clause 31 be amended as circulated:

- A. In subparagraph (c) delete the word “and”;
- B. In subparagraph (d) delete the words “detectable.” and replace with the words “detectable; and”
- C. Insert after paragraph (d) the following:
 - “(e) such other criteria as may be prescribed by regulations.”.
- D. Insert after subclause (2) the following:
 - “(3) The Electronic Authentication Products referred to in the Schedule are the products which can be used to validate an electronic signature under subsection (1).
 - (4) The Minister may by Order amend the Schedule.”.

Sen. Prescott SC: Just a question please, Mr. Chairman. On my copy the letter (d) is removed. Is that how it should be? Because the next provision is (e).

Sen. Al-Rawi: The strike through of (d) is what?

Sen. Panday: That is a typo.

Sen. Prescott SC: So (d) remains?

Sen. Panday: Yes Sir.

Sen. Prescott SC: Thank you.

Mr. Chairman: The question is that clause 31, as circulated but with the reintroduction of subsection (d), the word (d)—

Sen. Panday: It is not affected in the Bill itself but in the track change.

Mr. Chairman: We are returning the (d), the amended—it is a special (d) by itself and (e) remains (e). It is just that the (d) came out by mistake. The question is that clause 31 as amended with the inclusion of (d) now stand part of the Bill.

Question put and agreed to. Clause 31, as amended, ordered to stand part of the Bill.

Clause 32.

Question proposed, That clause 32 stand part of the Bill.

Sen. Drayton: Mr. Chairman, I had made a suggestion here and that is to delete the words “associated with” and substitute by including “authenticated using”. So, it would now read—the first line of 32, what is here now in the Bill, it says, “An electronic signature that is associated with an electronic authentication product...”, that is, of course, unless I do not understand what you mean by “associated” and I suggested instead it read, “An electronic signature that is authenticated using an electronic authentication product...”. I think that clarifies, rather than “associated with”. I do not understand the term.

Mr. Chairman: I do not know what “associated with” means myself. This is a very technical term.

Sen. Drayton: Yes, I do not understand what it means, “associated with”.

Sen. Panday: Mr. Chairman, the amendment was noted and our advice is that the language used in the current draft is more encompassing, keeping in mind the concept of technology neutrality.

Sen. Prescott SC: May I, for my own edification, ask what does “associated with” mean?

Sen. Dr. Balgobin: I think, Mr. Chairman, if I could assist in clarification, what you mean when you say “associated with” would probably be “generated by” or “generated through”.

Mr. Chairman: That may be a narrower subset of what is intended. Let us listen for the answer.

Sen. Prescott SC: Sir, I bow to the superior knowledge of those who know about electronics.

Mr. Chairman: It is not a language issue, it is a technology issue I am told.

Sen. Dr. Balgobin: Well, you see the electronic authentication service provider has a proprietary method for encryption and decryption.

Sen. Panday: Hon. Senator, this appears to be light years. It is said that when the signature is created by the key, the same key is used to establish the product so that the product does not encrypt the signature.

Sen. Dr. Balgobin: I am helping you. He said the same thing more technically.

Mr. Chairman: Are you happy with “associated with”?

Sen. Dr. Balgobin: Well, yes, because it cannot be associated with more than one electronic service provider.

Sen. Al-Rawi: Mr. Chairman, for clarity, I am also happy with “associated with” because it is a technology description meaning logical association with a product.

Sen. Panday: Thank you.

Sen. Nan Gosine-Ramgoolam: But with something, a product.

Sen. Al-Rawi: But secondly, Mr. Chairman, in light of my observations—

Mr. Chairman: And not associated with anybody here?

Sen. Al-Rawi: No, Mr. Chairman. Just through you to the Leader of Government Business, I am pleased, now having had the opportunity of looking at clause 31 in particular, because the inclusion of subsections (3) and (4) in particular take care of the evolving technology usage point.

Sen. Panday: I am happy that you are pleased. Could we move on?

7.40 p.m.

Sen. Al-Rawi: No, No, I just want to make the point. The point is really to provoke a further undertaking of the Leader of Government Business and my question is a serious one. Whilst I am happy that it takes care of evolving technologies, the question is: How soon can we expect the Schedule and the regulations to arrive to coincide with these?

Sen. Panday: The Schedule is already here. If you look further down, you would see the Schedules on page 31.

Sen. Al-Rawi: And the regulations?

Sen. Panday: The regulations will be coming soon. It is in the process of being drafted. [*Crosstalk*]

Question put and agreed to.

Clause 32 ordered to stand part of the Bill.

Clause 33.

Question proposed, that clause 33 stand part of the Bill.

Sen. Panday: Mr. Chairman, I beg to move that clause 33 be amended as follows:

- A. In subclause (1)—
 - (a) delete the words “the Minister or such authority” and substitute the words “an authority”;
 - (b) delete the words “prescribed by the Minister” and replace with the words “prescribed under this Act”;
- B. By inserting after subclause (2) the following:
 - “(3) An Order under subsection (1) shall prescribe—
 - (a) the powers and functions of the designated authority; and
 - (b) any other matter relating to the designated authority which the Minister deems necessary for the purposes of this Part.”

Question put and agreed to.

Clause 33, as amended, ordered to stand part of the Bill.

Clause 34.

Question proposed, That clause 34 stand part of the Bill.

Sen. Panday: Mr. Chairman, I beg to move that clause 34 be amended as follows:

- A. In subclause (1)—
 - (a) insert after the word “Provider” the words “(hereinafter referred to as “the applicant”);”;
 - (b) delete the words “the Minister or”;
- B. In subclause (2) delete subparagraph (b) and replace with the following:
 - “(b) proof of accreditation of its operations.”
- C. Delete subclause (3) and substitute the following:
 - “(3) Where an applicant has valid prior accreditation from another recognised jurisdiction, proof of accreditation shall be information relating to—

- (a) the name and address of the accreditation authority;
 - (b) the period of validity of the accreditation; and
 - (c) any other information required by regulations as may be prescribed.”
- D. Delete subclause (4) and replace with the following:
- “(4) Where an applicant has no valid prior accreditation, he shall indicate same to the designated authority who shall require the applicant to submit to an audit of his operations and systems to ensure compliance with the requirements of section 35 and any other standards which the Minister may prescribe by regulations.”
- E. Delete subclause (5) and replace with the following:
- “(5) Where the designated authority is satisfied that the applicant has met the requirements of this Act the designated authority may issue a notice of accreditation to the applicant.”
- F. Insert after subclause (5) the following:
- “(6) The Minister may make Regulations specifying the procedures for registration and accreditation.”.

Sen. Beckles-Robinson: I just wanted to say how happy I am for the amendments at clauses 34 and 35, and that the Minister took the relevant considerations.

Sen. Panday: Sen. Beckles-Robinson, we are happy that you are happy. Could we move on?

Sen. Beckles-Robinson: I wanted to make sure I gave you your plaudits.

Question put and agreed to.

Clause 34, as amended, ordered to stand part of the Bill.

Clause 35 ordered to stand part of the Bill.

Clause 36.

Question proposed, That clause 36 stand part of the Bill.

Sen. Panday: Mr. Chairman, I beg to move that clause 36 be amended as follows:

A. In subclause (1)—

- (a) delete the words “the Minister or” wherever it occurs;
- (b) delete the words “previously been accredited” and replace with the words “valid prior accreditation”;
- (c) delete the words “35” and substitute with the words “34”; and.

B. In subclause (2)—

- (a) delete the words “the Minister or” wherever they occur;
- (b) insert before the word “prior” the word “valid”.

Question put and agreed to.

Clause 36, as amended, ordered to stand part of the Bill.

Clause 37.

Question proposed, That clause 37 stand part of the Bill.

Sen. Panday: Mr. Chairman, I beg to move that clause 37 be amended as follows:

Delete the words “as a qualified electronic authentication product” occurring after the word “classes of qualified electronic authentication products”.

Question put and agreed to.

Clause 37, as amended, ordered to stand part of the Bill.

Clause 38.

Question proposed, That clause 38 stand part of the Bill.

Sen. Panday: Mr. Chairman, I beg to move that clause 38 be amended as follows:

Delete the words “Minister or the”.

Question put and agreed to.

Clause 38, as amended, ordered to stand part of the Bill.

Clause 39.

Question proposed, That clause 39 stand part of the Bill.

Sen. Panday: Mr. Chairman, I beg to move that clause 39 be amended as follows:

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Delete the words “the Minister or”.

Question put and agreed to.

Clause 39, as amended, ordered to stand part of the Bill.

Clause 40.

Question proposed, That clause 40 stand part of the Bill.

Sen. Panday: Mr. Chairman, I beg to move that clause 40 be amended as follows:

- A. Delete the words “the Minister or the”.
- B. In subclause (2) delete the word “Minister” and replace with the words “designated authority” and delete the word “he” and replace with the word “it”.

Question put and agreed to.

Clause 40, as amended, ordered to stand part of the Bill.

Clause 41.

Question proposed, That clause 41 stand part of the Bill.

Sen. Panday: Mr. Chairman, I beg to move that clause 41 be amended as follows:

Delete the words “the Minister or” wherever it occurs.

Question put and agreed to.

Clause 41, as amended, ordered to stand part of the Bill.

Clause 42 ordered to stand part of the Bill.

Clause 43.

Question proposed, That clause 43 stand part of the Bill.

Sen. Panday: Mr. Chairman, I beg to move that clause 43 be amended as follows:

- A. Delete the words “the Minister or” appearing in the chapeau.
- B. In subparagraph (a) delete the word “registration” and replace with the word “accreditation”.

- C. In subparagraph (d) delete the word “36” and replace with the word “35”;
- D. In subparagraph (e) delete the words “the Minister or”.

Sen. Hinds: The side note stands?

Sen. Panday: We will make that amendment subsequently.

Mr. Chairman: Instead of “Power of Minister” he wants to say “Designated Authority”. The side note will be amended to read:

“Power of Minister to deal with failure to meet requirements.”

And the remainder of section 43 will be amended as circulated.

Question put and agreed to.

Clause 43, as amended, ordered to stand part of the Bill.

Clauses 44 to 48 ordered to stand part of the Bill.

Clause 49.

Question proposed, That clause 49 stand part of the Bill.

Sen. Panday: Mr. Chairman, I beg to move that clause 49 be amended as follows:

- A. Delete the words “Minister or the”
- B. Delete the word “order” and replace with the word “require”;
- C. Delete all the words after the word “40”.

