

Leave of Absence

Monday, May 23, 2011

SENATE

Monday, May 23, 2011

The Senate met at 1.30 p.m.

PRAYERS

[MADAM VICE-PRESIDENT *in the Chair*]

LEAVE OF ABSENCE

Madam Vice-President: Hon Senators, I have granted leave of absence to Sen. Prof. Harold Ramkissoon who is out of the country.

SENATOR'S APPOINTMENT

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

“THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

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

/s/ G. Richards
President

TO: DR. LENNOX BERNARD

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

NOW, THEREFORE, I, GEORGE MAXWELL RICHARDS, President as aforesaid, in exercise of the power vested in me by section 40(2)(c) and section 44 of the Constitution of the Republic of Trinidad and Tobago, do hereby appoint you, LENNOX BERNARD, to be temporarily a member of the Senate, with effect from 23rd May, 2011 and continuing during the absence from Trinidad and Tobago of the said Senator Professor Harold Ramkissoon.

Given under my Hand and the Seal of the President of the Republic of Trinidad and Tobago at the Office of the President, St. Ann's, this 20th day of May, 2011.”

Oath of Allegiance

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OATH OF ALLEGIANCE

Senator Lennox Bernard took and subscribed the Oath of Allegiance as required by law.

PAPERS LAID

1. Second report of the Auditor General of the Republic of Trinidad and Tobago on the financial statements of the Regulated Industries Commission for the year ended December 31, 2008. [*The Minister of Finance (Hon. Winston Dookeran)*]
2. Annual audited financial statements of the Tourism Development Company Limited for the financial year ended September 30, 2009. [*Hon. W. Dookeran*]
3. Annual audited financial statements of the Seafood Industry Development Company Limited for the financial year ended September 30, 2010. [*Hon. W. Dookeran*]
4. Annual administrative report of the Ministry of Education for fiscal year October 2008 to September 2009. [*The Minister of State in the Ministry of National Security (Sen. The Hon. Subhas Panday)*]
5. Annual audited financial statements of the Caribbean Industrial Research Institute for the year ended September 30, 2008. [*The Minister of Science, Technology and Tertiary Education (Sen. The Hon. Fazal Karim)*]
6. Annual audited financial statements of the Caribbean Industrial Research Institute for the year ended September 30, 2009. [*Sen. The Hon. F. Karim*]

ORAL ANSWERS TO QUESTIONS

**Foreign Investment (Tobago Land Acquisition) Order, 2007
(Details of)**

63. Sen. Dr. Victor Wheeler asked the hon. Minister of Finance:

With reference to the Foreign Investment (Tobago Land Acquisition) Order, 2007, could the Minister inform the Senate of:

- (i) the number of persons who applied for licences to acquire land in Tobago since this Order came into effect;
- (ii) the number of licences issued; and
- (iii) how long is the Order to remain in effect?

The Minister of Finance (Hon. Winston Dookeran): Madam Vice-President, with respect to question No. 63, I will not repeat, just give the answer. With reference to the Foreign Investment (Tobago Lands Acquisition) Order, 2007, the answer is as follows:

1. two persons applied for licence to acquire land in Tobago since the Order came into effect;
2. ten licences were issued.

At present, the Order mandates that a foreign investor shall first obtain a licence under the Act before acquiring any land in Tobago.

Madam Vice-President, at this time, there is no time limit on the Order and, as such, this Order will remain in effect until the Government deems it necessary to make any policy adjustments. May I also add, that in the preparation of the 2011 budget, we commenced discussions with the authorities in Tobago on this issue and, shortly, I shall be meeting once again with the Tobago Chamber of Commerce on this matter.

Annual Foreign Investment in Tobago (2005-2010)

64. Sen. Dr. Victor Wheeler asked the hon. Minister of Finance:

Could the Minister inform this Senate of the number and amount of each annual foreign investment in Tobago for the years 2005 to 2010?

The Minister of Finance (Hon. Winston Dookeran): Madam Vice-President, the number of foreign investments in Tobago for each of the years from 2005 to 2010 is as follows:

- 2005—36;
- 2006—26;
- 2007—32;
- 2008—6;
- 2009—5;
- 2010—3.

The TT values for these investments are as follows:

- 2005—\$41,610,275;
- 2006—\$38,596,949;

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2007—\$33,556,825;

2008—\$5,061,477;

2009—\$450,000;

2010—\$1,464,813. [*Desk thumping*]

TRAFFICKING IN PERSONS BILL

[Third Day]

Order read for resuming adjourned debate on question [May 03, 2011]:

That the Bill be now read a second time.

Question again proposed.

Madam Vice-President: Those who spoke on May 03, 2011: Sen. The Hon. Brig. John Sandy, Minister of National Security, mover of the Motion; Sen. Faris Al-Rawi; Sen. Basharat Ali; Sen. The Hon. Emmanuel George; Sen. Terrence Deyalsingh; and Sen. Dr. James Armstrong.

Those who spoke on May 17, 2011: Sen. David Abdulah; Sen. Shamfa Cudjoe; Sen. Helen Drayton; Sen. Prof. Harold Ramkissoon; Sen. Rabindra Moonan; Sen. Dr. Lester Henry; Sen. Corinne Baptiste-Mc Knight; Sen. Dr. Vidhya Gyan Tota-Maharaj; Sen. Dr. Rolph Balgobin; Sen. The Hon. Rudrawatee Nan Gosine-Ramgoolam; Sen. Barbara Burke; and Sen. Fitzgerald Hinds. Any Senator wishing to join in the debate may do so at this time.

Sen. Dr. Victor Wheeler: Thank you, Madam Vice-President. Two hundred years ago, British parliamentarian William Wilberforce and a group of courageous campaigners changed the public perception of slavery and overcame strong resistance, to push through legislation that brought about the end of the transatlantic slave trade.

Despite the achievements of those 19th Century abolitionists, slavery remains very much with us today. Around the world, millions of people, usually women and children are trapped in a modern form called human trafficking. Twenty-first Century abolitionists are now needed to enact laws, take measures to set victims of trafficking free and stamp out a crime that shames us all.

Madam Vice-President, trafficking in persons is a human rights violation. It is a crime against individuals. It is also a crime against the State and, in our case, the Republic. Action is needed to prevent trafficking. Action is also needed to prosecute traffickers and also to protect the victims. Trafficking in persons is also

a form of violence against women and children who are the most frequent victims. The impact on the victims is very severe. You have psychological harm, physical harm, trauma and with those who are involved in the sexual trade, there is an increased incidence of attracting sexually transmitted diseases, like HIV and AIDS.

Madam Vice-President, trafficking in persons is driven by gender inequality. It is also driven by an absence of equal opportunity, and also driven by economic disparities between states and persons.

1.45 p.m.

Madam Vice-President, trafficking in persons is also driven by corruption, and we know this Government came in on a vote of confidence that they will stamp out corruption, but we still see glimmers of this being present. Trafficking in persons is also driven by failing judicial systems. It is also driven by failing law enforcement systems; it is driven by civil instability; and also, it is driven by a failure of states to protect and provide for their citizens.

Trafficking in persons is also driven by a demand for commercial sex, and in our country, Trinidad and Tobago, where there is a growing sex tourism taking place, this further drives the demand for commercial sex. Trafficking in persons is driven by cheap construction, and we have seen previously where companies have obtained contracts for substantial projects in this country, and we have seen evidence of some of the workers claiming that they are not being paid well and not being treated well.

Trafficking is driven by a demand for cheap manufacturing as happens in some underdeveloped countries abroad, and it is also driven by a demand for cheap domestic labour.

Having said all of that, Madam Vice-President, trafficking in persons cannot be combated through crime control or prosecution alone which this Bill is hoping to address by instituting measures to make trafficking in persons a criminal offence, and also catching those persons found guilty and prosecuting them.

There should also be anti-trafficking legislation to recognize the victims—recognize trafficked persons as victims. These victims must be entitled to protection of basic human rights, and this Bill certainly seeks to address that. It is imperative that in addition to what we are doing today by introducing laws to combat and deal with trafficking, we must also review some of the other laws that would have an impact; laws such as the immigration laws, our labour laws, and

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our child protection laws. At this point, I repeat again, we do need to address the Children Act, and have it come into force as soon as we can. The laws I have just mentioned should be amended to cover all aspects of trafficking.

In addition to putting the laws to deal with trafficking, we must also provide a comprehensive framework to address this problem of human trafficking, and once this framework is put in place, it must be effectively enforced and effectively monitored. What the State needs to do is to provide a framework for the prevention of victimization. The State needs to provide a framework for protecting the victims of crime, and also to prosecute the criminals who are found guilty of this trafficking in persons.

As has been said by colleagues earlier, trafficking in persons is a transnational crime, it crosses national borders, and it can be said to be similar in nature to the drug trade. Trafficking in persons is also similar in nature to trafficking in arms. And, again, as has been mentioned, the issue of the cancellation of the OPVs comes in here where if we are unable to protect our borders from bringing in drugs and guns, we would also be unable to protect our borders from bringing persons illegally to Trinidad and Tobago. Trafficking in persons requires international cooperation, therefore, through information exchange and mutual assistance.

Madam Vice-President, fighting trafficking in persons has many challenges. Because it is a transnational problem, regional variations in countries' compliance with standards that we have put in place is a problem.

1.50 p.m.

Even though you pass the laws, you have them on the books, the implementation of the laws is also a problem, because it requires adequate resources; human resources. It requires continuous oversight and it also requires monitoring and evaluation. We see, even in ordinary crimes, investigation and prosecution of cases is a problem but for trafficking in persons investigation and prosecution is even more of a problem, this is because it is complex and it is time consuming. It requires rigorous training and a commitment of the law enforcement and the Judiciary to deal with the problem.

Unfortunately, corruption also affects the investigation, because if the law enforcement officers and the judicial officers that you are hoping to perform effectively are corrupt, this will be a problem.

Identification of the victims of trafficking in persons is another problem because of the fear of deportation, fear of persecution and they are also fearful of the traffickers. So the laws that treat with trafficked persons as victims, as is mentioned in this Bill, are very important.

With respect to the Bill at hand, there are just two areas in the Bill that I have some concerns with. I know my colleagues have mentioned quite a few others. The first area is with respect to the composition of the task force, clause 1, which is where the task force is composed of Ministers including the Attorney General and also the Minister of National Security. I am not certain how this task force will work in relation to the National Security Council of which the Prime Minister is the Chairman.

The other concern is with respect to the reporting of the Counter Trafficking Unit to the Minister, because in the Bill there is the Counter Trafficking Unit reporting to the Minister of National Security. That Minister of National Security also sits on the task force. So, how is this reporting of the Counter Trafficking Unit to the Minister? Is that going to be different or the same as the reporting of the Counter Trafficking Unit to the task force? This is a problem of international proportions. It is a problem of national proportions. We have had examples here in Trinidad and Tobago, probable examples, of human trafficking and I support the Government in this Bill in taking whatever steps necessary to stamp it out.

Madam Vice-President, I thank you.

The Minister of Planning, Economic and Social Restructuring and Gender Affairs (Sen. The Hon. Dr. Bhoendradatt Tewarie): Madam Vice-President, I stand just to share a few points of view on this Bill before the Senate, the Trafficking in Persons Bill, but before I address one or two matters of substance, I want to say thank you very much for the warm reception that I have received from all Members of the Senate, [*Desk thumping*] the Leader of Government Business and his entire team from the People's Partnership and I give them the assurance that I will be a team player and a source of support. The Senators on the other side of the aisle, but hopefully, on the same side for Trinidad and Tobago, I want to thank them also for their very, very heartfelt sentiments. I thank them sincerely for that, and the Senators on the Independent Bench, especially the Leader who was equally warm when I came into the Senate. I do thank you for that, because the whole spirit of the Senate, as I experienced it that day, was very convivial and there were warm exchanges as people made their points. I really thought that the atmosphere was very, very positive.

Sen. Hinds: Let me assure you that your friends are on this side.

Sen. The Hon. Dr. B. Tewarie: I thank the Senator for his advice.

On the matter of the Bill itself, I just want to do two things; one is to talk a little bit about the Bill in the context of what it implies, in terms of what you might call a policy perspective of the Government, but the second issue is to support the Bill, which really addresses heinous crimes against women and children and seeks to establish structures and systems and ways and means to address them.

“The object of the Act”—as stated on page 8, clause 4—“is to prescribe measures to prevent and combat trafficking in persons including children, by—

(a) protecting and assisting victims of trafficking;”

This is an important thing because the business of trafficking really claims victims in a terrible way and the protection and assistance of people who have found themselves in this position is an important act of humanity which requires protection of the law and that is something, I think, that we would all want to support.

The second object is:

“(b) facilitating the efficient investigation of cases of trafficking in persons;”

This matter of investigation at home and securing the evidence to get to the point of arrest and ultimately prosecution is a very important part of the crime-fighting effort.

Thirdly:

“(c) facilitating the prosecution of individuals and organizations involved in trafficking in persons;”

If people are not punished for the crimes that they commit and the law cannot be enforced, there is little hope of making change in those areas that we wish to change.

Finally:

“(d) promoting cooperation between Trinidad and Tobago and other States in order to prevent and suppress trafficking in persons and to punish offenders.”

It is this international dimension of the challenge before us and the need to have adequate laws to protect people who have been caught in this worldwide net of criminal activity that is at the heart of this Bill.

Peace, security and stability are a necessary condition for the prosperity of all, which is the phrase that embraces the vision of the People's Partnership, prosperity for all. If you do not have peace, if you do not have security, if you do not have stability, prosperity for all becomes very difficult. In a country that is disorganized and crime-ridden, individuals and cliques may make a lot of money, but progress in the country will be undermined and prosperity of the many will not be possible. Peace and security have to be a fundamental objective to be achieved and within this framework, crime containment, management and reduction are important goals.

In this setting then, when we look at this Bill, we see that what is being done here is really an attempt to address and arrest the challenge and the problem at home. Because, in Part II of the Bill where it speaks to the issue of the National Task Force, it states in clause 6(1)(c) that the objective is:

“to develop a national counter trafficking plan for the prevention of trafficking in persons and children and to co-ordinate its effective implementation;”

This is very important. For anything that you wish to do, institutions are important and effective institutions are the basis of civilization, really.

One of the problems with human trafficking is that it is seen by the participants in the process as business at home and part of an international business strategy by the people involved, and it raises the question of how a country goes about its strategy for development. We note today with technology and with international connectivity, that it is possible to choose either to do constructive things or equally, to choose to do very, very negative things with which one can make money.

I feel that it is important to establish a kind of tradition and a sensibility in Trinidad and Tobago where the choices are going to be in the direction of genuine entrepreneurial initiative, investments in things that make a difference to the people and the quality of life here and opportunities that are important for development of businesses that can compete in the world, but are not tied to negative and destructive elements that have high human cost for the people involved in it.

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It is in this spirit that I say a few words on the Bill and that I have risen to speak in support of the Bill. Again, I want to thank Senators for their warm welcome and I want to wholeheartedly support this Bill in its objectives, in the institution it seeks to create, and I note the reasonable amendments that have been suggested.

Thank you very much, Madam Vice-President.

Madam Vice-President: Hon. Senators, please allow, me on your behalf, in this First Session of the Tenth Parliament, to congratulate Hon. Sen. Dr. Tewarie on his maiden contribution in this session. Congratulations to you. [*Desk thumping*]

Sen. Penelope Beckles: Thank you very much, Madam Vice-President. Let me join with my many colleagues in congratulating Sen. The Hon. Dr. Tewarie on his appointment as a Senator [*Desk thumping*] and to genuinely wish him all the best as a Minister and in his efforts to serve the people of Trinidad and Tobago. Let me also congratulate him on his maiden contribution in the Senate.

Sen. Hinds: What about Minister George in his yellow tie? He is the only one in a yellow tie today. Congratulate Minister George. [*Desk thumping*]

Sen. P. Beckles: I join the debate on the Trafficking in Persons Bill, 2011. There are some comments I would want to make on the Bill. I would like the hon. Minister of National Security, on his winding up, to address a couple issues that I have on the Bill.

2.05 p.m.

The first one I would like him to look at is the issue of “criminal group” at clause 21(e). Clause 21(e) refers to the trafficking as part of an activity of an organized criminal group. Subject to your correction, I am not seeing the definition of “criminal group” in the legislation. If you point it out to me, I will be happy.

I was wondering, having regard to the fact that we recently completed the debate on the Anti-Gang Bill, whether or not it might have been wise to consider if that is what “criminal group” meant; whether or not it might have been wise to consider the definitions of “group” in the Anti-Gang Bill rather than “criminal group” because “criminal group”, as you know, has a wide connotation. I think I know what you mean, but I am not sure, in terms of linking the legislation.

It is also mentioned again at (f). This says that trafficking was part of the activity of an organized criminal group and the convicted person organized the group or directed its activities. Could you refer me to that definition? But I still feel, for the purpose of completeness, that the suggestion of considering using the definitions in the Anti-Gang Bill may be one that is worth considering.

Madam Vice-President, when one looks at the definition of “trafficking in persons”, and that definition is at page 7, it says:

“‘trafficking’ in relation to persons means the recruitment, transportation, transfer, harbouring or receipt of persons by means of the threat or use of force or other forms of coercion, abduction, fraud, deception, the abuse of power, the abuse of a position of vulnerability or the giving or receiving of payment or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation;”

I started deliberately with that clause because I listened last week to Sen. Dr. Rolph Balgobin giving us some information, and clearly, he did his research. He also gave some information in terms of his personal experience. That should have alerted us to the extent to which a number of things are happening in Trinidad and Tobago. Sometimes we pass buildings and institutions that have interesting names. They appear to be decent places, for want of a better word, and then when we do investigations, we may find otherwise.

Those of us who would have been following issues relating to prostitution, human trafficking, drugs, murder and other related criminal activities would no doubt agree that the persons to whom we are referring are persons who sometimes are very powerful in our countries. Sometimes they may almost be referred to as untouchables and, therefore, if we really want to address these problems, we have, not just to pass the legislation and put certain policies in place, but we have to be extremely serious if we really want to remove the scourge of some of the criminal activities that are now plaguing our lands.

I think that this recent case that is going on in the United States of the Chief of the IMF, Mr. Dominique Strauss-Kahn, is an interesting case to look at. Whilst it does not deal with human trafficking per se, it tells us that sometimes persons who are held up, either in their own countries or in international circles, are sometimes the ones involved in some kinds of activities that would shock us. When I listened to Sen. Dr. Balgobin last week, and in doing my own research in Trinidad and Tobago, it is some such persons we are talking about.

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I am sure a number of us have been following this allegation as it relates to Mr. Strauss-Kahn and listening to the BBC news. Some of the people in France were saying: Well, you know, we told him that the United States of America is not France and when you go there some of the things you will get away with in France, you would not get away with in the United States.

This is simply because prostitution and some other like offences are not seen in France as seriously as they are seen in other countries. As a matter of fact, in England and some other European countries, prostitution is not illegal. Madam Vice-President, you may remember, some years ago, that a prostitute ran for President in France.

Sen. Hinds: Is so?

Sen. P. Beckles: Yes, I remember that very clearly. It was not a big issue. That is to tell you the extent to which that activity is not considered very seriously. My point is that very often it is those whom we hold in high esteem who are involved in these kinds of activities.

A number of persons mentioned in their contributions—I think it was the Minister of National Security and some others—that trafficking is one of the activities that is very, very lucrative and, in order to be involved in trafficking, one has to have a lot of money. When you look at the situation, it is that you have a number of people coming into a particular country, sometimes legally, but their time may be up; sometimes illegally and they are coming in at various ports at different times. Maybe, anywhere our borders are not secured, they come in there, with or without passport, and there is a thriving industry developing where people can then get passports; where they are able to get supposed extensions that may appear to have met the required qualifications and they have not.

Some people gave examples of persons who are staying in certain institutions and they hold their passports. They have to pay rent and they have to work as and when the people request. A number of these things have been going on for a long time. You would recall that some persons even gave examples of some organizations or places where off and on the police would go, maybe every four to six months, make a big raid and it is all in the newspapers and you have the pictures of 10, 20 women in the newspapers; everybody hiding her face and it is almost like a celebration that they have finally gone to this particular place and done something about it. Lo and behold, Madam Vice-President, in some instances, the next day, the next week or the next month, it is business as usual until the police decide to go back again.

We ask ourselves how these people are able to operate where almost anybody can tell you: Yes, just down the road in Marabella or in Chaguanas or in Port of Spain; that so many people—whether police or a member of the public—are fully aware of what is going on in those respective places.

Reading from one of the comments on Trinidad and Tobago, it actually says that Trinidad and Tobago is one of those destinations that are actually known for human trafficking. As a matter of fact, reading from one of the reports, the Tier 2 Watch List, it says that:

“Trinidad and Tobago is a destination source and transit country for women and children subjected to trafficking in persons, specifically forced prostitution, and children and men in conditions of forced labor. Some women and girls from Colombia, Dominican Republic, Venezuela and Suriname who had been in prostitution in Trinidad and Tobago brothels and clubs have been identified as trafficking victims.”

As difficult as it is for some of us to believe, whether it is in the outside world, we are perceived as a country where women and children are being trafficked.

As we seek to deal with this problem and as we have legislation, it is important for us to do some research as to how we got to where we are today. Very often we take the approach that we are looking at the legislation; we are looking at prevention; we are looking at prosecution and when you look at the report, they are very hard on, not just this Government, but the last government. The fact is that there have been no prosecutions or convictions and when you go through the reports from all the other countries, whether Guyana, St. Vincent, Barbados or Venezuela, the focus is really on prosecutions and convictions and very little, in my humble view, is talked about as it relates to the cause of human trafficking.

I take the opportunity to congratulate the Missing Persons Association for the work they have been doing in Trinidad and Tobago. There is a Miss Latifah Mitchell who has been leading the charge. One of the things the report talks about is education and working with the NGOs. They have been doing quite a lot of work. You can now go on to the website and several places and get a list of persons who are missing.

Some of the stories, of course, are quite unbelievable. If we think about the case of Abigail Joseph, who was last seen boarding a Cascade taxi in Port of Spain in September 2008 after dropping off her eight-year-old to school, she was lured into a car and has not been seen since then. There are several other stories

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that are very surprising; that in Trinidad and Tobago, with a population of just one million people, you can see someone going into a vehicle and never hear about them again. That has happened several times over.

Some of us would not want that experience whether for our husband, wife or neighbour; people that we know. Therefore, this is why this Bill is so very important. I think even more important is the issue of educating.

Sen. The Hon. Dr. Tewarie talked about the issue of peace. To a large extent in our society, some of us have gotten to the stage where once we are comfortable and feel we have improved our standard of living, we pay little or no attention to people around us. Some of us will see certain things happening and prefer to turn a blind eye. For us to succeed in dealing with the issue of human trafficking, it is not just the police who have to be vigilant, but many members of the public who see certain things happening and should report these things.

One of the clauses deals with the issue of witness protection. This is an area that we have not really been very successful at because of the length of time it takes for many of the matters in court to be completed. The extent to which we will be able to have these matters dealt with and expedited is the extent to which we will succeed.

2.20 p.m.

Now, Madam Vice-President, Sen. Hinds and I think it might have been Sen. Ramgoolam mentioned the report in 2009, about the children who were allegedly found in a cargo container. You know, I am sure the Minister of National Security can shed some light because I am sure that he would have— it may have come across his desk, that there are people in Trinidad and Tobago who still believe that that incident really happened. Even though the Minister of National Security at the time, I think the Prime Minister, the Port Authority came out and said that nothing like that happened. But you had a very reputable news media giving that story, and then people, in typical Trinidad fashion, embellishing the story. So, when you do research on Trinidad this is one of the things that still pops up, that it is there, you know. Because in doing my research I found several articles, children found in cargo container and it refers to:

“There was a complete shutdown in Port of Spain yesterday as rumors spread throughout the country that a container with missing children had been discovered. The airwaves of radio and television stations along with newspaper and newsroom were buzzing with activity, as concerned people called in”. [*Crosstalk*]

Sen. Hinds: Could you imagine that?

Sen. P. Beckles: And then as you read the story, you realize that people were calling in to say they had a brother in the Ministry of National Security, they had a brother working down on the port and they actually confirmed. Sometimes we live in a society where people just love to—you know a rumour sounds—it is exciting for people sometimes not to tell the truth. They do not understand that—and then people began to talk about the fact that all these people, children who were missing all the time, that they had them stored somewhere and they were now going to be shipped.

But you know, as much as it turned out not to be true, and thank God, when we read the newspapers last week about this container full of people going from Mexico to the United States—and I know you might not have been here, Minister—with 500 and something persons; those persons were from Ecuador, the Dominican Republic and Mexico—to cross to get to the United States. And they told you what it cost each individual to go to the United States. Of course, they told you the kind of circumstances under which these persons were in this container, women, children and men. That is why it came back to the issue of researching the “why” about how people are sometimes trafficked, because they made it very clear that in almost all the instances people were going to the United States for a better life, because of poverty and the challenges.

Now, a lot of people that come into Trinidad and Tobago who have gotten involved in prostitution and others because they believe, in many instances, that greener pastures—and it is the way to a better life.

When you look at the legislation, the legislation talks about the issue of—you have to get particulars as it relates to the age of the person, where the person lives and all sorts of particulars. The reason I am raising this, Madam Vice-President, is that I do not know how many persons are aware that there are still a number of—yes, at clause 41(1) says that:

“Upon a request by a competent authority of another State, the Minister shall, without undue or unreasonable delay, verify whether a person who is a victim of trafficking is a national of, or has resident status in, Trinidad and Tobago.

A request made under subsection (1) may include a request for verification of—

- (a) the name and age of a person who is a victim of trafficking in persons and who is suspected of being a minor;...

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Now, Madam Vice-President, the reason I find this a very, very interesting section—it may surprise some of us that there are still a number of children in Trinidad and Tobago or adults who do not have a birth certificate.

2.25 p.m.

As a matter of fact, I came across a case only last week where several brothers in one family—four to be exact—had no birth certificates. That is not my first experience. As a Member of Parliament, I had several cases where there were children who had never gone to school. I am not talking about 10, 20, or 30 years ago, but I am talking about recently; whether in walkabouts and so forth. I remember one particular case of seven children and none of them had a birth certificate and had never gone to school.

Now, I raised this matter in the context of trafficking, because in a case like that, people who live in a community will know that there are children who have never gone to school. Some people may bring it to the attention of the authorities and some people may not bring it to the attention of the authorities, but it is children like those who could be easily targeted. When you look for a birth certificate, those people do not exist—they do not exist in a legal sense—but those are the persons where a mother is taking her children casually for a walk that people are monitoring every day. This is not anything that is weird. You would notice that a mother who has three or four children on a particular day, or days, going with her to the market and so forth, there are people who are monitoring those situations more than we think. So, as we talk about educating people about this, and as I talk about the issue of the research and why, it is some of those instances that we have to pay attention to.

Under the last UNC administration at the time, I think it was Mr. Maharaj who was the Attorney General, they passed legislation to allow persons to be able to get birth certificates who previously did not have. In those particular situations, you now have to do an affidavit, but a lot of people are not aware that they can actually get a birth certificate even though their mother or father did not register them at birth.

Now, the difficulty is that you end up without a birth certificate and you do not have an ID card, and these are the persons who are sometimes easily targeted. Whilst some people do not want to hear us talk about issues of prevention and issues of those types of persons being victims of their own circumstances, it is a very important issue for us to address.

I share that particular situation, and I want to refer to a case that would probably bring this matter closer to home even though it is not a Trinidadian case. That was the case of the Austrian incest father; the famous Josef Fritzl. If I may just read a bit; he hid and abused his daughter for 24 years.

“Fritzl, 73, who fathered seven children by his daughter Elisabeth in a soundproofed cellar he built at the back of the block...”

He was eventually charged for murder of twin boys who died shortly after birth and, of course, rape and enslavement of Elisabeth.

Now, the interesting thing about that case is that he eventually took three of Elisabeth’s children to live with himself and his wife, and from all appearances his wife did not even know that those were her grandchildren. Nobody in that entire village was aware that he actually had those children living right downstairs. Of course, no birth paper and no knowledge at all that they were born. Some of us believe that things like that do not happen in Trinidad and Tobago, and I am saying that it happens.

There was a situation where he told his wife and the neighbours that the daughter had run away when he had built a soundproofed room downstairs where she had no access to light, but he would go down there from time to time just to rape her and to sit and do whatever it is he wanted to do. It is only when one of those children got ill, and they did the research, they eventually found out about a case like that. Now, the question we ask ourselves at the end of the day, is what kind of life would those children have?

Now, there are similar situations like this in many other parts of the world. In Pennsylvania there was another situation where a couple had two children, ages two and 13, and they concealed them for years, again with no birth certificate and no one had knowledge that they existed. They lived outside in that society in pure squalor; no heat, no electricity, no running water, no birth certificate, no schooling, no immunization and no medical care. At some time, even though people had a clue that something was going on there, eventually the police went into the home, and there was no evidence of those children probably taking a bath for years. At the end of the day, the bottom line is they were charged. Both the United States of America and Austria were shocked that the world knew that things like that were going on in their respective countries.

Now, as I come closer to home and having spoken about those instances that I talked about, there is an article written by Suzanne Sheppard in the *Newsday* some time ago, and it talks about—“Sex tourism drives illicit trade, experts say”—and

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this article was written in 2007. Suzanne Sheppard did a lot of research and she spoke about the fact that it is estimated that approximately 100,000 women and children are exposed annually for sexual purposes. This is in the Caribbean.

She referred to the fact that:

“Chief Immigration Officer Herman Browne, who was part of the joint exercise, said most of the passports...”

They went to a particular place where they were doing an investigation and held some people, and the Chief Immigration Officer at the time said—

“most of the passports had no immigration stamps, so it was difficult to determine how long the detainees had been in the country. He said some of the women had been arrested and deported previously but had re-entered the country illegally.”

They gave the names of several persons, and they all admitted that they had entered Trinidad and Tobago illegally by boat.

“They said they came ashore at beaches rather than official ports of entry. The women also admitted that they had come into the country to work as prostitutes at the establishments where they were arrested.

They say many of them are Spanish-speaking women who are being smuggled into the country at illegal points of entry along the south-western coast, including Moruga, Quinam, Iacos, Los Iros, Mosquito Creek and Carli Bay. However, because of limited manpower the authorities have been unable to bring the situation under control.”

I do not want to go into the names of the women, but these women were actually charged. I do not think it is necessary. It continues:

“An investigation by Sunday Newsday revealed that scores of women and girls are trafficked into Trinidad and Tobago every year...The majority come from Colombia, the Dominican Republic, Venezuela and Guyana.”

Now, it goes on to say, and this is what I mentioned earlier:

“Human trafficking is the third most lucrative illicit trade in the world, experts say, ranking close behind the arms and drug trades. The International Organization for Migration estimates that organized crime syndicates earned US \$7 billion annually from the trade, keeping their profits high and cost low by withholding food, wages, adequate shelter and health care.”

So, in my humble view, except the Minister says otherwise, the information I have is that these same areas that they referred to—Moruga, Los Iros, Mosquito Creek and Carli Bay and so on, there is a thriving industry of persons coming in illegally into Trinidad and Tobago and it continues unabated. As a matter of fact, there is even a suggestion that it has increased.

Whilst I congratulate the Minister for bringing this legislation to ensure that we do not move down to another tier, I want to suggest to him that if we are to successfully deal with this issue, then the issue of protecting our borders has become an even more urgent one. I say that because we could pass the legislation and, certainly, Trinidad and Tobago may get a better rating when they do the report next year, because by then the legislation would have been passed. The possibility exists that we may even get a conviction or two, because we now have the legislation, but the issue is not just the legislation but what can the Government do to improve the protection of our borders?

Now, we understood very well and to a certain extent agree that a new government has the right to make changes, but at the end of the day, we would want to maintain that the decision to cancel those OPV contracts was not a good decision. I am sure it would have helped to assist the Government in dealing with this issue of human trafficking.

You see, Madam Vice-President, similar to bringing in arms, ammunition and cocaine or anything else, it cannot be done by any “small fry”, it cannot be done by any man in the street. The only way people can successfully do that, they must have the kind of vessels, money and contacts. That is the only way they could succeed.

I just want to say that in the legislation, the issue in terms of making arrests, they need to look at including the issue of vessels, planes, boats and other similar types of vehicles that would allow the police to go and issue warrants on board. That is not listed in the legislation. I think that they should include that in the legislation.

Madam Vice-President, the other matter is that the legislation also refers to the issue of housing for victims. They talk about ensuring the issue of compensation, medical care and appropriate housing, and the legislation does not specify exactly how the Government proposes to do that. I note this because a lot of the victims who are trafficked, at the end of the day, part of the reason why they remained in that cycle is because they have nowhere to go.

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One would only hope that this issue of housing that is a very sensitive matter, that in the absence of a procedure and a process and some sort of transparency, is one of the things that can be manipulated. The reason for that is we are quite aware—take, for example, today, the Government and the PSA I think had the first distribution of houses in keeping with their agreement, but similar to this piece of legislation where there is no indication as to the process and procedure that would be followed to ensure that there is transparency, is a similar situation where in relation to the distribution of those houses to members of the PSA, the allegation is that there is no transparency and no proper procedure.

2.40 p.m.

The final point that I want to make in relation to this issue of human trafficking is the importance of dealing with the issue of cellphones and laptops. Madam Vice-President, in an article entitled, “Porn at Schools”, and this article is in 2008. It states:

“Secondary school students are selling sexually explicit footage...for as little as \$5.

The fee is paid first, then raunchy sex videos involving the students engaging in sex acts in...classroom are transferred to the customer via cellphone bluetooth.

This was revealed at a seminar on juvenile delinquency...at the Faculty of Social Sciences...University of the West Indies, St. Augustine.”

They randomly selected 14 junior secondary schools and enquired of them as it relates to this activity, and they really were not hesitant to share. Dr. Daphne Phillips, who conducted the survey said:

“...pornography was prevalent in more urban schools, whereas students from rural schools preferred other means such as stealing fruits to sell in order to make money.

The findings of the study drew a link between violence and broken homes, and were intended to inform the policy makers in society so adjustments could be made to existing policies.”

In another article, and this, interestingly enough is from Barbados:

“The Chief Education Officer in Barbados,...said that the existing policy is that any student found using a cell phone on the school’s compound, will be suspended, the phone will be confiscated, and the parent summoned to collect the phone.”

The reason for that is because of the development of this pornography in schools. It has become quite a raging debate in Barbados, but the fact is that they have recognized that it is a very, very important issue.

Madam Vice-President, referring to human trafficking or making a sort of link with slavery, is not something most of us would be happy about, but when you listen to the circumstances under which a lot of people find themselves, that is how it is referred. In an article about Trinidad and Tobago entitled, “Where are the Missing People?”, they refer to a young lady whose name is Devika Lalman, a 15-year-old who “left home a few days before Christmas to buy school supplies for her new academic term...” The mother of the Form Three student said she had given her...a...phone, but all calls to that phone have gone unanswered and the daughter has not been seen since.” This was in 2009.

They formed a view that almost all the women who disappeared left behind a pattern, their cellphones were switched off. We also heard that they were transported from one house to another before being shipped out; and this is being referred to in the *Sunday Guardian*, which carried out its own investigation and said:

“The clandestine local trade, which operates through a well-organized network and is supported by several powerful agencies, is linked to an international trafficking ring.”

2.45 p.m.

The paper said that children were being sold for as much as \$34,000 and adults for half that amount. They are mostly used as sex slaves and sometimes for slave labour, sometimes they are used to make pay-offs in drug trade—the paper noted—and that the trafficking also includes young women, and they mentioned the various countries.

So, Madam Vice-President, my point is that a lot of these things are well documented; the unfortunate thing is the pain for those parents, teachers, classmates, family members who have had to endure the difficulty of a loved one disappearing off the face of the earth.

So I must say that when I started to do my research on this—you know, you think of Trinidad and Tobago and you think of trafficking, you think of countries where it is prevalent and you find it—I must admit—a little difficult in the first instance, to believe that it is happening in Trinidad and Tobago. The question I had difficulty with is, where have these persons disappeared to? I cannot say that

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I have answers because I am not privy to a lot of it, but let us hope with this legislation now coming into being, that we would have the kind of documentation, and we would have the kind of aggressiveness that would probably reduce the likelihood of some of the instances to which I have referred.

I know that my colleague Sen. Cudjoe spoke about Tobago, but one of the things that Trinidad has also developed a reputation for in relation to trafficking, is sex tourism. Some research has been done on sex tourism and they were saying that sex tourism in Tobago mainly involves Europeans and North American women and local men. The trade is run with businesslike efficiency by tourist agents and unlisted guesthouses with advertisements in European magazines announcing package deals, including the services of a local male or female.

Madam Vice-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. [*Sen. F. Al-Rawi*]

Question put and agreed to.

Sen. P. Beckles-Robinson: Thank you very much, Madam Vice-President, and thank you very much to my colleagues. As I wind up I am sure, Madam Vice-President, you remember that famous name, Simonetta, that is the Swiss visitor who had developed a reputation for having sex with several persons in Tobago—she was HIV positive, and she had engaged in unprotected sex with a number of local men. A lot of research was done in relation to that particular case because she actually—if you would recall, she had the list of all the men, and she placed that list in a very prominent place so that, I suppose, people would have known exactly who those persons were. They actually interviewed a number of those men because their names were written, it is not as though they had to go and look for them. Their stories really related to the fact that you know, why they decided to engage in this activity, was in some instances I guess—they gave the normal answer, that is what they preferred.

2.50 p.m.

The point is that there are some institutions that market Tobago in a particular light that allows people to believe that that is what Tobago is all about and we know that is what Tobago is not all about, but at the same time it is important for us as we debate this Bill that we place a lot of emphasis on the issue of educating our population as to the pitfalls.

I end by saying that it is important that we all recognize that we have a role to play if it is that this objective is to be achieved. So I join with my other colleagues in indicating the support on this side for the Bill. Thank you. [*Desk thumping*]

Sen. Elton Prescott SC: Madam Vice-President, thank you very much for this opportunity to contribute to the debate on the Trafficking in Persons Bill.

I imagine that quite a bit has been said about the issue of sexual exploitation which seems to be predominating, but I should veer away from that slightly and focus on some legislative issues, which I have endeavoured to limit to six or seven of them. So if I may invite the attention of the hon. Attorney General, I should like to start there, to the text of the draft itself and focus firstly on the administrative bodies that have been proposed to be set up, namely, the task force and the Counter-Trafficking Unit and to make some enquiries in a gentle sort of way. I know the draft proposes that the task force be set up and should comprise the Attorney General, the Ministers responsible for foreign affairs, labour, social development, national security and justice, and then certain other officials from various other departments of Government: immigration, foreign affairs, social development; a whole coterie of persons.

My first question to the hon. Attorney General and to this Senate is, why have we found it necessary, the Attorney General being the constitutional advisor to the Cabinet and the Government, to include him in this body which, presumably, he should be advising. He runs the risk also of not even being the chairman because the chairman, according to the draft, would be appointed by the President from among this group of persons, so that one wonders how should he be advising himself. [*Desk thumping*]

He runs the risk further of the business of the task force being treated in a fashion rejected—let me use the word “rejected”—by the body to whom they report. So, he now is going to be required to seek to defend it in circumstances where he truly ought to be advising objectively and dispassionately from his constitutional distance as Attorney General of Trinidad and Tobago.

I do not make it lightly because clause 6 also goes on to say that their reports are to be submitted to the Minister. Now, the Minister, the person who holds that office is by no means likely to be a Minister of seniority over the Attorney General, so we need to ask whether that is the intention of this piece of legislation, that he should now be seen to be submitting to the Minister of National Security his, or the views of his task force, for the Minister’s approval or endorsements.

I trust, Madam Vice-President, that some concern will be given to re-engineering the entire legislation, but particularly, the decision to engage a task force of which the Attorney General is likely to be supernumerary.

Then I turn to the business of the task force itself. We see that it is meant to be wide-ranging—this is a national task force against trafficking in persons, so it monitors and gives directions, both general and specific, to the Counter-Trafficking Unit. There are many admirable tasks set out for the task force, and I am not about to seek to deride any of them, but I should like to focus briefly on the Counter-Trafficking Unit. The Counter-Trafficking Unit is established under clause 11 of the draft and it is proposed that it should be a unit within the Ministry responsible for national security, and there too I have my reservations, because its functions are innumerable, they are wide-ranging, and far-reaching and there is no doubt that a Minister responsible for national security ought to have some view and be given some opportunity to comment on the activities. But to whom does the director of the Counter-Trafficking Unit report? To whom is he accountable? Is it to the Minister? He, unlike the Member—and I trust I am not wrong when I say this—is appointed by the President; so too is the deputy director. I imagine that one could not have anticipated that in light of his or her presidential appointment, that a Minister of Government could feel that he should demand a report from a director of the Counter-Trafficking Unit, a presidential appointment.

Then why make the Counter-Trafficking Unit answerable to the task force? The task force, as I had pointed out, has many and varied functions, but it begins—

Hon. Senator: What clause is that?

Sen. E. Prescott SC: Clause 6 that is—by saying that among its functions are that it shall monitor and give directions both general and specific to the Counter-Trafficking Unit, so we know that they are the administrators, the managers of the Counter-Trafficking Unit and so they can determine whether or not and how the Counter-Trafficking Unit is to function.

When we place them in a position where they become answerable to the task force and taking directions from the task force, it expands the thinking that I started with earlier, that we find the Attorney General intervening and interfering, putting his hands in a number of matters that are way beneath the office of Attorney General—[*Desk thumping*] way beneath, in my view.

So, I am urging a re-think, as I think I have said before on the engineering of this piece of legislation so that it does not appear to be as, mundane is the easiest term I could find, as pedestrian as it appears to me.

I am on clause 12, Madam Vice-President, and wish to address clause 12(1). It says:

“The functions of the Counter-Trafficking Unit are as follows:

- (c) to gather evidence in relation to trafficking offences and any offence under this Act so as to secure convictions against traffickers;”

And then in clause 12(h) it says:

“(h) where necessary, to refer possible cases of trafficking in persons to appropriate governmental agencies, civil society or international organizations for requisite action...”

And then institution of prosecutions may be conducted presumably by these bodies and one is tempted to ask, so what are the constitutional roles of the Director of Public Prosecutions, should he not be the sole or primary recipient of evidence gathered by this Counter-Trafficking Unit [*Desk thumping*] in order to enable him to do what he is required by the Constitution, which is to institute prosecutions?

Let me read clause 12(h) again:

“The functions of the Counter-Trafficking Unit are as follows:

- (h) where necessary”—presumably in their opinion—“to refer possible cases of trafficking in persons to appropriate governmental agencies, civil society or international organizations for requisite action, such as, further investigation, institution of prosecutions...”

It just does not happen.

Under our Constitution this is certainly not what one would have expected to see in a piece of legislation of this nature. What if the task force determines that it will reserve the right to give specific instructions not to prosecute? It is well within their power as contemplated by clause 6 that the task force would say, “Well, leave that one alone. Do not prosecute that particular offender.” We do not want to know that our legislation permits a body of such force and power to determine which of our citizens should be prosecuted and which should not. [*Desk thumping*]

Indeed, it is my contention, Madam Vice-President, that the task force should not have the power which it seems to have inherently, to determine that it should first see the evidence before the DPP does. [*Desk thumping*] If we were to permit that, granted that there are many of our high-ranking officials in this society who

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might benefit from it, we cannot afford to reduce criminal prosecutions to the discretion of the task force. [*Desk thumping*]

Sen. Hinds: Amendment number one.