Question put and agreed to.

Clause 49, as amended, ordered to stand part of the Bill.

Clause 50.

Question proposed, That clause 50 stand part of the Bill.

Sen. Panday: Mr. Chairman, I beg to move that clause 50 be amended as follows:

In subclause (2) delete the words “ministerial direction.”

Question put and agreed to.

Clause 50, as amended, ordered to stand part of the Bill.

Clause 51.

Question proposed, That clause 51 stand part of the Bill.

Sen. Panday: Mr. Chairman, I beg to move that clause 51 be amended as follows:

- A. In subclause (1) insert after the word “law” the words “or in accordance with established Codes of Conduct”;
- B. In subclause (1)(b)—
 - (a) by inserting before the word “notify” the words “in the case of criminal liability,”
 - (b) delete the words “the Minister or; “ and
- C. Delete subclauses (2) and (3) and renumber subclauses (4) and (5) as (2) and (3) respectively.
- D. In subclause (2) as renumbered delete the words, “or as directed by the Minister or designated person under”;
- E. In subclause (3) as renumbered delete the words “subsections (1) to (3)” and substitute the words “subsection (1).”

Sen. Ali: In clause 51 suddenly there is a person called a “designated person”. I know we have been talking about “designated authority”, and here we have another person. That is in clause 51(1)(b).

“notify the Minister or such person designated by the Minister (“the designated person”)...”

That is a new person, different from a designated authority. I am not clear who that is and how that person is appointed.

Mr. Chairman: There is a defined term, as I see it, called “designated person” in (b).

Sen. Ali: Yes, on page 22 under (b).

Mr. Chairman: So right now I see it reading:

“In the case of criminal liability, notify such person designated by the Minister defined as ‘the designated person’.

Sen. Ali: And they say “the designated person”.

Sen. Panday: So we are deleting the words “the Minister or” and substituting—[*Interruption*] Delete from the words “the Minister” to the words “(the designated person)”.

Mr. Chairman: “notify the appropriate law enforcement authority”, is that how it would read?

Sen. Panday: Yes.

Mr. Chairman: The question is that clause 51(1)(b) the words in lines 1, 2 and 3, reading:

“the Minister or such person designated by the Minister (the designated person,) and” be deleted.”

So that the only person you would notify, in other words, is “the appropriate law enforcement agency”.

Sen. Hinds: Could someone tell me a small bit about the established codes of conduct in (a)?

Mr. Chairman: At the end of (a).

Sen. Hinds: What is my legal obligation in respect of that?

Sen. Panday: Under clause 52, the Minister should develop the code of conduct.

Sen. Hinds: We are coming to that?

Sen. Panday: In partnership with the service provider.

Sen. Al-Rawi: Mr. Chairman, before that section is adopted, if we look at page 23 on the track change document—

Sen. Panday: There are some mistakes in the track change.

Sen. Al-Rawi: I accept that, but I am looking at what was (4) and is now (2):

“(4) An intermediary or telecommunications service provider is not liable, whether in contract, tort, under statute or otherwise to any person, including any person on whose behalf the intermediary or telecommunications service provider provides services in respect of information in a data message or an electronic record for any action, the intermediary or telecommunications service provider takes in good faith...”

What about omissions and negligence? I am not in favour, strictly speaking, of negligence. I have seen that happen in a number of pieces of legislation, which can become problematic. At the very least, though, I think omission should be included, because it could be a positive and negative obligation. [*Interruption*]

Sen. Panday: Our instructions are that they should not be liable in the event of an omission, because they are merely a conduit.

Sen. Al-Rawi: Can we think about that one? I am not entirely convinced yet.

Mr. Chairman: I am not sure the omission really applies in the context of this paragraph, quite frankly. It is really relieving him from liability, if he takes action. It is not relieving him from liability if he fails to take action.

Sen. Al-Rawi: Just for exploration, because being happy, us all in this state that we are right now, at this hour, I just want to make sure that we are still being careful with the legislation. If we go back to the concept:

“Procedure for dealing with unlawful, defamatory, etc.” information. Clause 51 starts:

“If an intermediary or telecommunications service provider has actual knowledge that the information in a data message...

(a) remove the information...”—in the case of criminal liability—

“(b)notify such person designated...”

So if he fails to remove, that is an omission in subsection (2). So are you quite confident that omission really does not apply?

Sen. Panday: Those are our instructions.

Sen. Al-Rawi: Shall we look at it together, perhaps?

Sen. Panday: Hon. Senator, we are speaking about an intermediary here.

Sen. Al-Rawi: My question is: insofar as 51(1) imposes positive obligations and 51(2) then speaks about a removal of liability for an action that he takes, some of the obligations in 51(1), and I am asking this for discussion, include positive steps, what if one fails to take the positive steps, would that not properly be an omission?

Sen. Panday: If one reads the law, we are saying that an intermediary or telecommunications service provider is not liable. Look at the couching of the language.

Sen. Al-Rawi: So he is not liable for an action, if we strip it to bare bones, could he also not be liable for an omission, is my simple question?

Sen. Dr. Balgobin: What if the telecom provider does not act?

Mr. Chairman: If he does not act, then I do not see how he could ever be liable for anything. [*Crosstalk*] It is a genuine question. I am not wedded to a view.

7.55 p.m.

Sen. Panday: If one reads the whole section, one would say later on, let us take the second to last line,

“...the intermediary or telecommunications service provider takes in good faith...”

So, in exercise of the main powers, so if an omission, how could he take that in good faith?

Sen. Al-Rawi: Well, let us take section 44(d) of the Central Bank Act as an example, which has similar language for removal of liability. One may look at action and omission included there. In fact, they went further to add in negligence there. If you transpose that in here, in every concept of law we consider both actions and omissions, particularly in the law of tort. This clause 51(1) deals with both the civil and the criminal and imposes positive and negative obligations. So, I am just asking a genuine question, does an omission apply here and should we factor it?

Mr. Chairman: The section is saying, if you take action in exercise of the powers conferred in the section you should not become responsible or liable for it, but if you never took the action, then there is nothing for any third party to come to you to complain about. That is as I see it.

Sen. Panday: It does not say that you shall be liable, it says you shall not be liable. If one reads line 2,

“An intermediary or telecommunications service provider is not liable...”

Sen. Al-Rawi: Okay, so, just to take an example forward for discussion purposes, let us say that the telecommunications provider observed something, he should have done something, in good faith he decided, “look, there was no need for me to do it,” does that take care of the example?

Sen. Panday: Could you come with a better example? It seems to me that that example seems not to fall within the four walls of the section.

Sen. Al-Rawi: To borrow the words of my learned friend, if we just sip the porridge cool for a moment, one moment, just give a moment to reread as well and please, Mr. Chairman, if we can reread—

Sen. Panday: We will continue and come back to this in a few minutes. Time is of the essence.

Sen. Dr. Balgobin: May I ask just one question please with regard to 51(1)(a). Just seeking some clarification where (a) links with (b). The telecommunications service provider will as soon as it has actual knowledge,

inform law enforcement, and it will cease to provide services to the people who it perceives to be in breach, and it will report to law enforcement the identity of the persons involved.

Does this contemplate the quarantine or storage or handing over of the offensive data or material to law enforcement? Is that going to be covered? Is that implied there or is it going to be covered in the regulations or something? Because at present, what it says is that it will stop providing the service, and will tell the police about it but you must have the actual evidence and, as you know, these things leave a trail as they pass through the various servers of a telecom provider. So, is it this is implied that they will also hand over the evidence because they will have to sequester it and hand that over when they show the police?

Sen. Panday: Senator, in 51(a) subclause (1), insert the words “and secure” after the word “remove”, and that cures it.

Sen. Dr. Balgobin: That was my original suggestion.

Sen. Panday: Yes, please, Mr. Chairman, 51(a), 51. It is there? No, no, no. It is not in the track change.

Sen. Dr. Balgobin: It is not there, that is why I raised it.

Sen. Panday: In 1(a) insert the word “secure”— after the word “remove” at line 1, insert “and secure”.

Mr. Chairman: If I may go back Sen. Al-Rawi’ to what you posed—

Sen. Al-Rawi: Can I exempt at what you are about to tell me? I have “re-looked” at 51(1)(a) and (b). Insofar as they oblige mandatory action, I would be satisfied now looking at it carefully, that (b) in that limited context an omission is not necessary because (a) requires action. So, I will accept it there. But insofar as (b) had the tort of providing blanket liability, let me use the term “for innocent infringers” or an “innocent agent passing through”, what was in my mind and still is a question to consider, is whether we want to provide immunity for persons who acted innocently, and I borrowed the concepts from the Copyright Act, where one could have had innocent infringement, et cetera. But insofar as we are dealing with this section and not a new section, I will stick with the word “action”.

Sen. Panday: Thank you so much, Senator.

Sen. Al-Rawi: Can I hear the further amendments?

Mr. Chairman: I am going to give you that now. Sen. Prescott, you were asking?

Sen. Prescott SC: Mr. Chairman, I have some cosmetic changes to 51(2).

Sen. Panday: Sure.

Sen. Prescott SC: I think the punctuation is misleading. If I may just read it entirely with my recommendation

Sen. Panday: Yes, Hon. Senator.

Sen. Prescott SC: —It should read”

“ an intermediary or telecommunications service provider is not liable, whether in contract, tort under statue or otherwise to any person, including any person on whose behalf the intermediary or telecommunications service provider provides services...”

Mr. Chairman: Comma after services?

Sen. Prescott, SC: Yes,;

“...in respect of information in a data message or an electronic record, for any action”—delete the comma—“for any action the intermediary or telecommunications service provider takes...” Yes, am I understanding it? He is not liable for any action he takes... in good faith, in exercise of the powers conferred by this section.”

Sen. Panday: Thank you very much, Senator.

Mr. Chairman: So, if I may go through the amendments as I see them in addition to the amendments that were circulated, we propose that at 51(1) subclause (a), after the word “remove” in line 1 we add the words “and secure” and in subparagraph (b) we remove from lines one to three, the words “the Minister or such person designated by the Minister “the designated person” and, those would be deleted; and in subparagraph (2), we introduce commas in line 3 after the word “otherwise”.

Sen. Prescott SC: Line 5 after the word “services”—

Mr. Chairman: In line 5 after the word “services” we delete the comma after the word “action” in line 6.