Sen. E. Prescott SC: Madam Vice-President, I have not had the benefit of ascertaining whether anyone has recommended that there should be a joint select committee looking into this piece of legislation. [*Sen. Al-Rawi raises his hand*] Sen. Al-Rawi has now indicated to me that he has and assuming for the moment that his language skills are as good as they have always been, I want to support all that he would have said, ought to have said in that regard. [*Desk thumping*]

I turn now to clauses 15 and 16 under the caption “Criminal Offences and Related Provisions”. Clause 15 says that section 58(2) of the Interpretation Act does not apply to the penalties prescribed in sections 16, 17, 18 and 19. Those are the sections dealing with trafficking in persons; inciting, organizing or directing another person to traffic in persons; trafficking in children and inciting, organizing or directing another person to traffic in children.

Now, as I understand section 68(2) of the Interpretation Act, which this clause says does not apply, it says, “if you have put in a minimum or a fixed penalty it shall have effect as though no such minimum or penalty has been included in the legislation”. So, presumably, it is intended that whatever is set out here by way of penalty, should be the, maximum. I am assuming that is what is meant, but may I read section 16 as an example.

3.05 p.m.

It says:

“A person who, for the purpose of exploitation—

commits the offence of trafficking in persons and is liable on conviction on indictment”...—should be liable to imprisonment for a term—“of not less than fifteen years.”

Now, either the legislation intends to say that the maximum term is fifteen years, in which case one wonders why say, “not less than fifteen,” or this legislation intends to say that the power of the court to impose such sentence as the evidence may determine has been taken away.

Courts as I understand it—criminal courts—do have the power and the discretion to determine on the basis of the evidence presented, what sentences, within a certain range, should apply to any particular miscreant. I am not pleased to see that we have endeavoured by clause 16 to impose maximum penalties on courts in particular, in circumstances such as these.

The offences that are likely to come from a precise application of this Bill are going to be cases which could vary from an “innocent”, who finds himself or herself holding a child who has been left in his or her care, and then being approached by the police on the basis that he is harbouring or something that he is innocently found himself engaged in. The difficulty is that that person has to defend himself and it is not always going to be easy to do so. In short, the offences created under this Bill are not always guided by some vulgar interest in pornography or sexual exploitation of anyone.

I have commented on the sentences and I should now like to move to clause 20, if it pleases you. Now clause 20 says:

“In any prosecution for an offence of trafficking under sections 16, 17, 18 or 19...”—to which I have already alluded—“the alleged consent of the victim to the intended or realized exploitation is not a defence.”

We know that consent is not a defence to many sexual offences, so that one wonders what is behind clause 20(1) that the victim allegedly consented is not likely to be of any benefit to an accused person.

Subclause 20(2) even goes further and says:

“In any prosecution for an offence of trafficking...the legal age of consent to sex or to marriage is not a defence.”

So, one wonders if marriage is a defence, if the accused person should have with him a spouse who is 17, how does he avoid being, at the very least charged with some offence under this Act? Is marriage to the apparent victim not a sufficient defence to one of these allegations of sexual exploitation? I am told that in Trinidad and Tobago people can marry at those ages—and have married at those ages. This Bill however, describes a child as a person under the age of 18. So that one needs to be cautious about introducing illegality, or criminality, to put in higher, criminality in the lives of people who would otherwise be compliant with the law.

May I invite your attention now, Madam Vice-President, to clause 35? Before I do so—clause 36, I thought I should comment on what appears to be emanating from a reading of clauses 15 and 36. It appears that what we are now seeing in the legislation in Trinidad and Tobago—in the legislative approach—is a new method, a new way of addressing sentencing. Clause 36 says:

“Upon conviction of a person for an offence of trafficking under this Act, the Court may provide an opportunity to the victim of trafficking, if the victim desires it, to present his views and concerns in a manner not prejudicial to the rights of the convicted person.”

3.10 p.m.

But any analysis of clause 36 will cause you to enquire, well what is the point of this? What is the point of a victim standing up in open court and expressing a view not prejudicial to the convicted person's rights, a view about how—to present his views and concerns on what? Such a person would have, no doubt, given evidence which would have led to the conviction—and one wonders if this is a presentation of moral views, religious views, philosophical views. What is the point behind it, if it is not to cause the sentencing officer to determine what level of sentencing is required? It could not mean anything else, unless I am advised to the contrary.

So that after the person has been found guilty by a jury of his peers, the victim then gets up—and I have seen it on TV in some places—and says, “well, I think he should be hanged or released.” One of those two is likely to fall from the lips of such a person. Then I imagine a judge will have to say, “well I am sorry, you are not permitted to say anything prejudicial to the rights of this person; he has a right to be sentenced by me.” Is this going to permit the convicted person in a sort of sentencing hearing to seek to rebut what is being said by the victim on his or her views concerning the matter? Have we thought clause 36 through, really?

It probably is good that our society is now, I do not know, expanding, modernizing itself to the extent that we wish to hear the views of victims of offences on what has happened to them. It probably might provide some information to researchers and so, but the rights of the convicted person cannot be subverted in this way, laissez-faire, almost. [*Desk thumping*] So that a court then has to struggle with, should I take this into account or not, because I run the risk of prejudicing the rights of the convicted person.

I trust that the hon. Attorney General or those who report to him will bring this to his attention, so that we can have an opportunity of addressing precisely what is meant by it and, if necessary in committee stage or before the joint select committee, to seek to put right or put language that is appropriate into the legislation.

Finally, Madam Vice-President, may I address clause 35. It is captioned: the side note is “Information for victims”. It says:

“The Minister shall cause victims of trafficking to be informed, in a language that they can understand, of their legal rights and the progress of court and administrative proceedings, as appropriate, including but not limited to—

- a) proceedings involving the criminal offenders:
- b) proceedings for the return of the victims to their country of citizenship or lawful residence; and
- c) procedures for seeking legal immigration status under the Immigration Act.”

Just recently there was a television exposé, and I think it was in the press as well—the printed press—of some three or four men who had come into this country from India, and were engaged in tile laying, and they were being exploited—it is alleged—by an entrepreneur of some sort, and a citizen had come across them and was interested in their welfare. It seemed that until that citizen had become involved they did not know of their rights, and would certainly have been in need of assistance with language so that they could understand those rights and defend their own case. But clause 35 does not seem to extend that facility of providing assistance with language to persons charged with the crime. The way I understand it, such persons also need the protection of the court. Presumably, it is assumed that such protection will be offered. But this might be an excellent opportunity for us to consider that the Minister should be required by this piece of legislation to ensure that both victim and accused are informed, in the language that they can understand, of their legal rights, and the progress of court and administrative proceedings as appropriate.

3.15 p.m.

There was a report on TV, sometime this weekend, about a man who they said came from the Dominican Republic and is conducting his business here in the commercial sex trade. It does not seem as though people who know some Spanish have any difficulty getting by in Trinidad and Tobago which is probably a credit to our people, but such a person might need protection if he or she is charged by the police.

Madam Vice-President, on the assumption that we are going to get an opportunity to deal with the nuts and bolts of the legislation, I am prepared to take my seat at this stage, but I repeat my plea that one should give consideration to these matters being presented to a joint select committee.

Thank you very much. [*Desk thumping*]

The Minister of State in the Ministry of National Security (Sen. The Hon. Subhas Panday): Thank you very much, Madam Vice-President. We have listened attentively to the contribution of Senior Counsel, Sen. Elton Prescott, and

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a little later in the proceedings we will need some time to really look at it and give consideration to it.

So, my contribution will be very short and, after I have completed or some time during my contribution, we will adjourn this debate so that the hon. Minister and the legal people will have sufficient time to review and take on board those very important comments made by Sen. Prescott SC. [*Desk thumping*]

I thank Sen. Al-Rawi for tapping that because this is a Government that listens. We are not arrogant [*Desk thumping*] and we will take everything on board which is good. However, on the last occasion, Sen. Al-Rawi gave the impression that the heavens are falling because on this administration. Because we took so long to bring this legislation we are now on the stage two watch list— [*Interruption*]

Sen. Al-Rawi: I am honoured.

Sen. The Hon. S. Panday:—and this Government is the cause of it; we have been so lethargic; and we have not moved very fast. He made one loud song and dance, trying to cast aspersions on this Government. I want to inform my good friend, Sen. Al-Rawi, that I want to refer to the same United Nations Convention against Transnational Organized Crime and the Protocols thereto, and to indicate to him that this was done in 2002. He referred to it and I quote:

“With the signing of the United Nations Convention against Transnational Organized Crime in Palermo, Italy, in December 2000, the international community demonstrated the political will to answer a global challenge with a global response.”

We are talking about crime crosses borders, so therefore we must have strong law enforcement. They said that there are:

“...terrorists, criminals, drug dealers, traffickers in people”—and this is what we are dealing with today, trafficking in persons—“and others who undo the good work of civil society.”

All the good work that you are doing, these persons who commit trans-border crimes try to undo it. They then spoke that:

“At the Millennium Summit, world leaders proclaimed freedom—from fear and from want—...one of the essential values in the twenty-first century. Yet the right to live in dignity, free from fear and want, is still denied by millions...”

So therefore, that conference really understood the importance of such legislation.

Sen. Al-Rawi, December 2000 was the watershed event in reinforcement of the fight against organized crime. Kofi Annan, the Secretary-General of the United Nations said:

“I urge all States to ratify the Convention and Protocols and thereto at the earliest possible date and to bring these instruments into force as a matter of urgency.”

You were there from 2001 to 2010 and you did nothing about it and then you come to this Parliament and telescope to the country that we have put ourselves at stage two. You are saying we are on the edge, we are about to fall over, we are saying it is the PNM who put us on the edge and have us about to fall over. [*Desk thumping*] It is this Government which intends and has the conviction to deal with these cross-border crimes, and as such, we have brought this legislation within one year of the assumption of office. [*Desk thumping*] Sen. Al-Rawi, I think you should congratulate this Government for moving with such speed.

So it is not fair really to come to the Parliament and to read half of a document and the most important part you omit it.

Sen. Al-Rawi: Which document?

Sen. The Hon. S. Panday: The United Nations Convention against Transnational Organized Crime. They will say someone who does that is disingenuous, but I do not want to say that about you. But at least, you could have been fair enough to say that the PNM sat on this document for 10 years and did nothing and, it is this Government which came and attempted to deal with it. [*Desk thumping*]

Sen. Al-Rawi: You are lucky I cannot respond today.

Sen. The Hon. S. Panday: Now, Madam Vice-President, I wish to refer to another document:

“Human Trafficking in Trinidad and Tobago...as a destination source, and transit country for women and children subjected to trafficking in persons,”—as all the speakers before have stated that Trinidad and Tobago is indeed a destination, a destination for women specifically as this speaks about women and children—from Colombia, Venezuela”—Santo Domingo—“...and the Dominican Republic...?”

Sen. Shamfa Cudjoe said that I had indicated that they must raid these houses of disrepute and send home those illegal immigrants. What I really meant, Senator, was that if there are persons who come here on their own volition and voluntarily participate in that type of crime, we should indeed prevent them from staying in

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our society. I was not speaking about persons who were trafficked into the country. For example, Madam Vice-President, it is said that there are many ads in the papers which indicate that young girls could come to Trinidad and obtain an education. When they come here and are put into schools for a day or two, they are then told that they have to work for their fees and when they work for their fees, board and lodge they are driven into this type of life. We were not speaking of persons like that. We were speaking of persons who came here voluntarily and, this Government has decided that if persons come and try to voluntarily perform immoral activities in the country we will deal with them. However, at the same time, we embrace this legislation which deals with persons who have been trafficked. Indeed this Government will abide by the protocol and, this Government as you have indicated will abide by the protocol by passing the relevant legislation.

Madam Vice-President, we speak here as a destination country. Also, we speak about a source and a transit country. When we speak about a source, it would appear to me that we are speaking about having persons trafficked out of Trinidad and Tobago into other countries. When we speak about transit, we are speaking about persons from other countries coming in and moving out. But there is a different type of trafficking which this legislation has not dealt with, and that is, trafficking within the borders. For example, there are houses of disrepute in north and even central and ads are placed in the newspapers for persons to obtain work in north. They bring girls from Guayaguayare, Penal, Barrackpore and Cedros into the city and make slaves out of these persons.

Sen. Dr. Balgobin had indicated that they make those persons perform such acts that eventually after a period of time they are so ashamed to face their parents, to go back to the country, and as a result of that they live this type of, I will not say “wajang” but, wild life. If you watch them on the streets you will see that they behave as if they do not care. But in truth and in fact, when one checks the records, one will see that they came from good homes and, those persons have been so dehumanized that they fall into a certain category. Therefore, in this process, when we pass legislation, we intend to pass legislation not only to deal with bringing in persons in the country, but also to deal with persons who traffic internally. So we are dealing with trans-border crime and local crimes. The society cries out against this type of behaviour, but the society has a duty to ensure it does not occur.

When one looks at the Licensing Act, one will see that every year these licences have to be renewed. Why is it that persons in the community who object to this type of behaviour cannot go to the licence committee and object to the

granting of the licence? If they object to the granting of licence and they are successful, then that is a way to deal with the issue. We cannot leave the problem only to the police, only to the Government and only to the officials, but every single person in this country has a duty to deal with human trafficking, whether it is trans-border or whether it is internal.

Madam Vice-President, for example, in the country area a gentleman has a grocery. He wanted to become rich quickly, so he closed down his grocery and opened a hotel called Countryside or something hotel. In that, he had girls coming, dancing half naked on tables and then selling their souls. He would then pass in the village and ask the boys, “Won’t you like to come? Come boys, come and see what is going on.” Trying to deprave the society, the society stood up on him. Do you know what they did? There were billboards where he had drawings of girls skimpily dressed and they took tar and went up to his building and painted it. *[Interruption]*

Sen. Deyalsingh: T-A-R?

Sen. The Hon. S. Panday: Tar. I know what you are thinking about—
[Interruption]

Sen. Deyalsingh: No, no, no!

Sen. The Hon. S. Panday:—but this is human trafficking and depraving these people with sexual activity

Madam Vice-President, they chased him out of the village, and when they chased him out of the village he went down to Agnes Street, where Sen. Dr. Balgobin spoke about, and opened up. He could not stay in the village, and he could not stay in the town because they chased him out. And therefore, it is in those circumstances that the society really needs to assist in dealing with this type of behaviour.

3.30 p.m.

Madam Vice-President, and if one looks at the legislation before the Parliament, one will see that the legislation intends to deal with persons who deal in this kind of activity in that your licence can now be revoked. So all those persons who are carrying on these activities, once you are convicted under this piece of legislation, you can find your licence being taken away. So this Government, as I said, intends to deal with it, and deal with it in a very meaningful way.

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Madam Vice-President, why this legislation is so important is that, as I said before, he had this hotel and the only type of people you used to see going there were doctors, lawyers, big businessmen, university professors, only big shots would go there—

Sen. Deyalsingh: And what about parliamentarians?

Sen. The Hon. S. Panday: —some too, and also policemen used to be in there and they had a total cover. Madam Vice-President, that is why this legislation is so important in that it attacks a certain class of people that you do not see walking on the street every day.

Madam Vice-President, as you observed in the past, we have passed legislation—the anti-gang legislation, the Bail (Amdt.) Bill—and you hear people say, you are targeting a certain class of people, you only want to go for the small man—this piece of legislation goes against that grain, and this piece of legislation will deal with those rich, rude men in the society who would be home, and behave themselves in such a way that you would think that they are saints, and lo and behold, when you see them in the night in those places, you would be ashamed to see what they do. And they have become so “boldfaced” with it now, so “boldfaced” with it that they have advertised in the newspapers. If you look at the personal ads, and I read from a newspaper May 11. It says here:

“Attractive Executive Escorts, Massages. Pleasures Hotel/House, 24 hours.”

[*Interruption*] On the papers!

Hon. Senator: Which papers is that?

Sen. The Hon. S. Panday: I do not want to call the papers but these same people write editorials, and when they write editorials, they speak of morality and how the society must go forward, and yet, look on their own papers and you turn two pages after the editorials, you are finding this [*Sen. S. Panday holds up paper*]

Sen. Hinds: Is that the *Newsday*?

Sen. The Hon. S. Panday: [*Inaudible*] Next one:

“Massage & fantasy. Wide variety...”

Next one:

\$200 travel private, 326-8370

I see Sen. Hinds going at it. The other one:

At ravishing pleasures—

Sen. Hinds: Madam Vice-President, I take strong umbrage to my friend being irrelevant, Standing Order 35(5).

Madam Vice-President: I do not believe he is irrelevant at all, I think he is discussing the variables under the whole human trafficking element and this is one of them. So continue please.

Sen. Hinds: Leave me out of this—personal experiences.

Sen. The Hon. S. Panday: I apologise for exciting you. I apologise, Sir. It goes on, Madam Vice-President, and these are some of the persons who are being trafficked in the country, and this is the way they are selling human flesh—advertisements to sell human flesh. That is why, when I say that the whole society must come together to deal with this, I mean everybody, whomsoever.

3.35 p.m.

ARRANGEMENT OF BUSINESS

The Minister of State in the Ministry of National Security (Sen. The Hon. Subhas Panday): Madam Vice-President, as I said, tomorrow I shall continue to respond to the contribution of Senior Counsel. At this point in time, before the Minister responds, I humbly ask that this Bill be adjourned to tomorrow when we shall respond and take on board all these contributions; not only of Sen. Elton Prescott SC, but of all Senators. We thought that some good contributions were made. The suggestions were good and we shall—[*Interruption*] Pardon?

Sen. Deyalsingh: Clause 22.

Sen. The Hon. S. Panday: Clause 22. We have spoken to the experts and we are formulating, at this point in time, how to take those suggestions which have been made to phrase them into the proceedings. Tomorrow I will respond to that and I humbly ask that this be adjourned at this time until tomorrow when we shall continue this debate. Thank you.

Madam Vice-President: Hon. Senators, the question is that the debate on the Trafficking in Persons Bill, 2011, be adjourned to tomorrow, Tuesday at 10.30 a.m. when we will resume—[*Interruption*]

Sen. Baptiste-Mc Knight: At what?

Madam Vice-President: At 10.30 a.m.

Sen. The Hon. S. Panday: Madam Vice-President, I had spoken to Sen. Beckles-Robinson and she has agreed. I have also spoken to Sen. Basharat Ali and he had no objections.

Agreed to.

DATA PROTECTION BILL

[Third Day]

Order read for resuming adjourned debate on question [April 05, 2011]:

That the Bill be now read a second time.

Question again proposed.

Madam Vice-President: The list of those persons who spoke on Tuesday, April 05, 2011: Hon. Collin Partap, Member of Parliament and Minister of State in the Office of the Prime Minister, the mover of the Motion; Sen. Terrence Deyalsingh; Sen. The Hon. Therese Baptiste-Cornelis; and Sen. The Hon. Fazal Karim. On Tuesday, May 17, 2010, those who spoke were Sen. Prof. Patrick Watson and Sen. Basharat Ali. Any Senator wishing to join the debate may do so at this time.

Sen. Al-Rawi: Madam Vice-President, I do not rise to contribute just yet, but just on an issue of clarification. Sen. Basharat Ali was on his legs and reserved his right to speak on this Motion. However, I am happy to report that there were discussions between the Government, some Members of the Independent Bench and the Opposition on this particular Bill. We met with pleasure for many hours last Friday, discussing the technical aspects for proposed amendments to the Bill. I am aware that those amendments are intended to be circulated shortly. I believe the technocrats are in the course of doing the revisions, Miss Eversley in particular. I saw Mr. James was here and I see Mr. Maharaj is here as well and I do know that the hon. Minister Partap has also yet to deal with that. I am just wondering if it is that we are to see the proposed amendments, because I know some have been made. I was expecting to see them first and then to engage in the contribution after, so through you, Madam Vice-President—[*Interruption*]

Sen. Panday: Madam Vice-President, Miss Eversley will be here in a short while, so we could start the proceedings.

Sen. Al-Rawi: Again, just as a point of clarification, the reason I asked as to the circulation of the amendments, I have not yet seen the text and some of the amendments are—if I can put it this way—central to the Bill and what the content of my contribution in particular will be. It may very well be that I may have the ability to curtail a lot of the contribution, because there may have been concessions to some of the points, so I am—[*Interruption*] well, if the debate is to start to facilitate that, Sen. Ali was on his legs. I do not know, but—I do not want to be difficult. I do want to be cooperative.

Sen. Panday: I also want to be cooperative. I had spoken to Sen. Basharat Ali and he had indicated a few minutes ago, he did not complete his contribution. Senator, was your contribution completed? It was? Oh sorry.

Madam Vice-President: I am looking back at my notes. Sen. Ali, you started at 4.04 p.m. and you completed at 5.19 p.m. and after which Sen. George spoke, which means your contribution was complete. We actually had Sen. Deyalsingh after Sen. George on that particular Bill.

Sen. Al-Rawi: Sorry, Madam Vice-President, if I may, just to lend assistance. Sen. Ali started his contribution on the last Tuesday and only spoke for a short while—by my recollection, please forgive me if I am wrong, and he reserved his right to speak specifically. I do recall that. That was because we were going to discuss in the fashion that I have informed and he would, therefore, have had the ability to wrap up his content after those discussions. Perhaps, if you could just double-check your records.

Sen. Panday: Madam Vice-President, the Government has no objections if it is provided for in the Standing Orders.

Madam Vice-President: According to the advice I am given and the information given from the Clerk, Sen. Ali does in fact have 23 minutes remaining by her calculations, so if you would like to proceed. Yes?

Sen. B. Ali: Thank you very much, Madam Vice-President. I believe Sen. Al-Rawi was referring to the informal meeting that we had on Friday. I want to speak just to that, because I more or less, finished my contribution. I have to say that it was a most satisfying afternoon and I believe my colleague here on our side, Sen. Corinne Baptiste-Mc Knight was there for some time. Sen. Al-Rawi was there for a long spell. I was there for about three hours and I found it a very fine way of dealing with a Bill, which I found, as you may recall, I was not very happy with what I had there before.

I must thank Mr. Davidson and Mr. Rishi Maharaj and Miss Eversley, the technocrats who were there on Friday afternoon. I think we accomplished quite a bit, this is why I think Sen. Al-Rawi is very keen to see what the amendments are, because we did raise all the topics. I raised again, the questions I had raised and I do not think it was an issue at all. But we had some other issues, for example, the question of qualifications, even of the commissioner and the deputy commissioner. I believe they were going to make a little amendment to that, because I think they mentioned “same qualifications” and we were not sure what “same qualifications” were. They were going to do another reference if I am not mistaken.

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Then we questioned, I think more that one of us, where they said that the inspectors were to be qualified, but there is no indication at all as to what those inspectors are or what their qualification is going to be. We were awaiting how that might be resolved, because the inspectors, I believe, have quite a bit of power and they must have the basic knowledge and experience too. Maybe Sen. Al-Rawi will address that, because it is more the legal side of it; their ability to walk into places with or without summons. I am not too versed in that part of it.

I also raised with them a matter which I had raised in my contribution and that was—I was proposing an amendment to the Freedom of Information Act. First of all, I raised one question on the amendments to the Freedom of Information Act and that related to the question of why have we chosen to amend that for the complaints to be handled by the information commissioner, rather than the Ombudsman. The Ombudsman, as we all know, is a creature of the Constitution. Whereas, from my understanding of it, whenever someone is appointed by the President—from my understanding of, in my discussion there—that means in fact that it is an appointment on the advice of the Cabinet and the Prime Minister. So, really, the information commissioner is a government-appointee, as against the Ombudsman who is a creature, as I have said, of the Parliament. The answer was, and maybe it is quite correct, looking at it, if you go through the Freedom of Information Act at what the Ombudsman can do, in fact, you find there is a certain limitation in their action, whereas the information commissioner would be able to proceed much further down in the case of any offences. I accept that explanation, in fact.

The other item that I had raised was the question of the Freedom of Information Act Amendment. I was bringing—the point I raised in my contribution last Tuesday, I think it was, was the exemption of certain institutions called public authorities like NEDCO, Business Development Company and Taurus. They were exempted through the regulations by negative resolution. I took exception to that because they are almost like closed companies. They are private companies called public authorities. I had raised that point with the representative of the Chief Parliamentary Counsel's office and the reply was, in doing the amendments that they were doing they could not go to the Schedule. They cannot do that at that stage of the game, because it is not connected directly to the Bill in question, which is what we are doing. But, I would like to have my objection recorded, and I would like the Government to bring forward the amendments such that those state companies which are now exempt do not enjoy that privilege for whatever reason they may have had them.

As I say, I was quite happy with the session we had. I think Sen. Baptiste-Mc Knight who was there for a while was too and she may have some comments. I would mention too, although it was an informal meeting, my colleague, Sen. Dr. Balgobin was unable to attend but he did produce a paper with his notes called *Administration of the Data Protection Bill*. I think that should read “Data Protection Act”, in fact, because most of what is written here is related to when this Bill becomes an Act. It is a very comprehensive document and it has been circulated to all concerned, the officials, the Minister himself and all our people. My colleague would like to speak to it because it is his work. I think it is very useful; a very comprehensive statement which has been made by him and I congratulate him on coming up with this kind of proposal.

3.50 p.m.

Madam Vice-President, I do not think there is anything else I would like to say but to thank once again the officials who were with us last Friday and hope that we will get to the stage where we can get more of the amendments we were seeking to come from those discussions.

Thank you very much.

The Minister of Public Administration (Sen. The Hon. Rudrawatee Nan Gosine-Ramgoolam): Thank you, Madam Vice-President, for allowing me to join the debate on this Bill, that is the Data Protection Bill, 2011. You will recall that not too long ago this Parliament passed the Electronic Transactions Bill, 2011. It was during that debate that I advised the Senate that in order to develop trust, a very important word, in an electronic environment, the system must be, one, transparent; and two, there must also be integrity in the system. As a result, that is what this Bill before us here today is all about.

Whereas the Electronic Transactions Act gives legal effect to electronic documents, records, signatures and transactions, this Data Protection Bill is designed to protect the privacy of the personal information of individuals which is entered into electronic format.

We recognize that technology and the use of technology is a fact of life. We have moved on to the river of no return and we cannot do without technology in terms of our daily lives; transacting business. We are moving from a paper form to an electronic form and while we are very comfortable with the paper form and feel we can hold the paper in confidence and trust, our society has not yet placed total trust in transacting our business via the computer, technologically and

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electronically. As a result, the Data Protection Bill, 2011, forms part of this omnibus package of e-laws that is being introduced by our Government as we aim to create a very robust legislative framework that fosters and cultivates an electronic environment within the Republic of Trinidad and Tobago.

This is extremely important. As indicated before, we have to ensure that this legislation is transparent and robust enough so that our citizens will have confidence in it because the level of confidence determines the level of usage. It is critical, therefore, that we look at all these aspects as far as this Bill is concerned.

Madam Vice-President, the Data Protection Bill is a natural complement to the Electronic Transactions Act, 2011. I say “a natural complement” because one deals with the transaction while the other deals with the protection of the data in engaging the transaction. They complement each other and they cannot do without each other.

In engaging in transactions, we want to ensure that our data is safe and secure therefore, we must look at these pieces of legislation simultaneously. This legislation aims to ensure that personal information in electronic format that is within the custody or control of the organization, whether public sector, private sector or NGOs, shall not be disclosed, processed or used other than for the purpose for which it is intended except with the consent of individuals and where exemptions are expressly stated. We are pretty sure there would be times when one can release information, but these have to be identified specifically.

So, Madam Vice-President, the Data Protection Bill complements the objectives of the Electronic Transactions Act. What are some of these?

- (1) It protects the individual’s right to privacy when one engages in a transaction, thus giving them greater confidence in the use of e-commerce and e-Government services.
- (2) It provides enhanced protection for the physical and electronic security of personal information.
- (3) It ensures that information is used correctly; that the information is accurate and limits access solely to those with a legitimate right to information.
- (4) It fosters successful facilitation of trading relations with international counterparts that have similar legislation. That is important since we would be transacting, not just within the confines of Trinidad and

Tobago and probably the region, but, more importantly, our transactions move us beyond the shores of the region and, therefore, it is important that we understand what is happening in the international arena.

For example, within the European Partnership Agreement (EPA), maintaining comparable standards becomes an issue for the ability to carry out trade with the European Union and other member countries. There must be some kind of compatibility within the context of the legislation as we seek to verify what we have printed thus far.

Some key issues we need to consider are that the Data Protection Bill seeks to protect individuals by requiring organizations to notify persons as to the purpose for which the information is collected and their policies and practices for sharing such information. These have to be detailed and explained.

The Bill, therefore, creates binding obligations with respect to the collection, collation and disclosure of personal information and procedures to delineate the ambit of access rights to such information. Electronic transactions have been taking place several years now. This is nothing new to Trinidad and Tobago. We have been engaging in electronic transactions for a long time, years, without any legal regulatory framework. We purchase items and pay bills via the Internet and this has been going on for years without any legal framework, therefore large amounts of data are being collected by public and private institutions and this is happening as we speak.

This cannot go on forever. We need to put some checks and balances to ensure that our transactions are safe, they are secure and that we can be certain that we can engage in our business transactions without thinking about who is going to find out what we have there or what we intend to do or what we have done.

The practice of holding or using data is certainly not novel; but when this is combined with the current technology, including electronic and online transactions, it has become very easy to collect and store a vast amount of information that is personal and, therefore, we must take stock to ensure that this vast amount of information collected is safe and secure and only for those persons for whom we intend to use that information.

We are very much aware that the Government is undoubtedly the largest custodian of personal information within Trinidad and Tobago. Probably this could be followed by the private sector, including financial and medical

institutions. They are also repositories of large amounts of personal information that we use to take serious decisions as far as running the Government and the country is concerned.

Sen. Hinds: Running it down?

Sen. The Hon. R. Nan Gosine-Ramgoolam: Madam Vice-President, would you save me from Sen. Hinds?

There are several reasons for the enactment of legislation to regulate the collection and use of this personal information. Technology now makes it easy to gather, collect, collate, analyze, retrieve, disseminate and manipulate huge amounts of personal data. This has given rise to the concerns that privacy of individuals can be easily compromised. So, recognizing that we have been engaging to some extent with the electronic to actually do business, we want to ensure that, recognizing the fact that we must use this technology more and more, we put all the stopgap mechanisms in place so that our data would not be compromised with others and those who are not supposed to be privy to the information and the transactions that we are engaging in.

So, Madam Vice-President, it is also to be noted that security and privacy are often cited as some of the main reasons for the slow growth of electronic transactions. When something new gets on stream, there is always mistrust and probably one of the reasons why we are not using electronic means to conduct business is because we do not trust it 100 per cent. This includes e-commerce and e-Government and, therefore, we must look at legislation that we can implement so as to bring about some kind of trust and confidence in the users and the potential users of these electronic transactions so that our people can feel safe and secure in engaging in these activities.

A recent Cariforum-wide survey showed it to be the number one concern for doing business online, so it has been proven that our people still mistrust the technology to engage in business, therefore, the need for this piece of legislation.

It is necessary to ensure that Trinidad and Tobago establishes a data protection regime based on international best practice regarding the collection, collation, handling, disclosure and use of personal data.

4.05 p.m.

And this one that would balance the legitimate needs of the business or organization to process their information, on the one hand, while upholding the individual's rights and privacy on the other.

The legislation will therefore promote e-commerce and e-business, Madam Vice-President, in Trinidad and Tobago as the availability of legal protection of personal data will encourage both customers and consumers and business to engage in online transaction and trust in the system, that is, the security of the system, the integrity of the system and the confidentiality of their personal information.

Thus, the Data Protection Bill is a necessary corollary to the Electronic Transactions Bill, in terms of supporting its objectives. So, it will be difficult for us to implement the Act that has already been passed, that is the Electronic Transactions Act, if we do not put mechanism in place to protect the data and the information that will be used, to engage in that transaction therefore, the need, Madam Vice-President, to come to this House and ensure that we pass legislation so that business will become much easier to transact.

Madam Vice-President, data protection legislation is necessary to counter the effects of regulations that give room for activities that may amount to privacy intrusion, such as corporate abuse of information and the sale, distribution and sharing of personal information by corporate entities. We must guard against the sharing of information from one person or one organization to the other. That will be illegal.

So, Madam Vice-President, there is also a need to ensure compliance with international laws—and I think I made that point earlier—because within the spheres of protecting data, we have to ensure that this is in keeping with international standards. And therefore, the creation of an overarching legislative framework for the protection of data is critical for privacy and confidentiality in conducting our business electronically.

It is in our view, Madam Vice-President, a prerequisite for attracting business, for engaging in business both onshore and offshore as well. So to this end, the Government, our Government will now lead the way in providing for protection of personal and private information. As international pressure builds, Madam Vice-President, there is an ever increasing need for reinforcement of privacy and data protection in the Republic of Trinidad and Tobago, if we intend to become significant players in the global economy.

The use of technology is one criterion that is determining the levels and the standards of development of nations of the world. Therefore, it is really a necessary tool that we must harness immediately if we are to compete in the world economically and otherwise. In this regard, Madam Vice-President, the

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Data Protection Bill is one of the fundamental cornerstones in the creation of this legislative and regulatory framework that is necessary for the development of a dynamic electronic environment within our Republic.

It is in this light very critical and I entreat the hon. Members of this House to recognize the potential of this framework to support the diversification and enhancement of the economy to the benefit of all. We need to understand how important this piece of legislation is to our very survival as a small nation-state competing in the global environment.

Therefore, Madam Vice-President, I commend this Bill to this honourable House and encourage all, on the opposite as well as the Independent Bench, to support this piece of legislation as we move forward to place Trinidad and Tobago on the electronic map of the world. Thank you, Madam Vice-President.

4.10 p.m.

Sen. Faris Al-Rawi: Thank you, Madam Vice-President. I rise to join in the contribution to the Data Protection Bill, 2011. Madam Vice-President, far be it for me to take easy pickings, but the benches opposite me are so empty that it makes me feel as if we have adjourned already for the afternoon, but I am sure that Sen. Karim, Sen. Nan Gosine-Ramgoolam and, in particular, Sen. Ramnarine will give me some good encouragement and listen to what I have to contribute. [*Crosstalk*] Sen. Abdulah, of course, I have saved the best for last. [*Crosstalk*] We are all here and Sen. Beckles-Robinson is on the other side there.

Madam Vice-President, with a little humour to catch my colleagues' attention, I start by saying that preparation for debate on this Bill was a difficult one. It is extremely difficult not only because of the non-publication of a legislative agenda, which would have allowed us to properly discuss the data protection aspects of electronic transactions prior to the introduction of an Electronic Transaction Act [*Desk thumping*] but it was difficult, because conceptually speaking this area of law is a difficult one.

The Bill is divided into six parts with 102 clauses. It is not an easy piece of legislation, Madam Vice-President. It is enabling; it is legislation which seeks to actually extend rights already provided in the Constitution, but which have been difficult to define in strict terms. Of course, I refer to the rights provided in section 4 of the Constitution as they relate to privacy. In fact, in our Constitution it is described as the right to private and family life.

Permit me to put on the record of *Hansard* that under Part I of our Constitution, Chapter 1, we have, “The Recognition and Protection of Fundamental Human Rights and Freedoms in section 4 and they are described as “Rights enshrined” and it says:

“It is hereby recognized and declared that in Trinidad and Tobago there have existed and shall continue to exist, without discrimination by reason of race, origin, colour, religion or sex, the following fundamental human rights and freedoms, namely—

(c) the right of the individual to respect for his private and family life;”

Madam Vice-President, I start with the constitutional anchoring of the right to private and family life, and bring it into the context of this debate on this Bill, because in the Explanatory Note it says:

“...seeks to protect the privacy of personal and private information of individuals which is entered into electronic format.”

Before I get to the Explanatory Note on this Bill being inadequate, because it does, in fact, extend to paper constructs and paper systems and not only electronic, the first question I ask is—this is a debate I think which has been had in other sectors—whether this Bill, being one which interferes with a fundamental right enshrined in section 4 of the Constitution is of the kind that we need to provide the exception for section 13(4)? In other words then, do we need to make the statement that section 4 of the Constitution is being intruded upon and do we need, therefore, to call in aid section 13 of the Constitution? That affects the majority that is required in voting upon this Bill.

Now, Madam Vice-President, there are two schools of thought relative to this type of construct. They are, in fact, anchored in the well-known case of *Suratt and others v the Attorney General*. You will recall that case dealt with the Equal Opportunity Commission and the constitutionality of the establishment of the tribunal under that piece of legislation. In fact, it went all the way to the Privy Council and two cases were decided there. The first case that was dealt with by the Privy Council is what interests me.

Madam Vice-President, I believe that *Suratt No. 1* was dealt with in 2007 by the Privy Council and, in particular, I wish to commend for consideration the judgments delivered by Lord Bingham and Baroness Hale. Madam Vice-President, you would recall that in that particular case as the Privy Council looked at the law as to the constitutionality of that Act, under the microscope there was

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the issue of the type of majority that was required to deal with an infringement into constitutional rights, and Lord Bingham in particular, in supporting the High Court and the Court of Appeal judgments in Trinidad and Tobago, was at pains to note that in his view the Act itself was unconstitutional.

The majority in the Privy Council, in fact, decided against Lord Bingham and the majority view was given by Baroness Hale who upheld that the Act was, in fact, constitutional, but in that debate is the golden question as to the type of vote that we should take; whether we are, in fact, dealing with an intrusion of rights that are enshrined in section 4 and whether we need out of an abundance of caution, lest we find ourselves in a Suratt-type case to have the matter go before the court, and then enter into a long and expensive debate as to whether we should have taken care to use a three-fifths majority.

Now, Baroness Hale was quite interesting in her discussion of the equal opportunity legislation when she pointed out that it is not every intrusion of right that invokes the need for section 13 of the Constitution savings. That is where the legislation is deemed to be reasonable and that you can derogate from the rights.

Now, Madam Vice-President, if I draw it by way of example, clauses 19, 20 and 21 of this Bill deal with the manner in which inspectors or the information commissioners, deputies as well, may enter, access and deal with information. So, it can easily be inferred from the type of powers that exist in the Bill that we may, perhaps, need to consider dealing with a section 4 exception, and that is looking to the provisions to draw the exceptions to the rule. That is the first point.

Let me try to strip data protection down into its simplest terms. The concept of data protection is, of course, inextricably bound to the development of technology.

Sen. Panday: Hon. Senator, you spoke about the special majority, but if you look at clause 19, do you not think that it takes care of due process?

Sen. F. Al-Rawi: Madam Vice-President, I thank my learned senior, the hon. Leader of Government Business, for always paying attention. I do agree that clause 19 does provide some form of assistance. My question is really not so much for today, but for others coming after me, whether someone may take the view that we should have exercised more caution and adopted a different approach, lest we find ourselves in a Suratt-type position where it is knocked as being an unconstitutional development. [*Desk thumping*] You see, I do agree, and I think we are on unified purpose that data protection is an essential tool to a

developing democracy as ours. So, I thank Sen. The Hon. Panday for his observation, but I raise the question really for discussion in the Senate amongst us. [*Crosstalk*] Yes, out of an abundance of caution; *ex abundante cantela*.

So, Madam Vice-President, I was on the point of trying to simplify data protection, because I confess that the debate is a little difficult to grab a hold of, because it runs as an enabling piece of legislation to many different areas. Now, data protection is inextricably bound to the speed at which technology has developed.

One could even argue that data protection is closely associated to the birth of copyright. Of course, it is a different concept, but the copyright really came about with the advent of the printing press and, therefore, the right, be they economic rights of exploitation for works or moral rights for protection in paternity or integrity of works as exist under the law of copyright, they come into question because technology in the case then, the printing press, made it easy to interfere with the integrity of work. Similarly, in the current discussion, we are looking at the ability of technology in its very fast pace as we know it to be, and as we rely upon it to be, it is wide open to abuses. Madam Vice-President, that is all the more so when we look at the number of institutions and bodies that have begun to collect information. So this Bill really has a bifurcated purpose.

Clause 5 of the Bill actually describes the purpose simply, but really the purpose is a two-pronged purpose. The first purpose is to say that all information collected is to be treated as private, and the second purpose is, in fact, to describe the circumstances that one can access information that has been collected, and that has subsets to it including the right to ensure accuracy and that it is no longer kept for any undue length of time. So, Madam Vice-President, there are two purposes in the Bill, and because there are two purposes; that is the right to access the information and ensure that its integrity is in order and the right to have the information kept private, that I have raised the debate on section 4 of the Constitution.

Madam Vice-President, that is to be factored as well, because there have been many cases in different aspects of legislation which apply here which deal with the concept of freedom of speech. So we can clearly see that there could be arguments by the press that their freedom of speech could be infringed by a strict application of this Act.

Madam Vice-President, I wish to express and, perhaps, I should have done this at the outset, my sincere gratitude to the hon. Collin Partap, Minister of State in the Office of the Prime Minister and, in particular, to the Members of his

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technocrat team, that is, Mr. Rudy J. Davidson, Mr. Rishi Maharaj and Mrs. Ida Eversley for taking the time through their Minister to engage in a discussion on this piece of legislation. [*Desk thumping*] It was a very cooperative and informal discussion we had on Friday, but it allowed us to interrogate where the legislation came from; what the similarities of the current Bill before us are to the Bills that were laid in 2008 and 2009, and for us to begin to drill into curing some of the deficiencies as we on the Opposition Bench see in the Bill as currently constructed.

Madam Vice-President, with that said, I return to the point and the point is that the freedom of speech is an important aspect, because this Bill is actually going to, by way of example, limit one's ability to issue a picture. The example given by those who assisted us in the informal discussion was that in other jurisdictions, parents who had taken a picture of their children's class and who disseminated it by email had to black out the faces of every student in the picture, because they had not obtained the consent of those individuals to dissemination. Now, Madam Vice-President, that might sound as if it is far-fetched for this particular Bill, but it is not.

4.25 p.m.

When you look at the terms of the Bill and you look at the definition of data in clause 2, it really is a very wide and all-encompassing description. I quote:

“ ‘data’ means any document, correspondence, memorandum, book, plan, map, drawing, pictorial or graphic work, photograph, film, microfilm, sound recording, videotape, machine-readable record and any other documentary material, regardless of physical form or characteristics, and any copy of those things;”

So when this Bill comes in and it is born as an Act, if we are serious about implementing this Act, we are going to run into extreme difficulties on the content control, the implementation control, the policing control and the reporting control; and that is in fact one of the main difficulties in considering this Bill because the issue of implementation is critical.

I was very warmed to hear the hon. Leader of Government Business say that, the Government would stop to pay attention to the contributions of all Members of the Senate, relative to trafficking in persons because it showed that reality is upon the Government; that the country, is in fact paying attention to the fact that public relations can only take you so far. [*Desk thumping*]

Sen. Panday: First Senator, that characteristic of which I spoke is in our DNA.