Sen. Al Rawi: No, in line 6 after the word “record”.

Mr. Chairman: —and we insert a comma after the words, “in good faith”. Is that correct, Sen. Prescott SC?

Sen. Prescott, SC: I am happy with that. I think I heard them all.

Sen. Panday: Thank you very much, Senator.

Sen. George: In the previous clause, Sen. Prescott SC referred to the fact that he wanted comma after “record” and he wanted to verify whether that comma had been included too, in line 6, after “record for any action”. After “record” he wanted a comma there too.

Mr. Chairman: So, after the word “record” he wanted a comma and to remove the one after “action”. Sorry, I did not include that and so if I could repeat that, that in addition to the amendments already referred to, we also have an amendment by introducing a comma after the word “record” in line 6 of subparagraph (2).

Question put and agreed to.

Clause 51, as amended, ordered to stand part of the Bill.

8.05 p.m.

Clause 52.

Question proposed, That clause 52 stand part of the Bill.

Sen. Al-Rawi: Mr. Chairman, just a question. In clause 51, we use in subparagraph (a) capitalization for codes of conduct, capital “C” capital “C”, and I am wondering if those should be commons in light of the 52 prescriptions for codes of conduct again.

Mr. Chairman: Yes, I am told it should be lower case.

Sen. Prescott SC: Mr. Chairman, I also wish to ask a question. Is it intended, again, by reference to clause 51, that the Minister shall develop codes of conduct?

Sen. Dr. Balgobin: Yes.

Sen. Prescott SC: Because he has not been empowered to do so nor required to do so by the Bill. If it is that he should be empowered to do so, maybe clause 52 could say that, “The Minister shall develop codes of conduct”.

Mr. Chairman: You want that in which—

Sen. Prescott SC: Sorry, I am on 52, but I am saying that 51(1) speaks of something called “established codes of conduct”. Unless those already exist somewhere, it appears to me that the Minister must now create them, so I am saying that clause 52 should empower him to do so.

Mr. Chairman: So you want to say “shall develop” rather than “has developed”?

Sen. Prescott SC: Well no, I want to say that he shall develop it and when he has, it shall comply.

Sen. Al-Rawi: You want to put the obligation to develop in 52.

Sen. Panday: Senator, in 52, (1) would be renumbered as (2); (2) would be renumbered as (3) and a new subsection would be introduced which states as follows: “The Minister shall develop codes of conduct and standards for intermediaries and telecommunications service providers”.

Sen. Gosine-Ramgoolam: You like that?

Sen. Al-Rawi: Yes.

Sen. Gosine-Ramgoolam: Good.

Sen. Dr. Balgobin: Hold on, guys. Mr. Chairman, just one quick observation please. This behaves as if there is nothing in place at present. That would not be the case. There is written law that governs the behaviour of telecommunications service providers—TATT—not just TATT, there is written law, then there is TATT, there is also—TATT issues a telecommunications licence, which is a legal agreement that has codes of conduct and behaviours written into them, so this would be something that I would be cautious of. Because the Minister should not—

Sen. Panday: Hon. Senator, if you have concerns could we then include, “thereafter for the purposes of this Act” to tie it onto this Act?

Sen. Dr. Balgobin: “For the purposes of this Act”, to protect the Minister and everybody else.

Sen. Panday: Yes, thank you.

Mr. Chairman: So you want it to read, “The Minister shall develop codes of conduct and standards”—

Sen. Panday: “...for intermediaries and telecom service providers for the purposes of this Act”.

Sen. Dr. Balgobin: Yes, and it should be “may” as opposed to “must”.

Sen. Panday: Pardon me, Senator.

Sen. Dr. Balgobin: The Minister “may” as opposed to “must”, because there may be pre-existing codes that are perfectly acceptable.

Sen. Panday: Okay, so we would use “may” unlike Sen. Deyalsingh. [Laughter] We are happy with “may”.

Mr. Chairman: So “The Minister may develop codes of conduct and standards for intermediaries and telecommunications service providers for purposes of this Act”.

Sen. Panday: Yes.

Mr. Chairman: Can we go back? Clause 51 we already approved, so we are now on 52, and the question is that clause 52 be amended by introducing a new subsection (1) to read:

“The Minister may develop codes of conduct and standards for intermediaries and telecommunication service providers for purposes of this Act”.

And that what was subsection (1) would now become (2) and what was subsection (2) would now become subsection (3).

Question put and agreed to.

Clause 52, as amended, ordered to stand part of the Bill.

Clause 53

Question proposed, That clause 53 stands part of the Bill.

Sen. Panday: Mr. Chairman, clause 53, the amendment sponsored by Sen. Drayton, which has been accepted by the Government is as follow:

53(2) Delete the word “authority” and replace with the word “body”.

(4) Delete the word “authority” and replace with the word “body”.

58 In subclause (1), delete the word “based” wherever it occurs.

62 In line 3, delete the word” ,acquiesced in “occurring after the words :assented to”

63(3) In line 3, delete the words “up to “occurring after the words “a fine” and substitute the words “not exceeding”.

Question put and agreed to,

Clause 53, as amended, ordered to stand part of the Bill.

Clauses 54 and 55 ordered to stand part of the Bill.

Clause 56.

Question proposed, That clause 56 stand part of the Bill.

Mr. Chairman: We had an amendment proposed by Sen. Drayton.

Sen. Drayton: Yes, and this was just for the purpose of clarifying the language. The language as it stands is a bit convoluted and I think all that you are trying to say here is that before providing a qualified electronic authentication product or party seeking to enter an electronic contract, an electronic authentication service provider shall inform the party in writing of the following. So it was really just the introduction, and it is only for the purpose of clarity.

Mr. Chairman: Senator.

Sen. Panday: Yes, please, Mr. Chairman.

Mr. Chairman: We have the proposed amendment by Sen. Drayton before us.

Sen. Panday: It would change—our instructions are, Mr. Chairman—the substance.

Sen. Drayton: Yes, then could you just explain what was the intent, please?

Sen. Panday: Mr. Chairman, it says that:

“Before entering into a contract that would trigger the issuance of a qualified electronic product, an Electronic Authentication Service provider shall inform the party seeking the electronic authentication product in writing of the following:”

Sen. Gosine-Ramgoolam: We identify these, they are specific.

Sen. Ramlogan: What is the concern there?

Sen. Drayton: Well, it is just that it was not clear and from what I am hearing it certainly needed a little clearing up. The language is a bit—

Sen. Panday: Tweaking—it needs to be tweaked. *[Interruption]* Just a second please? One minute please, hon. Senators?

Sen. Dr. Balgobin: Attorney General, while they are thus occupied, if I could just raise something with the Chairman’s consent on clause 54, which I know we have just approved—

Mr. Chairman: Clause 54?

Sen. Dr. Balgobin:—while they are working through their thing. Mr. Chairman, with your indulgence, just a quick question; where documents, records and so on are supposed to be made available for inspection, I can make it

available to you in electronic form, but I also ought to make available not just the document but the mechanism by which you can access and read the document.

For example, using this I can hand you a document on a floppy disk. I would have made the document available to you, it is on a floppy disk, but none of us have a floppy disk on our computer now, so there is an issue with media change—*[Interruption]*—oh, except Sen. Baptiste-Mc Knight, who apparently still has a floppy disk on her computer. But I was just saying that with media change it is not just to store the media but also to store a player for the media.

Sen. Ramlogan: Yes, what take care of it is the words “for inspection”. You see, the words “for inspection” means that it must be capable of being inspected, so that no matter how you produce it, if you cannot access it and open it up then you cannot inspect it, so I think the words “for inspection” ought to cover that.

Sen. Dr. Balgobin: It would cover that, okay.

Sen. Panday: We are making a few adjustments. Could you kindly bear with us for two minutes, please, while we draft?

Sen. Gosine-Ramgoolam: The recommendation, as opposed to what is stated in the Bill, we probably looked at the stage before, and that is:

“Before entering into an electronic contract requiring an issuance of a qualified electronic authentication product, the electronic authentication service provider shall inform the party seeking.”

And we have the following. In your recommendation you said “before providing” I think the debate is on the words “entering” and “providing”. We see entering before providing and we think that there should be some guidelines for us before entering.

Sen. Drayton: Okay.

Sen. Gosine-Ramgoolam: So, we have the guidelines on the front burner rather than behind, so we did not want to leave that gap between “entering” and “providing”, and that is really the whole—

Sen. Drayton: Okay, it is a major difference.

Sen. Gosine-Ramgoolam: That is the only difference, really.

Sen. Drayton: So, if that is the case, then I—

Sen. Panday: Because to do otherwise would be changing the policy.

Sen. Gosine-Ramgoolam: Other than that, I think we would have a loophole up front.

Sen. Drayton: Okay, that is all right.

Clause 56 ordered to stand part of the Bill.

8.20 p.m.

Mr. Chairman: *Question proposed,* That clauses 57 to 64 stand part of the Bill.

Sen. Al-Rawi: That is a little ambitious, Mr. Chairman.

Mr. Chairman: Ambition is good.

Sen. Al-Rawi: Just because we have a few questions to ask. I could say automatically I have no objections to 57, a question on 58, no objection to 59, 60, but to get to 64 is a little tough, particularly because of 62. So perhaps you may wish—*[Interruption]*

Clause 57 ordered to stand part of the Bill.

Clause 58.

Question proposed, That clause 58 stand part of the Bill.

Sen. Al-Rawi: I have one clarification on clause 58.

“58(1) Any person who sends unsolicited commercial communications through electronic media to consumers based in Trinidad and Tobago...”

“Based”, the concept “based”, because an entity may include a person; a person includes a company; a company may be registered here, but working in Barbados or registered somewhere else. Do we want to use the term “in Trinidad and Tobago”? Because it may be inviting persons who are legally based here but operationally somewhere else. For instance, in online gaming, Mr. Chairman, if you are aware—*[Interruption]*

Mr. Chairman: So you prefer “physical”?

Sen. Al-Rawi: Yes, I would prefer a limitation to physical.

Sen. Panday: Do you prefer the word “located”?

Sen. Al-Rawi: Yes.

Mr. Chairman: He said legally they were based altogether.

Sen. Al-Rawi: Or just strike the words “based in”.

Sen. Panday: Sure. It does not change the—[*Interruption*]

Mr. Chairman: Clause 58 be amended by deleting the word “based” in lines two and four.

Question put and agreed to.

Clause 58, as amended, ordered to stand part of the Bill.

New clause 50(4).

Sen. Al-Rawi: Mr. Chairman, I propose a new clause 50(4) which reads as follows:

“An intermediary or telecommunications service provider, during an audit, shall not be liable under the Copyright Act in respect of—

- (a) the infringement of copyright in any work or other subject matter in which copyright subsists; or
- (b) the unauthorized use of any performance, the protection period of which has not expired.”

New clause 50(4) read the first time.

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

Sen. Al-Rawi: Mr. Chairman, I have a question, because it has not been addressed at all, through you to the hon. Leader, and to the hon. Minister. In the Singapore Act, there is a very useful description of limitation of liability to service providers and we have not taken that step. In fact, we have not addressed it at all in our Act. In particular, insofar as there is an obligation for disclosure and production of informations in the course of an audit, for example, under section 40, one may find oneself—innocently—running afoul of the Copyright Act. These are the provisions that I mentioned in my contribution, and by way of clarification, questions on the last debate.

Are we at all mindful to consider now, prescribing something similar to section 10 as it relates to service providers or authentication service providers? Because a service provider who actually produces copyrighted material can be guilty of both a criminal and civil offence. I need not remind you that the breach of one disclosure under criminal offence has 10 years’ imprisonment and \$100,000 fine per copyright infringement.

Mr. Chairman: He wants to introduce a new section.

Sen. Al-Rawi: Well there is no clause at all. What I am saying is that we have left it clean out of our Bill.

Sen. Panday: What is the mischief we are trying to resolve?

Sen. Al-Rawi: The mischief is that, in requiring a third party, such as an authentication service provider, to produce information which, for example, may be copyrighted information, we may be procuring a breach of other laws for which we have not prescribed relief in a fashion such as set out in the Singapore Act, for example.

Sen. Panday: Which section in the Singapore Act, can I ask?

Sen. Al-Rawi: Section 10 “Liability of Network Service Providers” which can be narrowed down to authentication service providers under a concept of an audit in clause 40, for example, of our Bill. It is noted in the Singapore Act that nothing in the Act would relate to liability of service provider—[*Interruption*]

Sen. Panday: Hon. Senator, section 10 speaks about provision of originals. That is the 2010 Act.

Sen. Al-Rawi: The 2010 Act under Part III deals with liability of network service providers.

Sen. Panday: Part III?

Sen. Al-Rawi: Yes.

Sen. Gosine-Ramgoolam: Mr. Chairman, I think I need to make a point here. While we did consult many pieces of legislation, including the Singapore Act of 2010, we have to be very careful not to copy everything from other jurisdictions, wholesale, as the forms of our legislative drafting differ in some cases. But I find that we are just trying to copy wholesale. We need to thaw it out and look at our cultural and legislative background.

Sen. Al-Rawi: Okay, I accept your point. Mine is not one to mimic any other pieces of legislation for mimicking sake. What I am saying is that we have a very strong and excellently drafted Copyright Act in Trinidad and Tobago. There has been a plethora of litigation relative to disclosures which are tantamount to copyright infringement.

Sen. Gosine-Ramgoolam: So would the Copyright Act not treat with that, through you, Mr. Chairman?

Sen. Al-Rawi: No it does not.

Sen. Gosine-Ramgoolam: Well it should.

Sen. Panday: Our advice is that it has been seen in section 26(2)(d) of the Singapore Act:

“Liability of a network service provider under the Copyright Act (Cap.63)...”

And our advice is that that is captured under 51(2).

Sen. Al-Rawi: That is our new 51(2) which deals with codes of conduct?

Sen. Panday: I apologize to you. It is Part VI, “Intermediaries and Telecommunications Service Providers”, clause 50(1).

Sen. Al-Rawi: Okay, but I am not speaking about information which resides on the server, because that is what 50(1) deals with, the resident information there. So you are not liable for something which you are just passing through your server. What I am talking about is, in the course of an audit where one produces the information forward for inspection and one—I do not understand the head shake next to you, sorry.

Sen. Panday: Go on, go on.

Sen. Al-Rawi: And one produces information forward in some circumstances we have not provided, I would not say indemnification, but an escape for the service provider who is lawfully conducting compliance with a rule, a code of conduct, or the legislation itself.

Sen. Panday: Our information is that when you are doing a technology audit, that issue of copyright information would not come into play. So therefore, that situation will not arise.

Sen. Al-Rawi: Sorry, could you explain that for me, please?

Sen. Panday: If you are doing a technology audit, the issue of copyright does not come into play.

Sen. Al-Rawi: How, how does the use of the words “technology audit” not take care of that?

Sen. Panday: It does not, it does not—my instructions are; it does not include copyright material.

Sen. Al-Rawi: How? All material under our Act is copyrighted the minute it is thought of. We do not need to condescend to recording it as the French Act or the American Act or the English Act requires.

Sen. Panday: Because the audit is, you are auditing the system and the processes.

Sen. Al-Rawi: So there are no production— remember our Copyright Act deals with producing material in any form at all.

Sen. Panday: Audit is the system and processes, not content.

Sen. Gosine-Ramgoolam: You did not raise this at all. Suddenly—*[Interruption]*

Sen. Al-Rawi: No, no, no. I raised this many times.

Sen. Panday: But this is the issue in which there will be no content. We are dealing with process and systems. *[Crosstalk]* We are evaluating the operational processes. *[Crosstalk]*

8.30 p.m.

Hon. Senator, the whole auditing procedure is there in Part IX, clauses 59, 60, 61 and 62. So it is in Part IX.

Sen. Al-Rawi: It is precisely because we were coming at this cusp that I raise the issue. It is not by magic that I have raised it, respectfully. I am just saying that we have not factored—in other jurisdictions the tale is that there has been quite a bit of litigation relative to copyright infringement for compliance with older pieces of legislation which resemble this. So I am just raising the issue—

Sen. Panday: I agree with you, but the question is, what we are auditing is systems and processes.

Sen. Al-Rawi: And there will never be a data dump, for instance, reproduced somewhere else?

Sen. Panday: Those are our instructions.

Sen. Al-Rawi: I cannot see that that could be correct, respectfully.

Sen. Dr. Balgobin: It is unlikely that a proper audit would ignore data for this kind of transaction. It is unlikely that it would ignore data. It would probably involve some data dump, so there is some validity to what he is saying. You will look at systems and processes, but how do you test a system?

Sen. Gosine-Ramgoolam: Via data.

Sen. Dr. Balgobin: You are going to have to look at the data.

Sen. Gosine-Ramgoolam: It is data you are auditing, so obviously that will come up.

Sen. Dr. Balgobin: But the question for me is what Sen. Ramkhelawan is whispering to me over here as well. The question in my mind is, to what extent, if an audit takes place by the designated authority that requires an examination of data, to what extent does a mischief occur? Because if a mischief does occur, presumably, that is covered by the Copyright Act. So that is the point I am not—

Sen. Al-Rawi: Just to give a real life example, I pursued a case in a prosecution stance for copyright infringement of data on a global level in court; in the Magistrates' Court and in the High Court, and procured no less than 100 charges—an Interpol sting operation—for a data dumping exercise. I have done a physical, hands-on case exactly like this in this jurisdiction and in other jurisdictions in tandem through Interpol. So I am not speaking in a vacuum. I am saying that the data can be dumped in an audit process and managed. Actually, the firm opposite me was Hamel-Smith and Company, in dealing with one of the aspects of the case. So, I mean, it is a real, hands-on case that we have had experience in this jurisdiction on.

Sen. Dr. Balgobin: But, Sen. Al-Rawi, if I could just ask: where does the mischief occur? Is it that when they dump the data, is it that there is a problem with the data dump itself?

Sen. Al-Rawi: Yes.

Sen. Dr. Balgobin: Or is it that there is a problem with how the data is used?

Sen. Al-Rawi: Yes, it is exactly that. The minute the data is copied in any form at all, there is a third-party offence that kicks in, and a right, and there are heavy offences. All that I am asking is to consider it carefully.

Sen. Dr. Balgobin: But is it an unauthorized copy if the law permits it to be copied?

Sen. Al-Rawi: Through you, Mr. Chairman, in our Act there is actually an offence for innocent infringer as well.

Sen. Panday: Senator Al-Rawi, we have been advised that there are auditing procedures to deal with matters like that, and also our Copyright Act has been amended to take care of situations to which you have alluded.

Sen. Al-Rawi: Could you direct me to those amendments, please?

Sen. Panday: I do not have them with me, but that has been my advice from the experts.

Sen. Al-Rawi: Okay. I mean, on that undertaking that the Copyright Act itself provides the exception—

Mr. Chairman: I do not think it is an undertaking, it is a representation.

Sen. Al-Rawi: Well, it is a representation, a very serious one, because there is an offence for innocent infringer in our Act, so unless somebody could point it to me and prove me wrong, I would find it unusual that we have prescribed a specific offence, saying that, “Look, you are guilty, even if you innocently do it in our Act.” It is a core cornerstone of our Act for there to now be an exception to that. I mean, it is mutually exclusive. I cannot give the example because I will be breaching confidence.

Sen. Gosine-Ramgoolam: No, you could give the example without calling names, because we are dealing with processes and systems and—

Sen. Al-Rawi: Hon. Minister, my intention is not to cause discomfort; my intention is to avoid litigation surrounding the Act.

Sen. Panday: Our instructions are that a situation like that will not occur. I do not know the procedure, but they say if you are dumping information that copyright material will not be in that category. Because in an audit, they are saying, how could you dump that kind of material?

Sen. Dr. Balgobin: So what if I am sending songs or something? What if I am sending recordings of somebody else?

Sen. Al-Rawi: A data message specifically includes that.

Sen. Dr. Balgobin: What if I am recording something that I should not and I am sending it—

Sen. Gosine-Ramgoolam: Is that not piracy?

Sen. Al-Rawi: No, no, it is original.

Sen. Dr. Balgobin: It may be something—for example, the business school hosted Prof. Michael Porter here and when you have these distinguished guys coming down, very often they say, “We do not want you to record anything. We do not permit you to record.” What about something like that?