Sen. F. Al-Rawi: Madam Vice-President, the DNA told that public relations is in the DNA of the People's Partnership and its UNC Head—it is true, because it is in fact reflected in the NACTA poll. It is in fact reflected in the difficulties which this Government has to face that the joyride is coming to an end. But, Madam Vice-President, that data does not need to be protected so strictly, because the people in Trinidad and Tobago are paying attention to it, but needless to say, the point is the operationalization of this Act is one of the core difficult concepts to appreciate.

Now, Madam Vice-President, the contributions in the Lower House on this Bill, were that this Government picked up existing legislation, dusted it off, made a few tweaks and turns in relation to it. Whilst that allegation can be made, the deeper point inside of this, and it anchors to the concept of operationalization of this Bill when it becomes an Act, is that, the discourse on data protection implementation has to factor the development of policies, and that is national policies as they relate to data protection and data management across the board, because this Act, in fact, has direct links to several other pieces of legislation.

It has relationship to sectoral pieces of legislation, one could consider the Financial Institutions Act, the Central Bank Act, the Financial Intelligence Unit legislation, in fact, the Trafficking in Humans Task Force, when it is created and the implementation arms, to the Electronic Transactions Act, to the Computer Misuse Act; it has to the Exchequer and Audit Act. It is an all-involved concept that data protection relates to every aspect of government that treats with data.

Now, Madam Vice-President, when you look to the fact that the data to be managed under this legislation, involves electronic data and physical data, the national policies are critical to have been articulated prior to the adoption of the legislation.

Madam Vice-President: Hon. Senators, it is 4.30 p.m., we will take the tea break and resume at 5.00 p.m. This sitting is now suspended until 5.00 p.m.

4.30 p.m.: *Sitting suspended.*

5.00 p.m.: *Sitting resumed.*

[MR. PRESIDENT *in the Chair*]

Mr. President: Before the tea break I understand that Sen. Al-Rawi was on his legs, and I understand that he has 25 minutes remaining of speaking time.

Sen. F. Al-Rawi: Thank you, Mr. President. May I say that it is so good to see you back in the Chair. Welcome back, Mr. President. You have slipped into the Chamber and it is not unannounced, you were well-announced by the Marshal, and I welcome you back to the Chamber, Mr. President. It is good to have you back with us. It is certainly important enough for me to spend at least a minute of the 25 minutes left in saying, welcome.

Mr. President, we were discussing the difficulties surrounding the operationalization and implementation of the data protection legislation as it will be born if this Bill sees the light of day. Mr. President, I was dealing in the period just before the tea break, with the difficulties that could be presented in the balancing of rights as they relate to, on one hand, the protection of privacy for persons as this Bill seeks to extend, there being already existing protection under the Constitution for private and family life—that on the one hand—and the rights of individuals, Mr. President, to speak about things which are deemed to be private as a result of this Bill. And that is, of course, another constitutional right in section 4 of our Constitution to freedom of speech and expression.

Mr. President, I say so because it is important for us to understand that the concept of data protection touches and concerns, in a material way, the liberties and freedoms of the press. I say so because this Bill in dealing with data—data being as widely defined as it is in clause 2 of the Bill, to include everything and anything, regardless of physical form—that is pictorial, electronic, document, graph material—that definition of data being as wide as it is—and in fact, Mr. President, the implementation of the concept of preserving privacy in this Bill because there is no definition of privacy. I think it is good that we have not legislated for a definition of privacy because it would perhaps be too restrictive moving forward in the law. But this Bill in fact, makes anything which you declare to be confidential, private.

So, it is important to acknowledge, Mr. President, and I would actually like to pull that section for you—I believe it would be under clause 6; yes, under clause 6. In recognizing the following principles, being the general privacy principles, we note, at 6(h), sensitive personal information is protected from processing, and generally information is protected from processing, but that when you extend from the general privacy principle—I will come to that in just a moment—Mr. President, forgive me, I am not able to locate it immediately but suffice it to say, Mr. President, says, that anything that you were to declare to be confidential, any correspondence or material which you declare to be confidential—ah, Mr. President, I have found it! It is actually in clause 2 of the Bill. Personal

information as it is defined in clause 2, means information about an identifiable individual. An individual is defined to be a natural person, and specifically, at paragraph (f), it includes:

“correspondence sent to an establishment by the individual that is explicitly or implicitly of a private or confidential nature, and any replies to such correspondence which would reveal the contents of the original correspondence;”

5.05 p.m.

So let me for Mr., Mrs. and Miss Trinidad and Tobago draw that into an immediate example, Mr. President. I am drawing the example into the context of understanding the balancing of rights, as I put it, on the one hand to privacy of that information and on the other hand to the freedom of the press. If one were to factor for a moment the recent revelations in respect of the National Petroleum contract issue, would it not be open for complaint to say that any information contained in letters, say from Gopaul and Company or CDS and Company, the two competing bidders, would be potentially running afoul of this Act when it comes into effect?

Does that mean, Mr. President, when you drill down into clause 20 and clause 21, in particular, of the Bill—clause 20 deals with the powers of investigation and seizure for public bodies, and clause 21 does the same thing for private bodies. In the Bill as it is currently constructed and as passed in the Lower House with the support of all of the Members of the Government in the Lower House, allows, on the basis of a mere warrant, which is upon reasonable suspicion, you present yourself to a magistrate, or a Justice of the Peace and then to a magistrate, you fill out a form on reasonable suspicion and you have invoked clause 20 and clause 21. What does that do, Mr. President?

It means that the press in the NP example, having published, let us say for argument sake, an impropriety in the award of a contract, even though in the public domain there are two totally different stories as to whether a contract has been awarded in the NP scenario or not, even though we have been bamboozled by the Leader of Government Business in the Lower House when he appeared on the last occasion in open obfuscation of the real issues; even though that has happened, let us say that you have got this contract issue and therefore confidential information, because you have described it in clause 2, you put a letter and you said this is confidential, it does not have to be expressly confidential, it could be impliedly confidential. That means that you can in fact

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roll up again, by way of example—I believe it was Camini Maharaj who launched the story—on the basis of a mere suspicion, a reasonable suspicion; you can get the assistance of a magistrate to obtain a warrant; go into her offices, because private bodies are affected under this legislation; take her computers; her documents; her information; anything that she is dealing with. And Mr. President, need I say that that is to unleash a draconian state?

Now, Mr. President, this is to show you the example of what the People's Partnership Government is really about. The People's Partnership Government in the Lower House, all 29 of them, every man to the name and number said yes to this Bill in the Lower House. They did not listen to one ounce of contribution from the Opposition. They trivialized it. The public relations played off on it, but, Mr. President, it is a living example, the NP contract by way of an extrapolation for an example, of a real living example of how you can easily fall to be a victim under this Act—if it is proclaimed as an Act.

Mr. President, I was making the point—and I know that you were not here—that the reason why this legislation should have been discussed as the People's National Movement had put it for discussion in 2008 and 2009 together with the Electronic Transactions Act—it should have been discussed so that all persons in society and the press in particular, would have had the ability to give their views on the delicate balancing of rights to be had from this Bill. So, Mr. President, we have got easily invoked positions.

Now, in fairness to hon. Minister Collin Partap, I made submissions to him and I am happy to report that I have seen amendments, I have not had a chance to drill down into them, but I have seen amendments which may take care of the concerns that I had in relation to how easily a warrant could be obtained. But, Mr. President, what I wish to focus upon is that in the Lower House, notwithstanding the self-congratulations that the People's Partnership gave to themselves, a dangerous Bill was brought to this Senate. And if it were not for proper interrogation where our numbers count for a bit more and where we have the ability to appeal to the intelligence of the Independent minds that sit behind us, Mr. President, the difficulty is that we would have been stuck, if the People's Partnership had its way, with this Bill as crafted.

So, Mr. President, clause 20 and clause 21 of the Bill, being the powers which could be exercised in an audit or where there are reasonable grounds to go in and believe that rights are being infringed, are cast in the present Bill on a very low level, in fact, what it does is that it reverses the excellent developments in the law as they relate to seizure warrants. We in law, and I know you are familiar with it,

call it the Anton Piller Order, so named after the very famous case of *Anton Piller KG v Manufacturing Processes Ltd*, that is a 1976 decision and it is reported in the *Chancery Reports* at page 55.

Mr. President, Lord Justice Ormrod, in particular, at pages 61H-62A—and permit me to read into the *Hansard* record—gave a reminder of how serious an approach one is to have when you are contemplating going into an institution to search and seize. And he had this to say:

“I agree with all that Lord Denning MR has said. The proposed order is at the extremity of this court’s powers...”

And that is to search and seize, Mr. President.

“Such orders, therefore, will rarely be made, and only when there is no alternative way of ensuring that justice is done to the Applicant.

There are three essential pre-conditions for the making of such an order, in my judgment. First, there must be an extremely strong prima facie case. Secondly, the damage, potential or actual, must be very serious for the Applicant. Thirdly, there must be clear evidence that the Defendants have in their possession incriminating documents or things, and that there is a real possibility that they may destroy such material before any application inter partes”—between two parties—“can be made.”

The duty was in fact very ably recently dealt with in a case by the name of *Irish Response Ltd v Direct Beauty Products Ltd and another*. And that is to be found, Mr. President, on the Queen’s Bench Division reports and it is a judgment of January 21, 2011.

Mr. President, it was in fact, Judge Richard Seymour—sorry, it was in fact the decision of the court in that particular case that the duty of fair presentation applies as much in relation to an application for a search order as in relation to an application for a freezing order. The consequences of a failure to perform that duty are the same in relation to search orders as they are to freezing orders.

Let me explain: a freezing order is known in this jurisdiction as a Mareva injunction, and a Mareva injunction is a method by which you can freeze a person’s moneys in bank accounts, et cetera. But this case is saying, after having said that the Ormrod principles laid down in the *Anton Piller* case are to be observed, it is prescribing and it is the law in this country as well, that fair presentation must be had; you must have a duty of full and frank disclosure; you

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must have presented the facts fairly on an ex parte application, that is where one person alone is making the application; you must come to the court with clean hands; you must have a very strong case, Mr. President. It is the simple point. But what has this Bill prescribed? It has prescribed that you take all of that law from 1976 as in the *Anton Piller* case and you throw it away. You throw it away and you roll in under reasonable suspicion on a warrant.

This is where you hear me make constant complaint of the habitual absence of the Attorney General in this Senate. [*Desk thumping*] This is why I think it critical for him to condescend to attend the Senate, Mr. President. You know there are polls floating around as to performance of the People's Partnership. [*Interruption*] Some people say 67 per cent of the people in the NACTA poll would have voted the same way; 67 per cent of 450,000 is 300,000 roughly. You are skirting when you drill down to the realities of polls to being almost neck and neck with the PNM you know, Mr. President.

Sen. Panday: You are dreaming.

Sen. F. Al-Rawi: But what does the Attorney General do on this Bill where his interrogation is critical to the people of Trinidad and Tobago? He being the titular head of the Bar, where is he on a constant basis?

If you think I am being uncharitable—because it is not that I have any animosity for the Attorney General himself; he is a likable person; he is a bright lawyer, but what good is his talent if he is never here? What good is his interrogation on this Bill in the example that I just gave you of clause 20 and clause 21, where you are prescribing a throw away of the common law of Trinidad and Tobago as it relates to seizure orders and the Anton Piller orders?

Sen. Panday: Hon. Senator, the hon. Attorney General is doing some emergency work now. What happens is since we came into Government he has been outing bush fires that have been left there by the PNM. [*Interruption*]

Sen. F. Al-Rawi: I thank you for the explanation, but I wish to say this in all sincerity, no joke here. I am a busy man; the hon. Sen. Panday, the Leader of Government Business is a busy man; the hon. Vasant Bharath is a busy man; [*Interruption*] the hon. Fazal Karim; the hon. Rudrawatee Nan Gosine-Ramgoolam is always here; Sen. Abdulah is always here; the Prime Minister is always in the Parliament unless she is on a plane, which is often, but she is always there when she is here, Mr. President.

The Attorney General is never in the Senate on a regular basis. He comes occasionally, he shows his face, but his input as the titular head of the Bar on this Bill is essential for the good of Trinidad and Tobago and he cannot, he cannot treat us with contempt by not being present as a responsible lawyer, at the lowest, to interrogate this Bill. How could this have passed through his hands?

Sen. Hinds: The Prime Minister cannot talk to him.

Sen. F. Al-Rawi: How? How could it, if you look at the law in relation to search orders, the Anton Piller remedy, the heavy prescriptions on common law, the fact that we are legislating now, the manner in which you can go in and seize, Mr. President?

You can seize anything under this Bill because data is so widely defined and if anybody expressly states it to be in confidence, or it is deemed to be impliedly in confidence, and that flows from the common law itself, in the case of *Faccenda Chicken vs Fowler*, where the rules of confidentiality were prescribed, and you could imply confidence by way of the circumstances in which the information was laid out.

5.20 p.m.

Mr. President, [*Desk thumping*] the point is when you are legislating important matters it is imperative—rather than patting yourself on the back, rather than dealing earlier with empty benches across me, because somebody is too busy planning a party, perhaps—[*Interruption*]

Sen. Hinds: And one yellow tie.

Sen. F. Al-Rawi:—that you come to the Senate and you sit down and you do the people's work. If you are not doing the people's work here, like the rest of us, my learned senior, Sen. Elton Prescott, Senior Counsel of the Bar of Trinidad and Tobago is here, Mr. President, at the behest of the President of the Republic, and so too my learned colleague, the Attorney General—but it cannot be that he does not come here.

Now, Mr. President, I am saying that in the context of this Bill by way of an example. So we have in this Bill now, prescription for warrant; low threshold. We have thrown away now the very important safeguards which the laws of Trinidad and Tobago, the High Court of Trinidad and Tobago, the Court of Appeal of Trinidad and Tobago, the Privy Council in its persuasive authority to Trinidad and Tobago has laid down for us.

So, Mr. President, what do we come to? We come to the fact that the Bill needs to be properly interrogated; by way of another example, the concept of legal professional privilege applies. So any person who processes personal information or sensitive personal information—and that is everything under the sun—has to give disclosure unless there is a law prohibiting it, of that personal information to others. One could argue that (LPP), legal professional privilege is met insofar as there is that prescription that other laws may apply and I could reasonably object as a lawyer to a request for provision of information because of legal professional privilege. But the point is, a wider consultation is required because it may creep up in a different context.

Let me give you another example. Look at the criticism we made in the implementation of existing law. The FIU, the Financial Intelligence Unit, the law itself is good, but the review of the law and the obligation for registration is important. So you look at the Proceeds of Crime Act, First Schedule, and you notice that attorneys-at-law must register, but you notice that anybody in Trinidad and Tobago who is in the business, carrying on the business of rental must also register. So operationalization in this context arises, when you look at the fact of no statement of national policy had, how do we educate the public of Trinidad and Tobago as to its obligations under this Bill? One. Two, what is the cost of that, Mr. President?

This Bill prescribes the conduct of an impact assessment for any policy that may affect data management, data protection management issues, but it prescribes it in a going forward context. There is nothing in this Government's statement to date, that tells us how you are to operationalize the Bill to have the first impact; how much time will be given for it; how much implementation room there will be for businesses to deal with it. I wish to draw you, Mr. President, to the example in Singapore. Singapore, as we know, has some of the best crafted laws, albeit in a peculiar circumstance of a very homogeneous society operating under strict presidential rule, but they have excellent laws developed for electronic transactions, commerce, other factions of their sectoral industries and other areas.

5.25 p.m.

Mr. President, it has taken Singapore 12 years to analyze its data protection principles and to roll out an Act which is intended to come out in May 2012, mainly because the President is on record or the Minister of Information in Singapore is on record as saying “drafting the law is easy, the problem is operationalizing it and the impact of that upon the citizens of that country.”

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. [*Sen. F. Hinds*]

Question put and agreed to.

Sen. F. Al-Rawi: Thank you, Mr. President, and to my learned colleagues.

Sen. Hinds: Saying it colloquially "continue to geh dem, geh dem."

Sen. F. Al-Rawi: Mr. President, 15 minutes would not even do me justice with how much I have to say about this Bill. [*Desk thumping*] Let me state in fairness, the Bill itself as it relates to the principles is fair. I disagree with my learned colleague, Sen. Nan Gosine-Ramgoolam, when she prescribed that best practices must be adopted in Trinidad and Tobago. I do not agree, because best practices in other jurisdictions evolved on the basis of existing legislation. When you look at the fact that the laws of data protection started in the 1970s in the land of Hesse, Germany, followed swiftly by Sweden, the United Kingdom, 70, 77, 78, 79, you come to England 1998 in their Data Protection Act, as was then updated, you will see that they have had the chance to develop national policy, one; rules and regulations, two; to have factored their experience in developing their legislation. We cannot pluck out of the ether another man's practice and prescribe it to us when we are dealing with ground that has not yet been traversed. [*Interruption*] Yes, I did speak about Singapore and their best practice there as an example, but I am cautioning—my prescription is not to just go and take what Singapore has, my prescription is that we must take care to make sure that what we are borrowing from another jurisdiction is apposite to our circumstance, it is appropriate, that it is not a square peg in a round hole. So what I am saying is we have to be careful with what we choose. Mr. President, but there being a great deal of graciousness on the part of the Minister of State in the Office of the Prime Minister, the hon. Collin Partap, in facilitating a discussion with some of the Members of the Independents, myself and the technocrats and himself, I wish to say that was the right place to start and I honestly do believe as much as we want this legislation to "kick off"—and we agree that data protection is critical—I do honestly believe and therefore prescribe that we ought to have—

Sen. Ramgoolam: Next ten years.

Sen. F. Al-Rawi: No, not ten years. I do not want to be facetious over the issue. I am honestly recommending to you that better discussion be had, not *ad*

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infinitum, but that there be a quick discussion amongst players in the industry, so that we can understand what the impact of the implementation is going to be. [*Desk thumping*] And that is because we are all citizens of Trinidad and Tobago and we are all on the same page.

If I could reflect quickly, clause 12 of this Bill deals with the commissioner or the deputy information commissioner being removed only for cause, including misconduct. And section 141 of the Constitution in clause 13 is called in aid as being applicable to the offices of commissioner and deputy information commissioner.

So, Mr. President, we are dealing with—and I think that this was drafted to meet the Suratt concept of an independent body—we are prescribing an independent commissioner and commissioners are the norm in many jurisdictions. The key is that we have got to have an information commissioner, last called a data protection commissioner, but we need an information commissioner as the first call; then we need to have some form of the parliamentary oversight which we have here, but in a very pyrrhic sense in that only a report is provided.

5.30 p.m.

What I am drawing to here, is that with clauses 13 and 12 married together, we are dealing with the SRC again. If you recall the debate on the FIU, Mr. President, if we are for one moment to believe the explanation given to us by the hon. Attorney General that there was ambiguity in the FIU legislation— [*Interruption*]

Sen. Hinds: Yes!

Sen. F. Al-Rawi:—it features again here. It features here because we are dealing with appointment of public officers. We are dealing with difficulties in the operationalization and appointment of persons to deal with this legislation. But we are falling into the position of an FIU where we have Susan Francois appointed by the Cabinet and we are also dealing with advertisements running at the same time from the PSC. So, are we to have the same thing here? [*Desk thumping*] That is why we need to have discussion prior to operationalization here so that we can figure out how to deal with this, because we are back to the difficulties, again, in this Bill, of having a mixture of public officers and private

officers. We are going to fall into the same old trap of disparity in salaries, how we deal with that and persons going on contract, perhaps being paid more than persons who are receiving recommendations from the SRC. So we are going into the very difficulties which the Attorney General pointed out as reasons for his ridiculous amendment to the FIU legislation. Forgive me for putting it that way, but it did not hold water.

Now, Mr. President, if we look further down into the Bill—we have looked at some of the purposes, and we have looked at the dangers of clauses 20 and 21 as they relate to public. Let me focus on clause 20. Clause 20 of the Bill allows you to inspect public bodies on the low basis of a warrant, but it provided in clause 20(5) with an exception for the applicability of this to the Office of the President, the Parliament, the Judiciary, et cetera. So we recommended—and I believe it is here in the amendments, but I need to speak to the mischief—that we in fact provide for an application to the High Court of Trinidad and Tobago. If one wishes to access those institutions, they should not be beyond the law, and there being a separation of powers in the Westminster style of democracy which we implement here, it would be reasonable to allow for an amendment of that section, such that you could approach the High Court to access private information about you to deal with the general privacy principles, and that is a specific recommendation that we have made. It was ignored in the Lower House, but hopefully it has been dealt with here. I do know that amendments have been circulated, but I have not had the opportunity to read them yet.

Mr. President, it is essential for us to also appreciate that the Bill itself prescribes offences. There is a very difficult offence stated here and, that is, where a concept of an aggravation of damages is applied. I believe the clause is where we prescribed 10 per cent of the annual turnover. I am just flipping to that section. Perhaps if one of my colleagues can make my life easy by reminding me where it is—clause 96. Clause 96 says:

“(1) Where a corporation contravenes any of the provisions of this Act, the Court may impose a fine of up to ten per cent of the annual turnover of the enterprise.”

“Oooh, Mr. President, I say.” Not only is that entirely vague, but it is extremely dangerous. Because if you were to drill down into the intention behind clause 96, it would obviously be to provide a measure of relief by way of aggravation of damages if it is that the people had the ability to access the money. But that is not the case here. So what is it then? It must be that it is meant to be a form of

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exemplary punishment. But if we have as vague a concept as that on the Bill, how do we factor when people have large turnovers of money which they in fact do not own? Let us say you passed it through an escrow account as a real estate agent, you got \$6 million in, which is somebody else's money to buy a property and your earning on it is maybe \$10,000. What is 10 per cent there? Is it of the \$6 million? Is it of your actual net earnings?