Sen. Al-Rawi: Mr. Chairman, if you listen to the language of the Singapore Act:

“any liability of a network service provider under the Copyright Act...in respect of—

- (i) the infringement of copyright in any work or other subject-matter in which copyright subsists; or
- (ii) the unauthorised use of any performance, the protection period of which has not expired.
- (3) In this section—

‘performance’ and ‘protection period’ have the same meaning as in Part XII of the Copyright Act;”

This did not come about without the basis of litigation being there to have provoked its creation.

Sen. Panday: Sen. Al-Rawi, out of an abundance of caution, in order to satisfy that issue, after clause 50(3), add a subclause (4) which says:

“An intermediary or telecommunications service provider, during an audit, shall not be liable under the Copyright Act in respect of—

- (a) the infringement of copyright in any work or other subject matter in which copyright subsists; or
- (b) the unauthorized use of any performance, the protection period of which has not expired.”

And that has been taken out of the area which you had indicated. Thank you.

Sen. Al-Rawi: I am grateful.

Mr. Chairman: I need to repeat this?

Sen. Al-Rawi: There is a last point as well. Hon. Leader, before you repeat, may I also ask your team to look at the catch-all in the Singapore Act of “performance” and “protection period” shall have the same meaning as the relevant part in our Act?

Legal Advisor: We would have to do some research to get it from the Copyright Act.

Sen. Al-Rawi: Okay, but Part X of our Act, because we do have the same definitions in our Acts.

Sen. Panday: Mr. Chairman, back to clause 50. After clause 50(3) we introduce a subclause (4) which states:

“An intermediary or telecommunications service provider, during an audit, shall not be liable under the Copyright Act in respect of—

- (a) the infringement of copyright in any work or other subject matter in which copyright subsists; or
- (b) the unauthorized use of any performance, the protection period of which has not expired.”

And we insert a further subsection:

“For the purposes of this section, ‘performance’ and ‘protection period’ have the same meaning as in Part—

Sen. Al-Rawi: You could leave out the Part: “as in the Copyright Act” and the correct section.

Sen. Panday: Okay, “as in the Copyright Act.”

Sen. Al-Rawi: Thank you, Mr. Chairman and the hon. Leader of Government Business.

Mr. Chairman: So we are going to go back to clause 50.

Sen. Panday: Yes, please, Mr. Chairman.

Mr. Chairman: In clause 50, in addition to the amendments which were already circulated, we are going to introduce a new subclause (4) to read as follows:

“An intermediary or telecommunications service provider, during an audit, shall not be liable under the Copyright Act in respect of—

- (a) the infringement of copyright in any work or other subject matter in which copyright subsists; or
- (b) the unauthorized use of any performance, the protection period of which has not expired.

For the purposes of this subsection, ‘performance’ ...”

For the purposes of this subsection (4)?

8.45 p.m.

Sen. Al-Rawi: Mr. Chairman, we went from (3) to (4) (a) and (b)—well, yes, subsection (5).

Mr. Chairman: Yes, but this “for the purposes” is just continuing.

Sen. Al-Rawi: Okay, yes.

Mr. Chairman: “For the purposes of this subsection ‘performance’ and ‘protection period’ have the same meaning as in the Copyright Act.”

Sen. Al-Rawi: In quotations, “performance” in quotes. Yes, sure, thank you Mr. Chairman.

Sen. Panday: Mr. Chairman, I have been further told that we have looked at the Copyright Act, and we speak about “unauthorized use of any public performance”. That is in consonance with the Copyright Act.

Mr. Chairman: So you want the words “public performance” in both places.

Sen. Panday: Yes, please Sir.

Sen. Al-Rawi: May I suggest that “performance” is the better word? There are two types of performance rights under the Act. There are public performance rights and there may be a private performance right, for instance, but it also has to do with the common law interpretation to it, and then the protection period is specific, because it also includes whether it is BERNE Convention based, life plus 70, or life plus 50 dichotomy. So, are you sure you want to confine it to public performances?

Legal Advisor: We are not seeing a definition of ‘performances’ by itself.

Sen. Al-Rawi: Only “Public performance”?

Legal Advisor: “Public performance”.

Sen. Al-Rawi: Okay, it has been a while since I looked at it. I will go with “public performance” then.

Sen. Panday: Thank you. The Act only refers to “public performance”.

Mr. Chairman: So the question is that the amendment as circulated in the further amendment as read but with the inclusion of reference to “public performance” in place of “performance” do now stand part of—

Sen. Panday: I have a further problem, please, Mr. Chairman. We have taken this from the Singaporean legislation, but our Copyright Act has no definition of the protection period.

Sen. Al-Rawi: The protection period should be in the Act. It must be in the original section, I think section 4 or higher up, it must be prescribed. The BERNE Convention is life plus 50, and it is otherwise life plus 70 [*Interruption*] Life plus 70, my learned Senior says.

Sen. Panday: It is in the Act.

Sen. Al-Rawi: Yes.

Sen. Panday: Thank you.

Question put and agreed to.

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

Question put and agreed to.

New clause 50(4) added to the Bill.

Clauses 59 to 61 ordered to stand part of the Bill.

Clause 62.

Question proposed, That clause 62 stand part of the Bill.

Sen. Al-Rawi: Mr. Chairman, relative to clause 62, clause 62 as currently drafted automatically lifts a corporate veil and obviates the need for prosecution or knowledge or other points. It is a very heavy hitting clause which takes away everything starting from the principle of *Salomon v Salomon* come down, nearly a 150 years of legal precedent. I am concerned to throw away that type of protection so quickly, particularly when we are on the first run of this legislation and may yet need to tighten it. I would like the Senators to consider through you, Mr. Chairman, adoption of a similar term to section 48 of the Singapore Act, and if I may—sorry, section 49 of the Singapore Act.

Sen. Panday: So what is your argument, hon. Senator, you do not want to lift the corporate veil?

Sen. Al-Rawi: No, I do want to lift the corporate veil in certain circumstances, and if you would bear with me, this will be the last point. Offences by a body corporate in the Singapore Act read as follows, and that is section 49:

“Where an offence under this Act or any regulations made thereunder is committed by a body corporate, and is proved to have been committed with the consent or connivance of, or to be attributable to any act or default on the part of, any director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he, as well as the body corporate, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.”

The difference in this section as proposed is that one must first go through the “proved to have been committed with the consent or connivance of”. It is in keeping with the current law as it prevails in the companies realm of the corporate veil and the *Salomon vs Salomon*, but it goes far enough to say, look, if you knew it and we can prove it, then we will ‘deal with you’.

My fear is that this type of provision may be exploited by a not so well intended person seeking to cause some mischief by applying the terms of the Act. I find that the

Singapore Act in its drafting is closer to the common law as it currently prevails and still provides the protection which I think is intended by the drafting in clause 62.

Sen. Ramlogan: Chair, through you, I do not see that the concept is different in what my learned friend read from the Singapore Act. The idea of the directors consenting to the wrongdoing is adequately covered here, where we say they directed, authorized, assented to or acquiesced or participated in the commission of the offence. And I certainly do not see that the *Salomon* principle is offended in any way. What we want to do is to say that if the company commits the offence, the Board of Directors must understand that they are the ones who may be liable to punishment. And the reason for that is obvious. If you omit that, what will happen is companies will commit offences, directors will close it down today, open up company Y tomorrow morning, and they will continue doing it over and over with impunity and you have a shell company remaining liable.

Mr. Chairman: I am just wondering, Attorney General, the only one that I have a problem with is the “acquiesced” and I would have preferred to say “knowingly acquiesced”.

Sen. Ramlogan: Now, I was coming to that. The issue of consent is adequately covered by “directed, authorized, assented to and participated in.” The Singapore model may have phrased it differently, but it means the same thing. Where I think we could probably look at is the question of the acquiescence. That is the point here.

Sen. Panday: So you are saying authorized.

Mr. Chairman: “knowingly acquiesced” I think would do it.

Sen. Ramlogan: Yes.

Sen. Panday: Indeed.

Sen. Ramlogan: The “knowingly acquiesced” will do it.

Sen. Al-Rawi: And then there is also “participated in the commission of”.

Sen. Ramlogan: No, but you must.

Sen. Panday: That will be intentional.

Sen. Al-Rawi: I am just saying that we do all know. I appreciate the distinction that my learned friend, the hon. Attorney General, has provided. I am comforted that we are

looking at it together. My intention is just to make sure that we do not unlock a gate for frivolous positions to go ahead. I know that we are joined in the purpose—

Sen. Panday: Also we want to lock the gate to prevent the criminals from coming out.

Sen. Al-Rawi: Correct. We are joined in the purpose of making sure that we send a strong message, but the “knowingly” as a word inserted before “acquiesced” I am very comfortable with.

Sen. Panday: “knowingly acquiesced”.

Sen. Al Rawi: My question now arises for consideration, what about “or participated in”?

8.55 p.m.

Sen. Ramlogan: If we put the word “knowingly” before “directed”?

Sen. Al-Rawi: *Ejusdem generis*, you think?

Sen. Ramlogan: No, no; “knowingly, directed, authorized, assented to, or acquiesced in or participated in”—“knowingly” will cover all. That will solve the problem, would it not?

Sen. Al-Rawi: Yes.

Sen. Panday: It protects you. It gives you further and greater protection.

Sen. Prescott SC: Is the word “knowingly” not redundant when we speak of acquiescing?

Sen. Ramlogan: That is what I would have thought.

Sen. Prescott SC: Is it?

Sen. Ramlogan: No, you could acquiesce without—[*Interruption*]—you ought to know, but you do not know.

Sen. Prescott SC: That is sleeping on the job.

Sen. Al-Rawi: There is the concept in law of laches, delays, as an adjunct for acquiescence. So, “knowingly” does provide some finer distinction to that point, I think, and keeps it better in tune with the concept of “knowingly” in criminal law. So I like the addition of “knowingly”.

Sen. Panday: Okay. Sen. Prescott, any objection to the insertion of the word “knowingly” before—

Sen. Prescott SC: I remain of the view that it is redundant.

Sen. Panday: So, I would humbly go with Senior Counsel's advice.
[*Crosstalk*]

Sen. Al-Rawi: Could I ask Sen. Prescott, through you, my learned Senior, why in his view "knowingly" is redundant? I catch the point of acquiescence.

Sen. Prescott SC: I put it simply just now. I can imagine the defendant saying, "I am guilty to acquiescing, but I did not know".