Insofar as clause 96 does not go into the hands of the person who has been the victim—that is the data subject—why is it there? If you look to the case of *Suratt v the Attorney General* in the Privy Council No. 2, Mr. President—and I think the date of that decision was July 29, 2010—you will see that the Privy Council engaged in some interesting discussion as to whether damages ought to lie in the hands of the persons who complained about the non-implementation of the equal opportunity legislation—the non-activation of it. The Privy Council held there that it was not an appropriate case for the application of damages. Mr. President, may I enquire how much time I have left?

Mr. President: You have four minutes left.

Sen. F. Al-Rawi: Four minutes. Much obliged. So, Mr. President, I am saying that if you look to the case law as it is persuasively had in this jurisdiction from the Privy Council and other pieces of legislation, you will see that the concept of a punitive form of sanction is not really best had in a description as vague as 10 per cent of the annual turnover of the enterprise.

Respectfully, Mr. President, I think that clause 96(1) should be deleted entirely; maybe even the whole of clause 96. Another form of wording has to be factored because this would perhaps be apposite in a country that had a tried and tested national policy, had a tried and tested track record on the implementation of data protection principles, but we do not have that in this jurisdiction. As a first run to the legislation, I think it would be dangerous for us to include this now.

Mr. President, on that point—and that is prescribing the possibility of coming back to the Parliament to discuss this Bill—this being a first-run Bill, I do believe that we should take avail of the type of clause that we had in the FIU 2009 legislation where we had the ability to come back to Parliament within one year of implementation of the Act and review the legislation, lest we are to find aid only by those persons who have the wherewithal to complain in the court. That is how

Suratt v the Attorney General was born and how it prevailed. So we need, insofar as we need to understand that an oversight factor should be had in this Bill, to perhaps introduce a one-year return to Parliament to debate the legislation again if it is that there is an insistence on the supposedly listening People's Partnership to proceed with this legislation.

I wish to make a point—I believe it has been dealt with in the amendments—that the prescription for the appointment of the information commissioner only at the hand of the President without the consultation of the Leader of the Opposition is dangerous. Because as you know, the Constitution of this country prescribes that the President is to be directed by the Cabinet and, if you do not want to accept me saying that I do not simply trust this Government, accept this instead: we need to be careful in the adversarial system of political exchange that we have, to be allowed the opportunity to contribute, lest we are faced with frivolous calls for the removal of public officers, particularly when this Bill does not prescribe a protection of the kind that section 137 of the Constitution offers to judicial officers. And on that, I would like through you, to recommend the case of *Levers J.* It is a Cayman Islands case which considered the removal of a judge of that court.

Mr. President, I am sure you would allow me one minute of injury time for clarifications. But the position is that if we do not have the mechanism for appointment of a tribunal to consider allegations of misconduct as we have featuring in section 137 of the Constitution of this country; if we are keeping only the prescription of appointment of an information commissioner by the President alone without the Leader of the Opposition's involvement, we need to have some form of protection for this office, lest we run afoul of the *Suratt* principles which require these commissions or these bodies to be sufficiently insulated from easy removal. Because we are going to be met with the kind of difficulties as disingenuous calls for the removal of a head of an Integrity Commission as opposed to a setting aside or recusing on an interest.

So, Mr. President, there are very serious issues that have to be dealt with under this Bill. I genuinely believe that we need to have the opportunity to sit together, interrogate it and allow the persons in the wider community to contribute. I compliment openly the hon. Collin Partap for facilitating the interaction with his technocrats. I wish that more Ministers had the courage to allow their technocrats to speak to what was before, because there is an open adoption of things that have come from before, and that is okay, but the right of paternity must always be clearly established.

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Mr. President, I thank you for the opportunity to contribute to this Bill and I hope that the Minister will reply in due course. [*Desk thumping*]

Sen. Helen Drayton: Thank you, Mr. President. I will be very brief. Let me say first that I endorse fully the intent of this Bill, and I certainly laud the provisions of this Bill. I believe that the right to privacy and the right to the privacy of your personal information is a fundamental right, it is a constitutional right. Having said that, I have two broad concerns and one or two issues with regard to a few clauses.

I think that Sen. Al-Rawi has expressed it quite adequately. I do have a concern with the potential of this Bill under clause 21 to muzzle the press where there is a right for the public to have certain information. I am not talking now about prostituting a person's personal information, but I can see a scenario where there is an issue, of, let us say a source of income, which posed the base for conflict of interest and a warrant being issued on an investigative journalist or the media to establish the source of that information.

I noted from the Canadian law and the United Kingdom law and, one or two others that I saw, that there is a provision with respect to the media and freedom of expression and the base of that is the need to balance protection of the personal information of public officers and citizens generally and freedom of the press. So I do have a concern similar to Sen. Al-Rawi's and I think that it needs to be addressed.

The second concern I have is that this commission under the powers of the position of commissioner, the commissioner has a responsibility to audit public bodies and, "public bodies" would mean every single department of Government or institution owned by the State which collects information on an individual. Therefore, I see it very similar in some respects or in a major respect to the role of the Auditor General. I do not believe that this is a position that should be under the political directorate. And I do feel that the commissioner and the deputy commissioners should be appointed at the sole discretion of the President. I note from the UK legislation that the commissioner falls under Parliament. This is a serious matter. We are dealing with personal information, and we are dealing with a position that has to audit government departments.

5.45 p.m.

Another matter with respect to the commissioner, when I looked at the responsibilities, I could not fathom why it was absolutely necessary to put in law that this person occupying that position, or the three key positions should be

attorneys-at-law. I could not fathom that one when you looked at the range of responsibilities and the experience that is required.

Having said that, Mr. President, there are a few observations with respect to the Bill. I note in the Explanatory Note, it says that the Bill seeks to protect the privacy of personal and private information of individuals which is entered into electronic format. But, when you read the definition of personal information and sensitive information, or you read the definition of data, it is quite clear, it is not only information that is on an electronic format, so that needs to be looked at.

Under definitions, I note, as well, that the word “enterprise” was used but throughout the Bill, the word “organization” was also used, and I wondered if it was being used interchangeably, or whether for the purposes of this Bill, we need to clarify whether it is one and the same.

I feel under the definition of personal information, we should include “political affiliation” and “alleged commission of an offence”. Sen. Nan Gosine-Ramgoolam spoke about best practice and when again I looked at other legislation, these items were included under the definition of personal information.

Under clause 6(f), I feel that the words “as is necessary” should be deleted because I believe that information that is not up to date is not accurate, so it is not a question of updating information, you know, as necessary. When you read the clause, it seems to imply that inaccurate information or information that is not up to date could be stored.

Under 6(j), this clause deals with a person’s request for information from a public body, and I think we should include the word “written” after the words “disclose at the”. I think it should be a written request otherwise the public body could simply say that there was no request for such information through an oversight, or it could be delayed for a very lengthy period. I also believe that there should be a clause that if personal information is compromised that the subject has a right to know that, and that information could be compromised where there is knowledge of a leak, where there is malfunction of a system, or if it was disclosed by mistake.

Under clause 9(1)(a), I think we should delete the words “any provision” and insert the word “provisions.”

Under clause 9(1)(b), I could not understand why we were putting into law that the commissioner has to “offer comment”. I would imagine that should be either give advice or provide information.

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Under clause 9(1)(c), in the second to last line, you should delete the words “collections of”, apart from being very bad grammar, it does not seem to make sense.

5.50 p.m.

Clause 9(1)(e), which deals with the request for information, implies that the public body can charge a fee for supplying such information and I want to recommend that in the regulations we should have a schedule of fees and not just leave it to the discretion of the various public bodies.

Clause 10(h) deals with the commissioner issuing reports on the status of compliance. Again, for reasons of good administration, I feel that there should be some time frame, maybe semi-annually, as the case might be.

Clause 27(1), which deals with the information commissioner submitting reports to Parliament, I believe that should be specifically at the end of, say, three months after a fiscal year.

Clause 42(e), (j), (k) and (l), I could not understand why these clauses would deal with a situation where ministers and other persons can authorize disclosure for reasons other than the purpose for which it was collected. I would imagine—if there has to be disclosure for reasons other than which the information was collected—that should be the jurisdiction of the commissioner to give approval to that.

And finally, clause 56, if a person requests information I certainly believe that 30 days is too long if that person needs that information for good reason and needs it in a hurry. I think there is a need for a rigorous process to handle complaints against the commissioner or any public body. I do not know about a tribunal, as Sen. Faris Al-Rawi has mentioned, but I think there is need to give consideration to the process of handling complaints. Maybe that is something that would be dealt with in the regulations.

I thank you, Mr. President.

Sen. Shamfa Cudjoe: Thank you, Mr. President. I must say welcome back to this Chamber. Your presence was missed.

I was not prepared to participate in this debate, but after listening to Sen. The Hon. Nan Gosine-Ramgoolam I was encouraged to just make a couple of statements on this topic. Sen. Gosine-Ramgoolam spoke about this whole issue of data protection and the protection of private information or data, as it relates to

persons or even public bodies, has to do with trust. I think that stood out to me as one of the most important factors in this debate. Because, no matter how good we draft legislation, we must have trust in the people who keep that information and data, collect the data and store the data to protect people's privacy and their private information.

In addition to trusting that the officials would keep the information in a proper manner, I want to add two more words. Those two words are "confidence"—you have to have confidence in the officials, whoever or whatever institution is responsible for protecting the data, that they would not just respect your privacy, but that they would also respect the law; the second is "respect". Mr. President, the three words that stood out to me are confidence, trust and respect.

As it relates to data protection, I remember, I think it was earlier this year, there was an issue on international news, the whole issue of WikiLeaks, where all the private information for the United States and other overseas territories was leaked on this website called WikiLeaks and it raised the red flag as to governments being responsible with the information that they have responsibility over. It also raised the issue of that day in November where the Prime Minister would have spilled the beans on the SIA issue in Trinidad and Tobago. Mr. President, you have to trust the officials who keep this information.

Another issue that also raised a red flag in my mind is the ownership of this information, because sharing data and protecting data has to do with ownership of information.

I want to share with you an issue that we had recently in Tobago, and this is closely related to trusting the institution, trusting the Cabinet and trusting the Government with your information. We just had, on Friday, the opening or the handing over of the MIC Centre in Tobago. The design, data and everything related to that MIC project was conceptualized and designed by the Tobago House of Assembly. We had a finish date for that project of September 10, 2010, but as I said in the last debate, the People's Partnership happened to be in Government at the completion of this project, so they were responsible for handing over the MIC Centre. It is important to note, as I said before, that this is a project that was designed and conceptualized by the Tobago House of Assembly and this Bill speaks about design and it defines data as being a design, photos, documents that kind of thing.

It is important to note that at the handing over ceremony of this MIC Centre, the Chief Secretary and Secretaries of the Tobago House of Assembly were invited and on the agenda to speak were—*[Interruption]*

Sen. Panday: Where?

Sen. S. Cudjoe: At the handover of the MIC—the Prime Minister, Sen. The Hon. Fazal Karim, the Minister of Tobago Development and the junior Minister in the Ministry of Tourism. The fact that the MIC was—[*Interruption*]

Sen. Beckles: Sen. Panday did not invite you?

Sen. S. Cudjoe: He did not invite me. Last week in the discussion Sen. Panday and the whole People’s Partnership team boasted about the MIC project and invited me across the floor. When I returned to Tobago—

Sen. Beckles: “Nah, nah, I cyah believe dat.”

Sen. S. Cudjoe:—I was expecting to see an invitation.

Sen. Al-Rawi: “Dey bounce yuh at de door.”

Sen. S. Cudjoe: But to my surprise, I went to my desk and I went through my mails and I checked—

Sen. Al-Rawi: “Yuh looking.”

Sen. S. Cudjoe:—but there was no invitation.

Sen. Ramlogan: Is that a yellow blouse you are wearing?

Sen. S. Cudjoe: No, it is green.

Sen. Ramlogan: *b*mobile?

Sen. Beckles-Robinson: Maybe it was due to the gas shortage.

Sen. S. Cudjoe: Let me go right ahead. I was on the point of intellectual property and owning information, owning data, design of this project and the conceptualization of this project. As I said before, the junior Minister in the Ministry of Tourism, the Minister of Tobago Development, the Prime Minister and the Minister of Science Technology and Tertiary Education were on the agenda to speak. It was surprising that this project was conceptualized and designed by the Tobago House of Assembly, specifically the Chief Secretary and the Secretary for Education, Youth and Sport, Secretary Claudia Groome-Duke and they were not invited to speak. At the handing over ceremony, the announcer then recognized the presence of the Chief Secretary and invited him to come to the podium and give a couple of words to the people that were there.

This was very disrespectful of this People’s Partnership Government and this is one point that the people of Trinidad and Tobago keep pointing out about this People’s Partnership Government. In fine Stinking Suzie style, they called the

Chief Secretary to the podium and asked him to give a few words, as though it was a birth night or a christening. [*Interruption*]

Sen. Ramlogan: Data protection!

Sen. Deyalsingh: “She coming to it.”

Sen. S. Cudjoe: He was not in the Chamber when I made the point. He just walked in. The ownership of information, design and the conceptualization of this project, these things belong to the Tobago House of Assembly. Now— [*Interruption*]

Sen. Panday: Mr. President, I wonder if my friend would just link it for me.

Mr. President: Continue, I thought you were starting to link it. I am looking forward to it.

Sen. S. Cudjoe: I was. As I said before, this has to do with the ownership of information and this Bill speaks specifically to design and conceptualization. As I said before, it raised the whole issue of ownership of intellectual property and of data. Maybe if the other side was listening, they would have heard that.

This MIC centre is supposed to be used to train young people in obtaining new skills also in data collection and data protection. It is important to note that data collection is a very critical part of the data protection, because how could you protect the data if you have not collected it? This MIC project plays a key role in training young people.

As it relates to intellectual property and owning the ideas and the data, the Tobago House of Assembly would have raised—a member of the minority would have raised in the Tobago House of Assembly—a Motion for the renaming of the Arthur Napoleon Raymond Robinson Airport.

Sen. Ramlogan: Well done People’s Partnership. [*Desk thumping*]

Sen. S. Cudjoe: I made my reservations to return to Tobago this week and I was very proud to see that the printout of the ticket says the ANR Robinson International Airport. It is interesting to see the People’s Partnership thump their desks bang, bang, bang. Sen. The Hon. Anand Ramlogan says the People’s Partnership. As I said before, as it relates to the ownership of ideas and data, this data was raised in the Tobago House of Assembly by the minority leader, so I was surprised to have— [*Interruption*]

Sen. Ramlogan: Eight years.

Sen. S. Cudjoe: Have you been doing any research? That was recently raised in the Tobago House of Assembly probably not even over two or three months. I remember watching the sitting on television. Anyway, in fine People's Partnership style, the Prime Minister was seen on television last Monday, I think it was Mother's Day, making an announcement that she would be coming to Tobago to name the ANR Robinson International Airport.

Sen. Ramlogan: Well done. Thank you very much. [*Desk thumping*]

Sen. S. Cudjoe: Mr. President, the application was already in and accepted by the Ministry of Works and Transport. All this was done by the Tobago House of Assembly, the Office of the Chief Administrator and the Ministry of Works and Transport already accepted it to the point that Mr. Jack Warner had to— [*Interruption*]

Sen. Al-Rawi: Apologize.

Sen. S. Cudjoe:—apologize on behalf of the Government.

Sen. Al-Rawi: Big time!

Sen. Panday: No.

Sen. Deyalsingh: Yes, he did.

Sen. S. Cudjoe:—and apologize on behalf of the Prime Minister—

Sen. Al-Rawi: Oh, no.

Sen. S. Cudjoe:—admitting that they would have made another mistake.

Sen. Al-Rawi: Oh, no.

Sen. S. Cudjoe: This raises the red flag of ownership, owning data; the ideas of the Tobago House of Assembly, the data from the Tobago House of Assembly being stolen and hijacked by this People's Partnership Government.

6.05 p.m.

Mr. President, another idea of the Tobago House of Assembly was to have a university of Tobago. This People's Partnership came into power last year and in the budget they mentioned having a combined campus. [*Interruption*] Yes, an integrated learning campus.

Now, Mr. President, the whole idea of this tertiary institution was supposed to—Now in Trinidad, also in Tobago, we have a problem with data collection. For instance, if there is a study on crime or so, we always complain about not having

the statistics, so one of the programmes to be done at that university would have been data collection to help with our data collection shortcomings.

The Prime Minister had also announced on Mother's Day that she was coming to Tobago to turn the sod for this University of Trinidad and Tobago (UTT) campus. [*Desk thumping*] I looked on and waited to find out where they were going to turn this sod because not a piece of state land in Tobago is owned by this Government. All state lands in Tobago is under the jurisdiction of the Tobago House of Assembly. I wondered if they were going to be turning sod at the President's House because that is the only place that she could do something without consulting the Tobago House of Assembly. This is very important, the protection of data that comes out of the Tobago House of Assembly, our ideas and our intellectual property.

Now, Mr. President, my final point, as raised by Sen. the Hon. Panday, is the electronic birth certificate. There was a big song and dance about the electronic certificate.

Sen. Ramlogan: Did we announce that as well? [*Desk thumping*]

Sen. S. Cudjoe: Yes, you did. Yes. Now, Mr. President, on a very serious note, on that night the Prime Minister told a story to this nation. It is the dishonesty. Mr. President, I want you to listen to what the Prime Minister told the nation.

Sen. Panday: Mr. President, 35(5).

Mr. President: Withdraw that remark; the adjective relative to the Prime Minister!

Sen. S. Cudjoe: Thank you. Much obliged. The story the Prime Minister told the nation was very far from the truth. This Prime Minister told the nation that Mr. Ashworth Jack—

Sen. Maharaj: Mr. President, 35(5). She said "far from the truth". She is imputing improper motives.

Mr. President: One is not entitled to make any derogatory remarks relative to any other Member of Parliament.

Sen. S. Cudjoe: Much obliged, Mr. President, which is far from being factual. [*Interruption*] Listen to the story "nah". Sip your porridge cool. [*Laughter*]

Mr. President, the Prime Minister told the nation that this electronic birth certificate was going to bring relief to Tobago, so that Tobagonians would not

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have to travel to Trinidad anymore to get birth certificates. The Prime Minister said that Mr. Ashworth Jack, the minority leader of the Tobago House of Assembly told her a story about a young boy who could not do the Common Entrance Examination because his parents could not afford to travel to Trinidad to get a birth certificate.

Mr. President, my mother has eight children. I am the fourth; the oldest is 33 and never in 33 years of my mother having had children, has she had to travel to Trinidad to get a birth certificate. Never in 33 years! As a matter of fact, when they came out with the new birth certificate, I was not even in the country when my mother got mine. I was at university in the US. I was in the US; she was in Tobago. She did not have to leave Tobago to get the new birth certificate and that was a PNM project.

So that was a far-from-factual story that was told to the nation. Come on, Mr. President, that is the kind of disrespect that we have been experiencing with this People's Partnership Government. You can come here week after week and make good laws, but at the end of the day you cannot legislate trust; you cannot legislate confidence; you cannot legislate respect and you cannot legislate honesty.

I remember there was a big song and dance when this People's Partnership had just come into government about the anti-corruption legislation. They came in saying that the PNM was a party of corruption so they must pass the legislation then. The legislation spoke about giving jobs and contracts to your family. You cannot legislate, honesty, trust, respect, integrity or morality because, at the end of the day, Sen. The Hon. Mary King still went along and did what she had to do.

Mr. President, I support the intent of the legislation, but at the end of the day, we have to be the watchdogs of one another, especially watchdogs of that People's Partnership Government and make sure that they uphold integrity, respect, confidence, especially as it leads to protecting data, especially the data of the Tobago House of Assembly.

With that said, I thank you. [*Desk thumping*]

Sen. Dr. Rolph Balgobin: Thank you, Mr. President, for the opportunity to say a few words on what is, I think, a very important piece of legislation.

Much has been said—I will not repeat any of those things—I would just like to pose a few points and ask the Government to consider how they are treating with this kind of thing going forward and perhaps make a few suggestions for the administration of the creation into which we are about to breathe life.

I begin by observing that a time frame ought to be established for the creation of the oversight body. We are talking here about bringing the legislation back for review, but we also need, I think, a time frame for implementation, for the creation of the necessary administrative organs to give this Bill the kind of life that it would require. What I would not want to see happen is a situation where we pass legislation and then take several years to create the office of the commissioner and appoint the deputy commissioners. There is precedent for this happening in this country. Most recently the Equal Opportunity Commission, the legislation was passed and took several years before commissioners were appointed and before the thing actually got going. I would like to start with that and hope to hear from the hon. Minister, in his winding up, how and when he proposes to treat with this.

In reading the Bill, there is a great emphasis placed on remuneration, rules for secondment and the pension benefits that one would get; but I would like to make an observation on clause 8(1)(b) in particular and to suggest, perhaps for ensuring objectivity, that clause 8(1)(b) be modified to say that “the President will appoint in his sole discretion”, simply to protect these offices from undue politicization or the perception of politicization.

On clause 8(2) and with the leave of my friends who are having their discussions, [*Senators conversing across the floor*] I wonder why an attorney-at-law needs to be the information commissioner. In looking at what prevails in other jurisdictions, it would appear that the practice has been very often for experienced lawyers to stand as information commissioners. I am not sure that we need to legislate that because in other jurisdictions, quite successfully, there are people from the media, journalists; people who are experienced in human rights advocacy and so on standing as information commissioners and doing apparently just as good a job. I see no reason to restrict it to someone from the legal profession necessarily. That is not to say that we ought to keep them out; but I am not quite clear why that kind of restriction is required. I think it ought to be someone with a certain type of experience and training. Yes, it can include law, but it does not have to be restricted to it.