Sen. Al-Rawi: You see, Senior, if you contemplate acquiescence by a delay or laches in the concept of civil law, that is a passive acquiescence as opposed to an active acquiescence. Does that cause you any pause?

Sen. Prescott SC: I do not accept that someone can acquiesce passively, especially for the purposes of criminal law. It seems to me that you must have made a mental commitment to standing by and supporting.

Sen. Panday: Also, clause 62 should be read in conjunction with clause 63.

Sen. Dr. Balgobin: Mr. Chairman, where do we stand in clause 62 on the subject of tacit consent? The reason I am asking that is because I hear about shell companies and people closing companies and opening new ones tomorrow, but there are also medium-size and largish companies operating here. Some of these things can happen and the authorization chain can be a little nebulous. What happens then? What happens to companies with a fair amount of employees and an executive says, "Go get this done", and someone, in doing it, does something that contravenes this Act? Lifting that corporate veil is always something that we should take great care when doing.

Mr. Chairman: I still have my problems with "acquiesced". I understand what Sen. Prescott says. You can have negligent acquiescence, but I would expect, given the other references to "authorized", "assented to", "participated in", they appeared to be far more positive.

Sen. Panday: It has and carries an intention.

Mr. Chairman: I would have preferred to leave out "acquiesced".

Sen. Prescott SC: May I suggest a more embracing approach?

Sen. Panday: Sure.

Sen. Prescott SC: That we remove the word "acquiesced" and put it after "participated". It reads like this:

“Where a body corporate commits an offence under this Act, any officer, director or agent of the body corporate who knowingly directed, authorized, assented to or participated in or acquiesced...”

So “acquiesces” stands on its own. “Knowingly” refers to all of the verbs that have gone before. He says you have knowingly directed, authorized, assented to participated in or acquiesced in. So “directly” does not describe—

Mr. Chairman: I prefer to leave out “acquiesced” as one of the—

Sen. Prescott SC: That is another approach.

Mr. Chairman: Altogether.

Sen. Prescott SC: You can leave it out altogether.

Mr. Chairman: It is far too passive and widely restricted.

Sen. Dr. Balgobin: Mr. Chairman, I support that and I think that we should keep the standard fairly high and have the burden of proof be that this person has actively participated in this.

Sen. Ramlogan: In any case, “participated in” is probably what you want to get with acquiescence you know.

Sen. Dr. Balgobin: So we want the active behaviour.

Mr. Chairman: I like “knowingly” after the word “who” and before “directed” and leave out “acquiesced”.

Sen. Prescott SC: Very well.

Sen. Al-Rawi: Agreed, Mr. Chairman.

Sen. Panday: Mr. Chairman, in those circumstances, “knowingly” will be redundant, I humbly submit in that, to direct, you must have an intention; to authorize, you must have an intention. It is implied. You do not have to use the word “knowingly”. We agree with Sen. Dr. Balgobin. We will delete the word “acquiesce” and do not insert the word “knowingly”.

Sen. Al-Rawi: As a criminal practitioner for many years at the Bar, I do trust my learned Leader of Government Business on the point of “knowingly” in that context, and I will be happy without it.

Sen. Panday: If Sen. Hinds had said that, I would not have believed it. Thank you very much.

Sen. Dr. Balgobin: Can we knowingly move on?

Sen. Prescott SC: Mr. Chairman, forgive me, you may have to remove the comma after “to”.

Mr. Chairman: The question is that clause 62 be amended as follows:

By deleting the “,” after “to” in line 3 and the words “acquiesced in” in line 3.

Question put and agreed to.

Clause 62, as amended, ordered to stand part of the Bill.

Sen. Al-Rawi: Mr. Chairman—

Sen. Ramlogan: What Faris?

Sen. Al-Rawi:—my recommendation—I am sorry that my friends anticipate me—is that we take the rest of the clauses en bloc subject to what anyone else may say. [*Desk thumping and laughter*]

Clause 63.

Question proposed, That clause 63 stand part of the Bill.

Sen. Prescott SC: Mr. Chairman, I do not like the use of the term “a fine up to”. It sounds very colloquial. Could we say “not exceeding”?

Sen. Panday: Clause 63?

Sen. Prescott SC: The second to last line.

Sen. Gosine-Ramgoolam: Second to last line?

Sen. Prescott SC: Yes, I do not like “up to”. What about “not exceeding”?

Mr. Chairman: “Not exceeding”?

Sen. Prescott SC: I prefer that.

Mr. Chairman: The question is that clause 63(3) be amended as follows:

Delete the words “up to” in line 3 and replace them with the words “not exceeding”.

Question put and agreed to.

Clause 63, as amended, ordered to stand part of the Bill.

Clause 64 ordered to stand part of the Bill.

Clause 65.

Question proposed, That clause 65 stand part of the Bill.

Sen. Panday: Mr. Chairman, I beg to move that clause 65 be amended as circulated:

- A. In subclause (a) delete the words “by the Minister”.
- B. In subclause (b)—
 - (a) insert after the word “upon” the word “an”;
 - (b) delete the words “by the Minister”;
 - (c) insert a comma after the word “Act” and bring out remaining words to the margin.

Mr. Chairman, I beg to move the following amendment in addition to that amendment:

Insert the word “or” at the end of subclause (a) after the word “Act;”

Mr. Chairman: The question is that clause 65 be amended as circulated, but with the additional amendment of adding the word “or” after the semicolon appearing in subclause (a).

Question put and agreed to.

Clause 65, as amended, ordered to stand part of the Bill.

Clause 66 ordered to stand part of the Bill.

Clause 2 reintroduced.

Sen. Al-Rawi: Consequentially, I can say I have no amendments to propose to clause 2 in light of the discussions we had. [*Desk thumping*]

Sen. Ali: Mr. Chairman, I had a proposal on the interpretation of public body, item (g):

“a company incorporated under the laws of Trinidad and Tobago that is owned and controlled...”

I think that should be “owned or controlled”.

Mr. Chairman: In (g) it says that is “owned and controlled” Sen. Ali suggests that it should be “owned or controlled”.

Sen. Panday: No objection. Thank you very much, Senator.

Sen. Prescott SC: Mr. Chairman, now that we have reopened clause 2, may I invite your attention to (i).

Mr. Chairman: The same definition of “public body”?

Sen. Prescott SC: Yes. It might be a policy question, but bodies that receive funding indirectly from government could include voluntary organizations, a football club, a sports team. Is it really intended that these are the public bodies that we are talking about?

Sen. Gosine-Ramgoolam: Public bodies are not NGOs.

Sen. Prescott SC: It says a public body means:

“a body corporate or an unincorporated entity...”

Mr. Chairman: Well it just says and control, Senator.

Sen. Prescott SC: “...and over which Government is in a position to exercise control;”

Sen. Gosine-Ramgoolam: Yes.

Sen. Prescott SC: Thank you much. I withdraw.

Sen. Panday: Thank you.

Mr. Chairman: The question is that clause 2 be amended with a further amendment in the definition of “public body”, item (g), the word “and” in line 3 be deleted and be replaced by the word “or”.

Question put and agreed to.

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

Clause 50 recommitted.

Question again proposed, That clause 50 stand part of the Bill.

Sen. Panday: Mr. Chairman, can I kindly crave your indulgence to revert to clause 50, please? We have checked the Copyright Act and hence the need for further amendment. In (b): the unauthorized use of any performance—

Mr. Chairman: Not the word “public”.

Sen. Panday:—public performance and delete the words “protection period” and insert “the duration of the copyright period”.

The reason for that is that there was no definition of “protection period”. In the Copyright Act, it is referred to as the duration period, so we are trying to make it constant—

Mr. Chairman: And, therefore, we remove reference to “protection period” in the definition part.

9.10 p.m.

[*Crosstalk*]

So can I read—do you want to specify the section in the Copyright Act now that you have it before you?

Sen. Panday: No please, Mr. Chairman.

Mr. Chairman: So I will read the amendment again?

Sen. Panday: No, there will be no need for that, Mr. Chairman.

Mr. Chairman: Of what?

Sen. Panday: Of putting the section of the Copyright Act.

Mr. Chairman: All right. I was going to read the amendment for Senators’ benefit as it now appears. So this is a new subsection (4) which appears in clause 50 and it reads, in subparagraph (b).

“the unauthorized use of any public performance the duration of the copyright period of which has not expired.”

Then it goes on:

“For the purposes of this subsection public performance has the same meaning as in the Copyright Act.”

Sen. Al-Rawi: “Public performance” as “duration period.”

Mr. Chairman: No, “duration period” is not a defined term.

Legal Advisor: —“duration period” is also not defined. We create the duration period.

Sen. Al-Rawi: Okay, agreed.

Sen. Panday: That is why we drafted it like that.

Mr. Chairman: So the question is that clause 50, as further amended, stand part of the Bill.

Question put and agreed to.

Clause 50, as amended, again ordered to stand part of the Bill.

Clause 30 recommitted.

Question again proposed, That clause 30 stand part of the Bill.

Sen. Panday: Mr. Chairman, may I humbly seek your kind indulgence to revert to clause 30? In clause 30, we had deleted the last two lines of clause 30 from the words “or is as reliable as appropriate given the purpose for which and the circumstances in which the signature is required.”

Our further advice, Mr. Chairman, is, that clause should not have been deleted, it should be included because of international best practice.

Mr. Chairman: So are you removing the introduction earlier suggested “as set out in section 31(1) or as prescribed under section 53(3).”?

Sen. Panday: What is the question, Mr. Chairman?

Mr. Chairman: Earlier you had suggested, not just simply the deletion of those words but the substitution for them, of the words “as set out in section 31(1)”.

Sen. Panday: So therefore we will have to remove that also, Mr. Chairman. Yes.

Mr. Chairman: So we are going back to what it was originally?

Sen. Panday: So we go back to the original position.

Mr. Chairman: Okay.

Sen. Prescott SC: Mr. Chairman, in the circumstances, would the Leader kindly tell us what it would mean when we look at that clause that we are putting back in there? What is it being referred to?

Mr. Chairman: I am told it has some international meaning.

Sen. Prescott SC: Well, it does not make it any less a nonsense.

Sen. Panday: “Where a written law requires the signature of a person, that requirement is met in relation to an electronic record or data message by the use of an electronic signature that meets the minimum standards of reliability and integrity...”

and now we have reinserted:

“...or is as reliable as appropriate, given the purpose for which and the circumstances in which the signature is required.”