That brings me to a critical point and that is, in this legislation, the duties and responsibilities of the information commissioner should be clearer. It does a great deal to specify what the powers of the information commissioner and of the deputy commissioners are and how they are appointed and so on; but the duties and responsibilities of the office are very important and we would all benefit from a clearer articulation of what those ought to look like.

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In terms of clause 19 of the Bill, I was not quite clear whether the appointment of inspectors should be that open ended. There are no qualifications for them anywhere, but they do have an enormous amount of power to act with a warrant to basically enter your premises, seize data, take control of a lot of information and so on. The commissioner appoints these inspectors in his or her sole discretion, but some clarity ought to be provided because they have almost an arbitrary power and we need to know a little more about the types of persons who qualify. For example, does having a criminal record preclude one from being an inspector? One would presume so, but, again, that might be an assumption too far.

This legislation for data protection needs to be supported by national policy on this whole matter of data management and privacy. We have, I know, a policy on protection for personal privacy and data for Trinidad and Tobago's web presences and that is from 2006 or thereabouts; but we do not have much else. Clause 6 delivers some detail on general privacy principles, but that would be clearly insufficient to establish a basis for personal privacy and protection of personal data in a Republic such as ours.

What are we going to need if we are going to give this true life? We need at least four or five critical policy articulations from the State. We need a national policy on data collection, retention and disposal as well and I will speak to that when I draw the Senate's attention to what currently exists.

6.20 p.m.

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 before this honourable House.

Question put and agreed to.

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Sen. Dr. R. Balgobin: Thank you, Mr. President. So, I am saying that, to my mind, there are four or five points of policy that need to be articulated. And the first would relate to a policy on data collection retention and disposal. The other would relate to data access and sharing, a national policy on data matching which the Bill is silent on, a national policy on disclosure of personal information outside of this jurisdiction which is sure to come up as matters of national

security, and a national policy on information and data security and the development of an infrastructure plan for cyber security, which I know is something that is occupying the attention of the folks in national security.

It is quite easy to come up with those things using international standards. So, I would recommend that the Government give serious consideration to that and to sort of present that to the population, so that we can see how all of these disparate bits of legislation are governed by these disparate bits of policy that are, in fact, hanging together, so that we understand again where the hooks are, where the touch points are and where the gaps might be.

The Bill, very usefully, speaks of privacy impact assessments and I wanted to put on record that my understanding is this is really meant to be an antecedent to the operation of the legislation. In other words, it ought to be done before the legislation even comes into effect and not *ex post*, as they say. And that is simply to ensure that we have a seamless implementation of the legislation.

In that regard, we need to also think about—and I would like to hear the Minister's closing remarks on this—how do we establish, Mr. President, the correlation between the collection of electronic data and its paper-based equivalent, because the existing policy or guideline would be clearly insufficient. I think codes of practice are important and I am hoping that we can, using this logic and through the Minister's good office, ensure that we move beyond what is presented in the national archives as a guideline for data collection and storage.

It says here, for example, pay record cards we hold for 30 years; contract documents though, we keep for five years; personal files we hold for 30 years; policy files for 10 years and Cabinet notes for seven years, and so on. Why would you want to hold pay records for 30 years and Cabinet notes for seven years is, I suppose, something worthy of note. My understanding is that this has become dated and I do not know the extent to which it is being used but, certainly, if it is not it means that the State is managing its data in a very uncoordinated way. And if it is being used then there are several gaps to beware of.

In that regard, I would like to draw your attention, Mr. President, to this whole notion of how we collect this data and how we manage and protect it because a learned attorney's research I was reading, I think it was Christopher Hamel-Smith, was making the point that electronic data actually tips how we treat with

paper data on its head because with paper data you decide what to keep. But by default many or most pieces of electronic data that come to you are actually stored somewhere. And so a policy on data protection cannot just speak to the destruction of a record on a PC, if it is stored on a server somewhere else or it is in a cloud somewhere.

6.25 p.m.

So, we need to be very clear on what we mean by holding on to that data, and ensuring that when we say it ought to be deleted that it is which, of course, brings up the other question of how we prove the authenticity of electronic data in the first place. People can change things all the time. Is it that we are going to require that the electronic records are still printed and hard copies kept? I think these are interesting questions for us to consider, but my primary concern would be with regard to the retention and the eventual destruction of the data to ensure that all copies are destroyed.

Mr. President, clauses 19, 37, 74 and 100 suggest that regulations are required, and it would have been quite useful to see these regulations, because without them we are leaving a great deal to interpretation. I am hopeful that the hon. Minister would be able to give an indication of when these regulations might be available for review.

Mr. President, I am almost at the end of my short talk. There is something I want to say about clause 27, which is the commissioner shall submit a report annually to Parliament on activities of the office, and then from there you can have a special report and then we go into Part III where it talks about protection of personal data by public bodies and so on. There is scope in this legislation for persons to appeal to the information commissioner for various protections or remedies if the person feels aggrieved. However, in all of this, I would like to make one minor observation, and that is we need to be mindful—although it is important for us to preserve this question of press freedom—of the risks involved in leaving ourselves open to the politics of personal destruction, which I think has become an unfortunate part of our national landscape. It is something I think that I feel very sad about when I consider it.

Recently, I have seen two controversies that have enveloped everyone; the society, the Government and to some extent the Parliament, regarding two instances, and one of those had to do with the SIA and the other had to do with a former Minister of Planning, Economic and Social Restructuring and Gender Affairs. What I would say is, in both instances for whatever reason—I mean

people make mistakes. I would be very concerned about seeing people in their 20s being held up to the standard that an experienced and mature person is supposed to demonstrate. That is not to say that people have not done things wrong, but the whole point of getting experience is that you make mistakes, and you develop and grow.

When one has one's mistakes plastered all over the media and you are 22 or 25 or something like that, how do you recover from that? Must that person's right to learn from his or her mistake be subordinated so completely to everybody else's right to know? I do not have an answer for that, but what I can tell you is, I think we have to be mindful and careful about destroying the spirits of our young people who can sometimes be badly advised or make silly mistakes. That is not to say that they are not making mistakes. I am just making the point that with all of this guarantee of freedom of speech and freedom of expression and so on, they appear to be entering a phase where nothing is off limits, and I am mindful of that and the effect that can have on the psychology of the young.

So, that is just something that I wanted to draw to your attention when I considered clause 53(2), which said that the head of a public office can ignore a request for information if they consider it vexatious. I would love to know on what basis one would consider a request frivolous or vexatious. At what point does it become frivolous or vexatious? Is there a legal definition for that? I do not know. I am not a lawyer, but sometimes people ask for information all the time because they cannot get it. Is it that if I ask for it too often then my request becomes frivolous or vexatious? I do not know. I think clause 53(2) might benefit from some tightening up, which brings me to my penultimate point on this Bill which is a worthy effort to bring our national framework forward.

My penultimate point is, there is a very urgent need for us to take an omnibus approach to legislation of this type. It is new legislation, but the touch points with other parts of our national life are quite significant, and we need to be clear on the links with the Electronic Transactions Act and the regulations that govern that. We need to know where this ends and where cyber crime legislation starts. That is a very significant aspect of this whole landscape that is going to rub right alongside this piece of legislation.

It did not say it here, but I am gathering from the pieces of legislation that we have passed before, that some amendments to the Audit and Exchequer Act are going to be required, and something in the way of e-payment regulations are necessary. Now, why is that?

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I am assuming if someone is accessing Government services, unless you are going to be absolutely difficult and say to somebody that e-services will be that you go online and print out a form, but you must still present yourself to a government office, if that is what the intent is then that is fine, but if that is not the intent, and if the intent is a person can access government e-services electronically, which is what I thought the e-services meant, then one should be able where one is required to pay electronically. I am not sure why, for example, one would want to print a form to file an annual return and present oneself at the Registrar of Companies which quite unhelpfully has only one office on Frederick Street and then you must stand and wait for somebody to tell you that the form is wrong, and then you go back and do it how that last person told you to do it. Then you meet somebody else and that person tells you now it is wrong, you did it right the first time, go back again. These are little things that make dealing with the Government so difficult, and this is, I am sure, what the Government is attempting to change in putting forward these pieces of legislation. I know Sen. Nan Gosine-Ramgoolam is working very hard on developing the IT infrastructure that would facilitate e-services, but a critical part of that would be e-payments, because you do have to pay for government applications and you have to put some money into the system in order to access some government services, and that needs to be treated within this legislation.

That brings up another question and that is, once I have paid you and I am paying the Government, I am creating a confidential financial transaction record. How are we going to deal with that? Well, it does not say here, but that is something that we need to have clarity on, if we are going to get anywhere near where we need to be with e-Government.

I mean, I could go on and on. I will give you another example, and that would be an amendment to the Customs and Excise Act would obviously be required, because now the immigration folks and so on are allowing you to do an advance passenger declaration and, of course, that creates a record of very personal information about you; what you are moving with; who you are travelling with and when you are in and when you are out and so on. How are we going to deal with information like that is something that legislation is somewhat silent on, and it might benefit from some further explanation.

This whole question of data storage and this matter that has been put forward by the National Archives I am told has fallen by the wayside, so I am hoping that the Minister might clarify what is the model that is currently in effect. What it is that is governing our current practice for records held by the State?

Finally, clause 96 gives me pause, because I could not understand why clause 96 was any different to clause 95(2). I understand, having been recently explained the difference between a body corporate and a corporation, but it seems to me quite drastic to impose a fine of up to 10 per cent of the annual turnover of the enterprise. I am not quite sure why we have gone that route but that, to my mind, seems like quite a heavy blow to place on a corporation. I am not sure, in any event, as with so many Acts that come here we are unencumbered by the data, and almost entirely alien to the facts. So we really have no idea, the extent to which there are transgressions with regard to personal data now. I do not hear too often about transgressions with data in the private domain, we do hear about them in the public or semi-public domain though. So, I was not quite clear why clause 96 needed to be as strong as that.

I do support it, and I support what it is endeavouring to do. I am hoping that we can get the policy articulation we need to see how this hangs together with all of the other electronic data related things that the State has to do. This is not about putting anybody on the hook; it is really just an acceptance that you really have very complex technical bits of legislation to deal with mere slivers of our new electronic reality. We need to work together to ensure that the State does not make any missteps in this regard.

I am clear that many of the things that I am talking about cannot, at this point, or probably would not find their way into a revision and, therefore, I would support the call for, perhaps, us looking at the effects and the operation of this Bill when it becomes an Act, say within a year or two, so that we can understand better where we stand. But to the extent that this carries us forward in terms of improving our understanding of where boundaries lie with regard to data and personal data in particular, I applaud and support the effort.

Mr. President, I thank you for the opportunity to speak. [*Desk thumping*]

6.40 p.m.

Sen. Embau Moheni: Mr. President, thanks for the opportunity for me to make a brief contribution to this debate on data protection, because the question of data and information is critical. In the business world today, information is value, money, business opportunity, and I believe that this piece of legislation even though the parameters and the scope of study are so wide that it is going to involve continuous study, it is critical to this nation at this point in time.

It is also important in this 21st Century age of information, that we recognize the importance of information as an asset to the development of our nation; an asset that has become so proliferated in this age of information and the rapid

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movement of knowledge and information through so many sources on a global level. It is also important, as has been pointed out that we recognize, notwithstanding all of this, that privacy is still an issue and will continue to remain such. In the business world, information is an asset that is built up over a period of time, and therefore, it speaks a lot to the need for regulation and legislation in terms of data protection.

I would just like to clarify certain points that were made by Sen. Cudjoe with regard to certain issues in Tobago. For one, we need to be very, very clear in our understanding that the THA does not own land in Tobago. Land may come under their jurisdiction; they may be a trustee, that land belongs to the people of Tobago, in the twin-island State of Trinidad and Tobago. And whether it be the THA or whether it be the central government, we are talking about the usage of land to serve the interest of the people of Tobago, a lot of which we have seen in recent times; the intent of the central government to utilize land in Tobago for the interest and the development of the people of Tobago, with the recent opening of the centre in Canaan, Bon Accord, as well as, the University Complex which would be underway and which is going to provide not only opportunities for education, but opportunities for other areas of development in Tobago.

Getting back to the question of the Bill at hand, we have recognized the growth of government and government activity in this country, coming out of the period, particularly of the 1970s into the '80s, up to the present time, and the fact that government services and government activities have expanded with a wide range of services and activities being generated by the central government, as well as other arms of government. In order for the population to benefit from these services, the population needs to be enlightened, needs to be able to access information, on an easy, understandable and regular and continuous basis coming from the Government, and therefore, the need to expand and improve that communication process between the Government and the population.

6.45 p.m.

So it is not only at the private sector, not only at the business sector that flow of information is important, but even more so at the central government level.

What is important, in my mind, is the development of a whole new thinking, a whole culture where the question of information is concerned, which has to begin at the primary, secondary and other levels of formal education so that the generations to come could have a better appreciation of the value of that asset

which forms part of our national treasury, which forms part of our national savings, because information is not something that drops out the sky instantaneously, it is something that is built up over a period of time.

But we also need to recognize that today, our youth, our young persons at the primary level, at the secondary level, are oftentimes given a menu of information, a large percentage of which is negative at a time when their brains are at a formative state, thus affecting that most critical factor of character. And we know that under the past regime, we have had a particular type of culture existing and developing in our society that has been very much instructive of a breakdown of discipline, whether with regard to finance, attitudes what have you, that has affected the performance of our society.

While I had to agree with Sen. Cudjoe, that you cannot legislate honesty, I believe that it would be better served if she would look at the PNM-controlled institution of the THA in terms of their attitude to the question of honesty and these other—[*Desk thumping*]

I am not going to speak very much on that matter at this point, because in the not too distant future, a lot of this information is going to be in the public domain—about contracts of \$25 million to move one boulder and \$24 million to clear 400 sq ft of land—very shortly, so I am not going to speak very much to that. What is very sad at a time when so many Tobagonians have lost contracts, persons who invested millions of dollars to buy trucks and tractors and backhoes and those types of things, were placed on the breadline. Only recently when the THA began to register vehicles again, it was done in such a clandestine and secret manner that only a few persons knew, there was no advertising of it.

As a matter of fact, one individual who was working at Works, a woman, was so annoyed because she herself even though she was employed there, was not privy to that secret information which was only passed in the corridors. Her son who was a truck owner did not meet the deadline to register his vehicles and therefore could not benefit.

So that, yes, you cannot legislate honesty, it can only be developed by people's sense of value for each other, for a recognition that fair play is important, and an understanding that each and every one of us has to live in this land. [*Desk thumping*]

6.50 p.m.

We recognized that we must observe that right to life and by so doing what happens is that that circulation of money that is needed so that the economy could

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begin to turn around again is affected by a type of nepotism that is affecting a small island where everybody is everybody's neighbour.

So I would support the need for this legislation. I would also like to indicate the importance for continuous study, because it is broad and it is wide in its dimensions. It is important that we have this legislation at this point in time so that we could begin to put the kind of necessary guidelines, constraints and processes to ensure that our information is better managed and that the population gets better value for an asset as important as that, and to recognize that there are times when information has to be fed to the public and not be kept within a little family or a little party at the exclusion of those who have a right and those who have invested millions of dollars and see their investment lying idle while their children remain hungry.

Thank you.

Sen. Penelope Beckles: Thank you very much, Mr. President. There are just a couple of things I would like to say in relation to this Bill, but before I do that I would like to respond very briefly to Sen. Moheni.

Sen. Moheni referred to the fact that—or he implied or imputed that the THA has been conducting a lot of clandestine activities and that there have been a lot of contracts that have been awarded very secretly. Mr. President, I just want to say that when he talks about the THA and secret, I hope Sen. Moheni remembers that had it not been for Camini Maharaj, the secret award of the contract under Mary King would not have been disclosed [*Desk thumping*] and had it not been for the question filed by Sen. Hinds three times to get an answer, and the media, that the secret affair of the contract, the \$40 million contract at NP, would not have been known to the public either. [*Desk thumping*]

So as they would say, those in glass houses should not pelt any stones.

Sen. George: What? What?

Sen. P. Beckles-Robinson: If I could go further, Sen. George, all the secrets of the SIA that have now caused the ratings of the hon. Prime Minister to fall would not have been disclosed either. [*Desk thumping*]

I want to start by looking at the first Explanatory Note of the Bill which says that, this Bill seeks to protect the privacy of personal and private information of individuals which is entered in electronic form. Mr. President, my understanding of this Bill is much wider than that because in clause 2 of the Bill, and I think Sen.

Al-Rawi referred to it, but I think I want to refer to it again because it is very important, it is really much wider than what the Explanatory Note says. It says that “data” means, “any document, correspondence, memorandum, book, plan, map drawing, pictorial or graphic work, photograph film, microfilm, sound recording, videotape, machine-readable record and any other documentary material, regardless of physical form or characteristics, and any copy of those things.” So I want to say it is much wider.

The reason that is so very important, and I want to agree with the position taken by Sen. Dr. Balgobin and that is, that whilst clause 6 talks about principles, general privacy principles, when you go through the Bill without a policy it is going to be very difficult if not impossible to implement this piece of legislation.

Clause 6, for example, gives some general definition as I said of general privacy principles and just probably two of them I would like to look at and that is (g) which says, “personal information is to be protected by such appropriate safeguards having regard to the sensitivity of the information;” and (h) speaks to “sensitive personal information is protected from processing except where otherwise provided for by written law.”

Now, I would like the hon. Minister Partap to indicate the issue of whether or not this Bill requires a special majority. Now, if we recall the Interception Bill, well now Act that was before this Parliament, which in essence spoke about intercepting particular calls, between parties, that Act required a special majority. Now, clause 4 of the Constitution says:

“It is hereby recognised and declared that in Trinidad and Tobago there have existed and shall continue to exist, without discrimination by reason of race, origin, colour, religion or sex, the following fundamental human rights namely—“

And at (c) it says:

“the right of the individual to respect for his private and family life;”

Now this Bill of course seeks to contravene that in certain material particulars, and my point therefore is whether or not a special majority is required for the purposes of that contravention of clause 4. Because, Mr. President, as I read before it refers to sensitive personal information.

Now, when you go to clause 35 of the Bill it says that:

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“A public body shall protect personal information in its custody or under its control by making reasonable security arrangements against such risks as unauthorized access, collection, use, alteration, disclosure or disposal.”

Clause 48, Mr. President, then goes to say exactly what a head of public body shall cause to be done. Now, the reason I am saying that it is going to be difficult to implement this Bill is because clause 48 puts a very, very onerous task on public bodies, but there really is not a time frame for this to be done. But if this is not done then the Act simply cannot be implemented.

Clause 48 says that, “The Head of a Public Body”—and, Mr. President, I know that you read your legislation and you follow the debate very closely and you would see that public body is defined. It is actually very, very lengthy, it is a number of bodies that fall—I cannot find it right away, but it says here that:

“The Head of a Public Body shall cause to be included in personal information banks, all personal information under the control or in the custody of the public body that—

(a) has been used, is being used or is available for use for administrative purpose”.

Now, Mr. President, just think of an authority like WASA, just think of an authority like T&TEC, just think of an authority like the National Housing Authority; clause 5 says, a public body is the office of the President, the Parliament, Joint Select Committees, the Court of Appeal, the High Court, the Tax Appeal Board, the Cabinet as constituted under the Constitution, Ministry or department, the THA, municipal corporations, statutory bodies, companies, the service commission, a body corporate or an unincorporated entity.

Now I do not know if the Government is aware of the onerous task that is being placed on these public bodies. Clause 48(1) goes on to say that:

“The Head of a Public Body shall cause to be—

(b) organized or intended to be retrieved by means of the name of an individual or by an identifying number, symbol or other particular assigned to an individual.”

So it means that clearly for the purposes of collecting the data and accessing the information these bodies now have to put together all of this information in what you call a bank, of course, and then that information has to be accessible. Now, what is the time frame that that has to be done?

I recall sometime ago when I was the Minister of Public Utilities—and I am sure that Minister George may or may not have come across a similar situation—a question was filed in the Parliament about the number of persons owing moneys to WASA, and when I received that information there were some persons who actually had three accounts or four accounts; one particular name, but it was clear that the information was inaccurate, because over time in terms of how data was collected, they may not have had the time to properly audit and do their homework. So that this information here is extremely important but to get this information ready within a particular time is going to be very difficult and I would really like to know whether the Government has thought of the difficulties in terms of implementing that information.

Now, Mr. President, at clause 95, it speaks about the penalties and it says:

“A person who commits an offence under this Act is liable upon—

- (a) summary conviction, to a fine of not more than fifty thousand dollars or to imprisonment for a term of three years;”

Then it also talks about a body corporate—a body corporate shall be liable upon summary conviction to a fine of two hundred and fifty thousand dollars and on conviction on indictment to a fine of fifty thousand dollars. So clearly the issue of complying with this legislation is very, very important, and again I go back to the issue of time frame, Mr. President. What is the time frame to ensure that these bodies comply with this very, very important piece of legislation.

Now, clause 47 says—and I have a serious concern with clause 47, because clause 47 says that:

“Every public body”—and I am relating this again back to what I said a while ago—“shall prepare a privacy impact assessment, in the form prescribed by the Commissioner, for any proposed enactment, system, project, programme or activity where such enactment, system, project, programme or activity would or would reasonably be expected to substantially or materially impact personal information.”

Mr. President, my point again is this, if any of those public bodies that I just referred to fails to comply—you have no time frame in essence because it is very difficult—what are the consequences? The consequences to those various bodies, the payment of these fines, and we go back to the point that a lot of those bodies in a real sense are not individuals, it is going to still be taxpayers’ money if some

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of the utilities or some of the ministries do not comply. What is the incentive and what are the supervisory methods that are put in place to make sure this Act is properly implemented?

7.05 p.m.

I am saying that it is a good idea to have the impact assessment done, but what happens if they do not follow the specific section of the Act. Clause 47(3) goes on to say that:

“Where a privacy impact assessment has been submitted...the Commissioner shall evaluate...”