Sen. Prescott SC: So my question is: what must be “as reliable as appropriate”, the electronic signature?

Sen. Panday: Mr. Chairman, it says that the parties—under this law you will have the minimum standard of reliability but the parties may require a different standard, and that is why that has been reinstated.

Sen. Prescott SC: In clause 31(1), you go on to say what is the standard for reliability?

Sen. Panday: Yes.

Sen. Prescott SC: And therefore, why not include—

Mr. Chairman: Why not just include whether it goes on? I thought perhaps the reason for maintaining the wording was that, of course, the circumstances may change and we may have different technologies arising.

Sen. Prescott SC: I recall that the intervention—and I think it was Sen. Al-Rawi said—what he really attacked was the use of the words “or is as reliable as appropriate.”

Mr. Chairman: I think it was Sen. Drayton.

Sen. Prescott SC: Yes, it might have been. And it is really still that phrase that troubles us. Without it, it says “that meets the minimum standards of reliability and integrity given the purpose for which and the circumstances in which the signature is required”, and then 31(1) tells you what are the criteria for determining reliability. So it may appear that that inelegant phrase “or is as reliable as appropriate” should be treated as inelegant and removed.

Sen. Dr. Balgobin: Mr. Chairman, I suspect that what is happening here and what the drafters are pointing to us is an instance where two consenting parties agree to lower the standard.

Sen. Panday: Not a standard.

Sen. Dr. Balgobin: Sorry?

Sen. Panday: We speak here of the minimum standard and two consenting parties--

Sen. Dr. Balgobin: Consenting parties decide on a standard that is lower than what is set out in 31(1) because 31(1) requires authentication, protocols and all sorts of other things. But what it is saying is that two people agree that they do not need that, they can work with something that is far simpler, and I suspect, Mr. Chairman, that this is being done to broaden the scope of the applicability of this legislation.

And so it is a question of how, because it is a fact that only a very small proportion of the population would know their way around some of these authentication technologies. I think what this is attempting to do is broaden that field to allow the regular citizen to agree with another contracting party to a standard for the purposes of that particular transaction.

Sen. Panday: So therefore you agree, hon. Senator, that—

Sen. Dr. Balgobin: Well, if it is that we want to expand the use of electronic signatures then that is fine, and I will support it on that basis. However, it does introduce other—

Sen. Panday: Lowering the standard, yes.

Mr. Chairman: But why not just say “or conforms with the standards which the parties have laid down in their contract” or something like that.

Sen. Dr. Balgobin: Yes, I will be comfortable with that.

Mr. Chairman: But I do not know if that is what is intended. I am just saying, given your rationale.

Sen. Dr. Balgobin: No, well that is the intent.

Sen. Panday: That is the intent.

Sen. Dr. Balgobin: There can be no other intent. That is what this is. If you do not have it, Mr. Chairman, what happens is you restrict the population that can use this.

Mr. Chairman: Your suggestion seems to find favour with Sen. Prescott SC

Sen. Dr. Balgobin: Well, since he is the arbiter of all that is right and proper in the legal fraternity, we can go with him once he nods.

Sen. Panday: Mr. Chairman, what was the—

Mr. Chairman: I said “or conforms with the standard which the parties”—

Sen. Panday: “or conforms with the standard which the parties have agreed to in their contract.”

Sen. Dr. Balgobin: Mr. Chairman, I would support that.

Mr. Chairman: Senators, the amendment which I believe is being considered is that we delete the words, “or is as reliable” down to the end of clause 30 and replace them by the words “or conforms with the standard which the parties have agreed to by contract.”

Question put and agreed to.

Clause 30, as amended, again ordered to stand part of the Bill.

9.20 p.m.

Sen. Ramkhelawan: Mr. Chairman, I do not want to, as my friend Sen. Al-Rawi says, belabour the Bill, but my colleague, Sen. McKnight, raised a matter with me, for which I do not seem to have the answer. Under the Schedule, the last line:

“electronic certificates associated with a digital signature”

Mr. Chairman: We are going to come to the Schedule in a moment.

Sen. Ramlogan: We are now going to the Schedule.

New clause 19.

Mr. Chairman: There was a proposal put forward by Sen. Drayton for a new clause 19.

Insert the following new clause 19 after clause 18 in Part II:

Other requirements	“19. An expression in a law, whether used as a noun or verb, including the terms ‘document’, ‘record’, ‘file’, ‘submit’, ‘lodge’, ‘deliver’, ‘issue’, ‘publish’, ‘write in’, ‘print’, or words or expressions of similar effect, must be interpreted so as to include or permit such form, format or action in relation to an electronic record unless otherwise provided for in this Act.”
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New clause 19 read the first time.

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

Mr. Chairman: Just to explain, clause 19 had been proposed. I believe that Sen. Drayton said that she would withdraw it, but we are going through the process. We are now asking whether you are agreeable to a new clause 19 or not.

Sen. Panday: No.

Mr. Chairman: That is why I asked.

Question, put and negatived.

New Schedule.

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

Mr. Chairman: Mr. Chairman, I propose a new Schedule which reads as:

“Electronic authentication products used to validate electronic signatures,”

New Schedule read the first time.

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

Sen. Baptiste-McKight: Mr. Chairman, this makes mention of “electronic certificates” which we removed from the definition, and “digital signatures”, which appears no place in the Bill. So, I just do not understand what it is doing here. Can someone explain please?

Mr. Chairman: Clause 31 is the reference.

Sen. Baptiste-McKight: Well, I certainly cannot find it in clause 31, so I am asking for a little help, please.

Sen. Ramlogan: I am advised that these are technology-specific terms. Digital signature—it is known what a digital signature is.

Sen. Baptiste-McKight: No.

Sen. Ramlogan: What I am being told is that there is no need to define it.

Sen. Baptiste-McKight: No, no, no. We are not going there. Because, we talked about the difference between “electronic signature” and “digital signature”. We talked about the need for certificates or not, and it was obviously decided that there was no need for certification, so “certificate” was removed from the definitions. Having done that and agreed to it and mentioned digital signature nowhere in the Bill, it turns up in the Schedule. It does not make sense.

Sen. Ramlogan: I was just saying what the explanation was.

Mr. Chairman: I would like to point out that clause 31(3) and (4), to derive some understanding of the Schedule, I think you needed to see it in that context.

Sen. Dr. Balgobin: If I may, clause 31(3), in particular, is really what is driving the question of the electronic authentication products used to validate electronic signatures.

Sen. Panday: Speak a little louder, please Senator.

Sen. Dr. Balgobin: I was just saying that clause 31(3) treats with the issue of electronic authentication products used to validate electronic signatures. The issue is: is electronic certificate associated with digital signature? I think for the avoidance of confusion, we should not use the term “digital signature” in the Schedule.

Sen. Ramkhelawan: I am suggesting we go back to “electronic signature”—

Sen. Dr. Balgobin: since we have—*[Interruption]*

Sen. Ramkhelawan:—since we have a definition.

Sen. Dr. Balgobin:—come up with a very comprehensive definition of what an electronic signature is for our purposes, we should be able to use “electronic signature” here and that will suffice, because you have—

Sen. Gosine-Ramgoolam: That was the original Bill anyway.

Sen. Dr. Balgobin: You have, at great pains, defined what an “electronic signature” is, and you have basically—now, what it will in fact be is a digital signature. But, for the purposes of this legislation, you have to call it an electronic signature, because it has been so defined.

Mr. Chairman: Associate it with an electronic signature, rather than a digital signature.

Sen. Ramlogan: All right, we can change it from digital to electronic, then. Would that satisfy?.

Sen. Dr. Balgobin: Because your definition of an “electronic signature” covers it, Attorney General—because this legislation—is what a digital signature would be.

Sen. Al-Rawi: You can, perhaps, delete the whole line, because if you look at the Schedule and we just stuck with “electronic authentication products used to validate electronic signatures”, there is really no need for the second line.

Sen. Dr. Balgobin: Presumably, the second line speaks to examples or something like that.

Sen. Panday: Mr. Chairman, lines one and two, those lines are the title. What has been happening is, throughout the legislation, we have been using generic terms and here now we need to have this for specificity.

Mr. Chairman: It just identifies the Schedule. Because it is a mark up, obviously, it left the word “Schedule”. But, this, in the original, will be right up with the word “Schedule”. It is just a heading; just like the side headings. That is all that—as I understand it. The words “electronic authentication products used to validate” is a heading. Then the actual wording in the Schedule will read:

“Electronic certificates associated with”—and if you agree to it—“an electronic signature.”

That is how I understand it.

Sen. Panday: Sen. Baptiste-McKnight is concerned about the word “certificate” but here we are not using generic terms, but specificity. We need to be specific at this stage. We have been advised that this is what locks the digital signature to the electronic signature.

Sen. Al-Rawi: My only question is, in light of the deletion of “certificate” from the definition section in clause 2, do we have complication by repeating the use of certificates in the Schedule?

Sen. Gosine-Ramgoolam: That locks the digital and the electronic.

Sen. Dr. Balgobin: Well, the thing is that a digital signature is what creates an electronic certificate, so to speak. You cannot have one without the other.

Mr. Chairman: Are you going to keep it or not?

Sen. Dr. Balgobin: I think there is a merit in saying what an electronic certificate is, but I am—

Sen. Al-Rawi: Find another way to describe it other than electronic certificate, because we have specifically deleted references to electronic certificates in the Bill. Would there be any harm in saying, for instance—again, just repeating in the type of font and lower case or sentence case that it is in—electronic authentication products used or associated with electronic signatures? There would be no harm in saying that?

Sen. Panday: But, you are saying the same thing!

Sen. Al-Rawi: I am just—for tidiness sake—saying that we have deleted the electronic certificate references in the Bill.

Sen. Panday: I have been advised that we have drafted it like this. As new technology arises, it will be—

Sen. Gosine-Ramgoolam: It would change the Schedules.

Sen. Al-Rawi: I am trying to lend assistance to the observations of my friends on the Independent Bench.

Sen. Gosine-Ramgoolam: This is why it was placed in the Schedule, so that we can change as the technology changes.

Sen. Dr. Balgobin: Could I ask a question? What would you put in that little section that says “electronic certificates associated with a digital signature”? What is that intended to include? We have defined that fairly specifically in the Bill. What does that include? What is it that we are proposing to put there?

Sen. Panday: We have been told that the Schedule should remain as is to accommodate and incorporate any changes in technology which may come after.

Sen. Dr. Balgobin: Okay, now that does not work. That one does not work.

Sen. Ramkhelawan: That vitiates a lot of the arguments we have raised and settled on for the past couple of days of deliberations. You have fought off certain things. You have fought off digital signature and so on. Let us—once we are getting it right—not come to the end and change the rules of the game. If we are going, let us go with electronic signature; if you have to deal with certificate deal with it now. [*Interruption*] You do not want to have something that is wrong even before you have to amend.

Sen. Dr. Balgobin: What does this—what are they trying to convey?

Sen. Panday: It automatically includes it.

Sen. Dr. Balgobin: Is it that we are trying to convey examples of electronic signatures or is it that we are trying to convey what are the acceptable digital signature formats, or is it that we are trying to convey who the acceptable providers are? Because, then we can fashion wording very quickly.

Mr. Chairman: We must look back to clause 31, which is where the Schedule comes in, clause 31(4), I think it was.

Sen. Al-Rawi: Mr. Chairman, if you use the wording there, clause 31(3) reads:

“The Electronic Authentication Products referred to in the Schedule are the products which can be used to validate an electronic signature...”

Why do we not put “products used to validate electronic signatures” and just leave it like that?

Sen. Panday: Our advice is that all the abstract terms we have been using before, this Schedule locks it in to the digital signature.

Sen. Baptiste-Mc Knight: That explanation means you need some keys to lock it in.

Sen. Dr. Balgobin: Mr. Chairman, in clause 31(3)—I am trying to understand what the technical folks really have in mind and then I am more than happy to propose a wording.

Mr. Chairman: The Schedule ought to have the products described in it. That is what I gather.

Sen. Dr. Balgobin: And products are proprietary to providers who are in the Bill, who must be approved by the Minister or some designated authority on application.

9.35 p.m.

Once you have approved the electronic authentication provider, you have de facto approved their product, so that is why I am asking, what is the content that we are trying to include here? Because once the Minister or the designated authority approves the provider, the product is approved, so just to try to help and to clarify.

Sen. Gosine-Ramgoolam: I was advised by the technical people on this issue that throughout the Bill we have been general—abstract—and the Schedule is being specific, so we are trying to lock the abstract with the specifics.

Mr. Chairman: That is why I said you want to identify at least one product.

Sen. Gosine-Ramgoolam: Definitely.

Mr. Chairman:—that falls under this, but this does not seem to be a product—

Sen. Gosine-Ramgoolam: What does it say?

Mr. Chairman: It seems to be another general description, to my mind, of some other type, but is there a product name that we can fix on?

Sen. Dr. Balgobin: No. It is the product of an authentication—

Sen. Panday: We have been advised that the term “electronic certificate” is a term of art.

Sen. Gosine-Ramgoolam: Exactly, and that is placed in the Bill somewhere.

Sen. Panday: That is the technical people.

Sen. Dr. Balgobin: You will find that all over, the world, just not here; nothing wrong with that. I am still trying to understand, are we trying to say that these are examples of electronic signatures?

Sen. Gosine-Ramgoolam: One example, one.

Sen. Dr. Balgobin: Is this an example of an electronic signature, or the application of an electronic signature product, an electronic authentication product? So why not just say that, instead of introducing a new term in the Schedule like “electronic certificate”? Why did you not just say “example of an electronic authentication product”? Could we do that?

Sen. Panday: We will go with it.

Sen. Dr. Balgobin: Excellent.

Sen. Panday: “Electronic authentication product associated with”—oh, no, no wait—

Sen. Dr. Balgobin: An electronic signature? [*Crosstalk*]

No, no, no, you cannot say “digital signature”. [*Crosstalk*] We have just spent an enormous amount of time—

Sen. Ramkhelawan: Well, we did not define it—

Sen. Dr. Balgobin: You are stripping digital out.

Sen. Ramkhelawan:—and the hon. Minister defended it and said that is a subset. We do not want to have to go now and put “digital signature” and find ourselves seeking to have to define it on a separate page. So, go with “electronic signature”, stay with it, you have made all those arguments about electronic signature.

Sen. Gosine-Ramgoolam: And we can speak to the specific schedule, later on.

Sen. Ramkhelawan: Later; yes, if you want to do that later and then you define and so on.

Sen. Dr. Balgobin: If I may just point out to the technical people, through you, Mr. Chairman, that all of section—I know it is not ideal from a technology

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purist point of view, but all of Part IV treats with electronic signatures, that is the terminology that we have standardized on for the purpose of this, so, let us just use that. We know what we mean. It is written down. [*Crosstalk*] I am at a loss to understand, Mr. Chairman, why we are wedded in the Schedule to the notion of a digital signature. This is a battle that has been fought and won already.

Sen. Ramkhelawan: Yes.

Sen. Dr. Balgobin: We already have a comprehensive definition for an electronic signature.

Sen. Ramkhelawan: Mr. Chairman, we do have a wording now?

Sen. Dr. Balgobin: We do not have to go over this anymore.

Mr. Chairman: I hear you. I have heard the different—

Sen. Dr. Balgobin: So, I am waiting for clarification, I suppose.

Sen. Ramlogan: Mr. Chairman, may I just ask us to flick back to 31(3)? Clause 31(3) is linked to this, and this is the explanation given and I think we have to look at it again. What they are saying is that 31(3) reads:

“The Electronic Authentication Products referred to in the Schedule...”

So the Schedule therefore must contain electronic authentication products.

“The Electronic Authentication Products referred to in the Schedule are the products which can be used to validate an electronic signature under subsection (1).”

So we have to have electronic authentication products and we must have the specifics, and the specifics are really the electronic certificate associated with a digital signature, which is a subset of an electronic signature.

Sen. Dr. Balgobin: No, it is not.

Sen. Ramlogan: So would you all be—

Sen. Dr. Balgobin: In our definition here [*Crosstalk*]—Mr. Chairman, in our definition here, we have taken great pains to ensure that our standard for an electronic signature is synonymous with what the world would consider a digital signature.

Sen. Ramlogan: Okay, Senator if we change “digital signature” to what 31(3) has, which is “electronic signature”, would you all be happy?

Sen. Dr. Balgobin: Yeah, what we went to was—

Sen. Ramlogan: That ties back in with the wording of 31(3)—

Sen. Dr. Balgobin: Yes.

Sen. Ramlogan:—which speaks to an electronic signature as opposed to a digital signature.

Sen. Dr. Balgobin: Well we wanted to tie it in even tighter, Attorney General, and say “electronic authentication products associated with an electronic signature”.

Sen. Al-Rawi: That is exactly what I said.

Sen. Ramlogan: Sorry, electronics—repeat that please?

Sen. Dr. Balgobin: “electronic authentication products associated with an electronic signature”, which is what 31(3) says.

Sen. Al-Rawi: If in your regulations on your Schedule you get to certificates, then so be it there, but the point is, for consistency, just to use the term that you have in 31(3).

Sen. Gosine-Ramgoolam: Legal versus technical.

Sen. Al-Rawi: Exactly, spot on, legal versus technical.

Sen. Ramkhelawan: And then when you want to—[*Crosstalk*]
—when you are adjusting your Schedule you could create other definitions and sub definitions, but you also have these definitions here.

Sen. Gosine-Ramgoolam: We are just fighting on our own turf, without understanding each other.

Sen. Dr. Balgobin: No, I think what will happen here, hon. Minister, is that if you introduce it here now what is going to happen is you are going to invite confusion. It is better for us to try to standardize on the language, so that nobody is confused. Because in the rest of the world, a significant distinction can be made between an electronic and a digital signature, so, if we introduce that language here, it can generate confusion. So we just want to standardize the language.

I would say if it makes the Government any happier, “electronic certificates associated with an electronic signature” can probably work. It is not ideal because it still introduces this notion of electronic certificates that we have taken out everywhere else.

Sen. Ramlogan: We have come up with a compromise that I am hoping will solve this problem, given the hour, if we just say “electronic certificates” full stop.

Sen. Dr. Balgobin: That will work because all electronic certificates are associated with electronic signatures.

Sen. Ramlogan: That will work? So, let us go with that, yes; that is what I thought too.

Sen. Baptiste-Mc Knight: I have one other question. That means that you will reintroduce the definition of “certificate” that you took out?

Sen. Ramlogan: No. A certificate is a term of literal interpretation in the English language.

Sen. Baptiste-Mc Knight: So why you had it here in the first instance?

Sen. Ramlogan: Because it was technology specific then. When we use it here we use it in the ordinary sense of the English language.

9.45 p.m.

Sen. Baptiste-McKnight: It is late, but let us get something straight. People here are not foolish. The first time you have “certificate” on this was when you put it in the Schedule. You had it here as a definition, so do not tell me it is specific.

Sen. Ramlogan: Hon. Senator, do not manifest the hour in your speech and your gesticulations towards me, please. [*Desk thumping*] I am advised by the people who are advising us on the technical side that when it was used in the definition section, it was defined because it was technology specific then. When we use the term “electronic certificate” here in the Schedule, we are using it in as one would ordinarily understand a certificate in the ordinary English language. That is what I have been advised and I have no reason to disbelieve them.

Sen. Baptiste-Mc Knight: The only thing I would say to you is: It seems you have not read the first draft that you brought for us because there was not one mention of “certificate” in it, so that I do not understand the technological link to a missing word—quite simple!

Sen. Ramlogan: All right, we will agree to disagree on that one. Thank you very much.

Sen. Panday: In those circumstances, it is a policy position and we go with the Schedule as is.

Mr. Chairman: The question is that the Schedule be amended by deleting the words “electronic certificate associated with a digital signature” and replacing them with the words “electronic certificates”.

Question put and agreed to.

Schedule, as amended, ordered to stand part of the Bill.

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

Senate resumed.

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

ADJOURNMENT

The Minister of State in the Ministry of National Security (Sen. The Hon. Subhas Panday): Mr. President, I beg to move that the Senate do now adjourn to Tuesday, April 12, 2010 at 1.30 p.m., at which time we shall debate the Bail (Amdt.) Bill, 2010, the Anti-Gang Bill, 2010 and the Data Protection Bill, time permitting.

Sen. Ramlogan: Anti-Gang first.

Sen. The Hon. S. Panday: Yes.

Question put and agreed to.

Senate accordingly adjourned.

Adjourned at 9.51 p.m.