After that is evaluated then the:

“...public body shall take all reasonable steps in accordance with its privacy impact assessment to avoid unnecessary intrusions into personal privacy when designing, implementing and enforcing enactments, systems, projects, programmes or activities.”

Mr. President, I just want to make the point again, that it is going to be extremely difficult to implement this without the proper supervisory methods in place.

When we go to clause 37 of the Bill, it says that:

“A public body shall dispose of all personal information in its control or custody in accordance with Regulations made by the Minister under this Act.”

Now, as far as I know, to date, no regulations have been made. I have looked at the Bill and there is no time frame for those regulations to be made. In essence, for this Bill to function effectively there must be regulations. [*Desk thumping*] So I say again that:

“A public body shall dispose of all personal information in its control in accordance with Regulations made by the Minister under this Act.”

Now, when we say Minister, we are speaking about the Prime Minister, as I understand it.

Mr. President, this particular clause has a two-edged sword, because in my humble view, what are the criteria that the Minister will use to determine when certain information shall be disposed, when? It is really very, very subjective, because at the end of the day we pass this legislation today—is it that the legislation will only come into effect when the regulations are made? Or is it that once the legislation is passed the regulations could be made from time to time by negative resolution? So I have a serious concern about that particular clause.

Sen. Panday: Senator, I apologise to you on the issue of the regulations. What is happening is that we have started them and what is happening is that we are waiting for all the amendments to be taken on board so that the regulations could be completed and it would at that time make sense.

Thank you.

Sen. P. Beckles-Robinson: Okay. Any particular time frame for the completion of the regulations?

Sen. Panday: I cannot give you it right now, but I am certain that maybe before the end of the proceedings. I shall endeavour.

Sen. P. Beckles-Robinson: Well, I just want to underscore my point, that for the legislation to be effective the regulations are important, and I have a serious concern that with this power to dispose of information, that if this is passed without the regulations then in truth and in fact, when the regulations come we really would have already compromised ourselves.

Mr. President, there is a particular clause here that defines sensitive information, clause 2, the definition section—

“‘sensitive personal information’ means information on a person’s—

- (a) racial or ethnic origins;
- (b) political affiliation or trade union membership;
- (c) religious beliefs, or other beliefs of a similar nature;
- (d) physical or mental health...”

I am very happy that this particular clause has found its way into the legislation and that one can—and this particular amendment—there was an amendment in the Lower House as a result of Hon. MP, Colm Imbert.

7.10 p.m.

The reason why this is important is that you would recall that there was a case a few years ago, it was the case of the then hon. Member, *Basdeo Panday vs Magistrate Ejenny Espinet*, where efforts were being made to insist that Ms. Espinet recuse herself from sitting on that particular case on the basis of political affiliation. An application was filed before the court for a declaration of the members of the People’s National Movement. Fortunately, the court did not allow that to happen. Justice Kokaram did not grant that request, because one could well imagine what would have happened today now that this UNC-led coalition is in office, with a list of all the members of the People’s National Movement.

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It is one thing for colleagues on this Bench to openly declare our affiliations with pride. There are others who have the right to join any organization, whether it be the UNC, COP, MSJ, TOP, NJAC and choose if they so wish not to declare it openly. But here it is that that request was made and we know very well what could have happened if that membership document had fallen into wrong hands.

So I am very happy that this is a consideration because in truth and in fact, this can work very seriously and people could be discriminated against even though the Constitution guarantees you the right to join political parties and to express political views; that is entrenched in the Constitution, section 4. But we see from time to time—and it also speaks of freedom of association and assembly—that your political affiliation can be used against you. And that is something that—Sen. Moheni talked about “nepotism” but if you listen to the cries of many persons today, whether it be CEPEP; whether it be URP; whether it be contract workers; their cry every day is one of discrimination by this People’s Partnership Government.

Now the sensitivity about this legislation is that what you are seeking to do is really balance the rights of the individual and balance the rights of the society, and in so doing, with modern technology, the whole world is opened up as it relates to communication. We can only think of WikiLeaks as an example, where you now have very sensitive documents, whether it be the American government, whether it be French, whether it be Russian, that are now finding their way onto the Internet. And within very recent times there was very, very sensitive information from the President of the United States that found its way on the Internet, and as far as I understand it to date they have not been able to find any piece of legislation with which they could charge the owner of WikiLeaks.

So that as we seek to protect people’s privacy and we now know you have Twitter, you now have Facebook, you now have all the very modern pieces of communication that are allowing us just in a matter of seconds to know when something has taken place—and people are finding very creative ways of getting documents that are illegally obtained on to the system—how do we treat with that? Now again, Mr. President, you would recall that there was the case of *Independent Publishing Company Ltd vs the Attorney General*, this was the matter involving—[*Interruption*] Yes this was the matter involving Dole Chadee and his gang.

7.15 p.m.

[*Interruption*] Sorry? This is a very serious discourse. This was a Privy Council judgment and, in this case, the judge ruled at first instance at this trial, prohibiting the media until further notice from referring to certain events at that trial. Two newspapers published and two journalists published reports alluding to

those matters. The two journalists were subsequently required to attend before the judge, to show cause why they should not be punished for a contempt of court. At the conclusion of a short hearing, both journalists were convicted. One of them was sentenced to 14 days and the other was fined \$1,000.

The judge then made a further Order prohibiting any further notice of the publication of any reference to the contempt proceedings. The appellants sought redress under section 14 of the Constitution, contending that the judge had no power to make such an Order. The constitutional matters in the Appeal Court were dismissed and the journalists appealed to the Privy Council. The Privy Council ruled that a court had no common law power to make an Order postponing the publication of a report of proceedings conducted in open court and, if the court is to have such a power it must be conferred by legislation. It also ruled that in the absence of either a power to make the postponement Order made by the trial judge or of any right of appeal, or other remedies against those Orders, the newspapers' constitutional right to free expression and freedom of the press had been infringed and they were entitled to seek redress by way of constitutional Motion.

Mr. President, these matters are very important for us because they are very, very important learnings as we seek to treat with what are very sensitive matters. In some instances very controversial, and in other instances very difficult to implement, legislate, interpret and, certainly, it would be very interesting if these particular sections are challenged at some point in time on how the court will rule in relation to these matters.

There is a very, very recent case that sheds even some interesting light on the difficulties the court can have in dealing with electronic data and modern technology. You may or may not have been following it, but there is a famous footballer from England, who at present—I should not say present, but anyway—was having a relationship with someone whilst he was married and this matter came to the attention of several parties. He filed an injunction to gag the newspapers from making it public because, of course, what it would have created, having regard that he is very popular, he is supposed to be a role model and so. At the end of the day, the court granted the order and gagged all the British newspapers from publishing this particular story.

Now, what is interesting about this and for our discourse here today, is that the *Herald* newspapers in Scotland decided that they were not bound by the ruling of England. So they published the picture of the footballer on the front page of the newspapers, simply putting a little blackout strip by his eyes. The fact is, by the time you are finished and ready you can actually get a copy of the newspapers on

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the Internet before you can purchase it. So, of course, this has caused quite a big scandal in Britain because the newspapers were not able to publish it. It was printed in Scotland and in any event everybody had access to exactly what had transpired. They even actually printed a copy of the court's injunction.

So what has since happened, Mr. President, is that the footballer has now sued the owner of Twitter and persons unknown. Last month he obtained an order preventing the *Sun Newspapers* from revealing his name, and has now launched proceedings against Twitter and persons unknown. Now, in an editorial, the *Sunday Herald* said it was unsustainable for newspapers not to be able to print information available on the Internet. It is causing quite a stir in the court system, in the Judiciary and, not only there, but it was done in the United States and several other places. The Prime Minister of Britain and several other members have commented on this because they are very, very concerned. The Prime Minister of Britain said that he was among those who have expressed disquiet about the issue, saying last month that he was a little uneasy that judges were using the European Convention on Human Rights to deliver a sort of privacy law without Parliament say-so.

Now, the newspapers indicated that they found that injunctions had been obtained by nine footballers, nine actors, four pop stars, six wealthy businessmen, a senior servant and a Member of Parliament. But the critical thing is that the majority of these persons are, of course, very wealthy and they can go to the court and access that. So this case is a landmark case, but it is there on appeal because you had as they said, some 30,000 persons twittered this particular injunction and they breached the order of the court, in essence. We wait to see what will be the decision of the court since the application, as I said, is against the head of Twitter and persons unknown.

As I was doing my research, I came across this very interesting case because I was saying that clearly as you legislate now you have to be very forward-thinking and you have to recognize that there is a revolution in the communication industry and the technological industry. You cannot really legislate for everything, but clearly it is something that we have to have in the forefront of our minds as we deal with this piece of legislation.

We know that the issue of privacy in Trinidad and Tobago is something that people have all been concerned about, and this piece of legislation talks about instances and when information can be given. It talks about instances when information cannot be given. It even goes so far as to say that there are times

when particular personal information is in their custody, that it speaks about the fact that if that application is frivolous or vexatious, that you can actually deny a person that request.

The interesting thing, Mr. President, is that when the Prime Minister of Britain spoke about the fact that the courts were using the European Union legislation and there really was no existing legislation in England to deal with it—because their Constitution, unlike ours, is not a written Constitution. Even the human trafficking legislation that we dealt with a while ago, if these things are to be successful, it requires that we have to also deal with some of our other Caricom countries.

In this case you had a decision in England; Scotland having a totally different view; United States deciding that they are not bound by it; but the European Union of which Britain is part, you have their legislation and you have the unwritten Constitution in England. If we are to succeed, it is important that Caricom play a role in these types of matters.

Now, I raised the issue of Caricom because I saw in the newspapers yesterday that Caricom has a retreat in Guyana to deal with very, very important matters affecting the region. I was really, really shocked that it was reported, that not only did our Prime Minister not attend, but there was absolutely no representation from Trinidad and Tobago. The reason given was that they had to celebrate the successes of their one year in office tomorrow. Now, I really hope that the hon. Prime Minister will clear the air on that matter and make it absolutely clear to the people of Trinidad and Tobago and the region that that statement in the newspapers is false. I cannot believe that they could not find anybody from this Government to attend an important Heads of Government Caricom meeting. We know that the past statements have already infuriated a lot of Caricom members about Trinidad and Tobago being an ATM machine, and what happened in relation to the natural disaster that occurred in some islands. So, I am hoping that they would clear the air on that matter.

But coming back specifically to the point as it relates to this Bill, I want to say that in principle, we support the Bill. This is a piece of legislation that the People's National Movement was working on, but we recognized that it required quite a bit of consultation, it required an input from as wide as possible participants, the banks, the credit unions, the various ministries, the various entities, to ensure that it worked effectively.

Mr. President, even in the Parliament where you have seen that the Parliament and the joint select committee have been referred to as public bodies, when you go back to the Constitution it specifically states that the joint select committees

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and certain committees of Parliament can send for papers and can subpoena certain documents. So we have to be very careful how this piece of legislation affects the functioning of Parliament.

At the end of the day, those of us who have had opportunities to subpoena persons before several committees—some were very reluctant; when you asked for certain documents, they refused to give those documents. They were either sensitive or they had several reasons for which they were not going to provide those committees with those documents. Now that you have this piece of legislation where there is no policy, but you have certain principles and certain guidelines, it is going to be incumbent upon the Government to educate the ministries and all the various institutions so they will know exactly what is the objective of this piece of legislation.

I think it will be very important if this legislation is to be properly implemented, that the Office of the Prime Minister will have to look very carefully at having certain allocations in the budget every year to ensure that the various ministries comply with the particular sections in this Parliament. I am of the view that there is no way that be it NHA, be it T&TEC, be it WASA, be it whatever body—under section 48, what the Act requires you to do, it is going to require specialist training, it is going to require specific officers and it is going to require a dedicated staff to ensure that they comply with this Act. So at the end of the day, Mr. President, that is my contribution and I am hoping that the Government will pay attention to some of my suggestions. [*Desk thumping*]

7.30 p.m.

Sen. Fitzgerald Hinds: Thank you very warmly, Mr. President. Mr. President, as you may have observed, I was out of the Chamber when my very learned colleague made the bulk of her contribution, and therefore having caucused, we are of similar minds. Of course, I cannot boast of hearing all that she had to say, but I think enough was said by her and some of my other colleagues to have brought home the point that a good thing in the hands of the wrong person could be very dangerous indeed. I say so because as it must by now have become very clear to you, this Bill was the brainchild of the previous administration.

Sen. Panday: “How Sen. Al-Rawi actin’ like that?”

Sen. F. Hinds: And like so many other pieces of legislation, a good idea, good thoughts and prepared with a view of refinement after consultation—because a Bill comes from the government. A Bill is the brainchild of the

government like a white paper, and it is put out for public comment, and the final phase of that, in most cases, is a debate in the Parliament with an open mind, taking into account what the other side and the Independents would, of course, say. And it is quite clear from what you would have heard from the Members on my side and our bench that yes, a very good idea in principle but it required some refinement, but this Government is faced with a bit of a crisis. This Government promised this country that it would fix the economy; it would keep the economy turning over.

When it came to office, it met an economy in good shape. Good shape! All the economic indicia demonstrate and this is beyond doubt and question; not a matter for argument—whether it was foreign reserves, whether it was the GDP, which the previous administration tripled over the past eight years—all the economic indicia show that the economy was strong and healthy. I told you before, that that Government has come to office led by their Prime Minister, published in a very expensive *Forbes Magazine* all the virtues of the economy of Trinidad and Tobago, how strong the economy was and why this was one of the best places for investment. That is the way they spoke internationally. But, in order to win support from the uninitiated, the unwary souls, whose backs they rode on to government, like the farmers, they say a different language inside of Trinidad and Tobago. [*Interruption*] We are talking about information; the Ministry of Finance has all the information; it is part of the data that the Ministry of Finance holds.

Sen. Bharath: You are speaking on the wrong Bill.

Sen. F. Hinds: You can say what you wish! Mr. President, we had intended, of course, that the Bill be refined, the ideas be refined, we take on board what everyone had to say but this Government, as I was saying to you, has deadlines. It is faced with certain crises; has not been able to deal with crime as it promised people that it would; has not been able to do that. And all of the investments that the previous administration put into crime, I told them, notwithstanding what National Security does, the criminals have a life of their own, international crime has a life of its own, and you are virtually always coming from behind. We told them that, but they told untruths to those who would listen to them, carelessly, that they would fix it, and today they grapple with murders three a day; they used to scream when they heard three murders a day! I remember my friend, Sen. Panday—

7.35 p.m.

Mr. President: Are we on the Bill?

Sen. F. Hinds: Yes indeed!

Hon. Senator: He has been out of the Chamber too long.

Sen. F. Hinds: These murder statistics are part of the data held by the Ministry of National Security, very important, and we are dealing with data protection and privacy; a matter that I want to come to very shortly. [*Interruption*]

Sen. Panday: You do not know what is short.

Sen. F. Hinds: You, “doh” trouble your heart about that. I was saying that they have some deadlines. They are having trouble with the Financial Action Task Force (FATF). They are having problems with that and even my mispronunciations. Mr. President, they have some deadlines, most particularly tomorrow, May 24th, a day that they did not look forward to. They thought it would take a little longer, but we have a birthday gift for them tomorrow, which we shall package and deliver from Four Roads in Diego Martin with love. [*Interruption*]

Sen. Panday: Mr. President, Standing Order 35(1). “You can go Four Roads or Five Roads is same licks you would get.”

Sen. F. Hinds: He is still in campaign mode—and they are afraid that after May 24, 2011 the Prime Minister might—[*Interruption*]

Sen. Maharaj: Mr. President, Standing Order 35(1), you were about to make a ruling.

Sen. F. Hinds:— go to a residence in Tunapuna again.

Mr. President: I ask you to keep within the ambit of the Bill.

Sen. F. Hinds: Oh yes. My last comment was that they are probably worried that after May 24, 2011, their Prime Minister could wantonly go to another residence in Tunapuna again. Why did I say that? The data held by the Integrity Commission must also be protected. All of this has to be protected. [*Interruption*]

Sen. Gosine-Ramgoolam: Calder Hart.

Sen. F. Hinds: Yes, you tell us about Calder Hart a year later; keep telling us. That is why the data coming from the MFO survey shows a declining trend. [*Interruption*]

Sen. Ramlogan: And we still on top! Not even in a decline you would meet us. Not even in decline could the PNM catch us. Sad state of affairs that you are in.

Sen. F. Hinds: What you just heard there is a painful cry of hope. Let us continue and not be distracted by the Attorney General who wants to demonstrate by his volume that he is present in the Chamber yet again. Sen. Al-Rawri, he is indeed, here.

Sen. Ramlogan: Yes.

Sen. F. Hinds: I heard my friend Sen. Beckles-Robinson make reference to a particular case and the possibility of information being held by the Government or by state authorities being used in a certain way. All governments hold information of necessity, in respect of citizens and those who interface with their country, all, but it is how you manage the thing.

There was a body of information held by the SSA and the SIA; important national security information. How did that Government treat with it? *[Interruption]*

Sen. Ramlogan: How did you all collect the data? Spying, illegally. “How yuh collect de data? Talk ‘bout dat.” Spying on the President. Shame!

Sen. F. Hinds: I would not engage the Attorney General in that despicable conduct.

Sen. Ramlogan: It despicable to spy on “de” people.

Sen. F. Hinds: I would not. I refuse to go there—

Sen. Ramlogan: Spying is despicable!

Sen. F. Hinds:—because the matter that I have now raised is far too serious to be trivialized by the Attorney General of Trinidad and Tobago, a serious thing.

Sen. Ramlogan: That is why we passed the law, man!

Sen. F. Hinds: This is why I began my discourse, for a short intervention, on this important business of data collection and the management of data by the State, by saying a good idea in the wrong hands is dangerous.

Sen. Ramlogan: “Dat is why dey voted all yuh out!” The population recognized that.

Sen. F. Hinds: Dangerous! How did they treat with that information? They scandalized from the airport 8.00 a.m. one morning. I do not know if the coffee the lady had was too strong, but I remember it was about 8—*[Interruption]*

Sen. Ramlogan: Who lady?

Sen. F. Hinds: I am so sorry, I withdraw “the lady”, the Prime Minister.

Sen. Cudjoe: “Yuh sure it is coffee?”

Sen. F. Hinds: And I am almost certain that it is coffee.

Sen. Ramlogan: Of course.

Sen. F. Hinds: Strong, straight, black coffee, perhaps, which does have a debilitating effect on someone, if your circumstances are such, but I would not—
[*Interruption*]

Sen. Ramlogan: But you would drink it.

Sen. F. Hinds: I do not want the Attorney General provoking me. I am dealing with an important matter. I am dealing with a matter that, a few months later is demonstrably having, again, a debilitating effect on the national security efforts of Trinidad and Tobago, because of the mishandling of data and information.

Today I filed a question asking the Minister of National Security, because he has certain data at his disposal. I have asked him a thousand questions and he has run and hid from me and ducked. Well, I have filed another question to ask the Minister of National Security to tell us what criminal action has been taken, or may be taken against the person or persons who provided him with misleading data on a junior member of staff in the SSA/SIA to have led him and the Prime Minister as Chairman of the National Security Council to have appointed her to the position of director.

Sen. Panday: Mr. President, Standing Order 35(1); yes, please, Sir.

Mr. President: But I did not hear it.

Sen. Panday: Standing Order 35(1), please, Sir.

Mr. President: I would allow Sen. Hinds to continue. I would remind him to keep on track in this debate.

Sen. F. Hinds: Yes, we are dealing with data protection and the mismanagement of it by the Government, who this Bill gives a tremendous amount of power over information about, in some cases, our private lives; corporate and as natural persons, very important, and being in possession of that data, they used it in a certain way.

I have data, where a young man, wanting to become a member of the esteemed Trinidad and Tobago Police Service, of which I was a member, proudly so, and just like Mr. Strauss-Kahn and many other human beings as mere mortals,

this young man fell prey to temptation, as many persons who commit crime do. He was a victim of a low self-esteem, as many persons who are involved in crime are, lacking the confidence like a lion to come out in the society, acquire academic training and prowess, acquire skills and enter into a business and earn one's keep like a man, an honest man, to earn the respect of his peers in the society. A criminal does not think that way. He thinks like a skunk. He thinks like a hyena. He does not have the class to work hard and acquire the skills like a man, to get what he wants. He hides in the dark and he snitches and snatches and preys on others in order to achieve his goals. The young man, very sadly, fell prey to those afflictions and falsified his GCE certificate which he possessed and submitted that for entry into the police service. That too would have formed part of the data that they would have had on applicants for entry into the police service.

I also recall I defended a young woman in this society who fell prey to those temptations and afflictions as well and I was her attorney-at-law and pleaded with the court to have mercy upon her and not send her to a certain place for safe custody. I think it was the same Magistrate Ejenny Espinet that my colleague spoke about; a matter to which I shall return very shortly, if you would permit me.

In both cases that I have described to you, the two citizens suffered the pain of the law. In the first case, the young man was fined \$3,000 and the magistrate told him flatly that he does not deserve a place in the police service. And in the second case, she was not fined, it was a case of community service and she was also told that she does not deserve a place in that organization, because if you want to enter an organization that is supposed to treat with crime, how can you, on entry, commit a crime? I thought it was fair and I am sure that these two young citizens, like thousands of others all around the world, would have learnt from the errors of their ways.

But we have someone in the SSA who tendered a false résumé to the Minister of National Security, not directly, she has never met him. He told us he does not know the young lady, but through someone else, gave the Minister of National Security, who told us that he was set up because he came to Parliament and told the Parliament, based on the data that he had, that she was a graduate—and other Ministers did. I want to know, Mr. President, what criminal sanctions will be brought to bear against those who were involved in that. But, the Prime Minister, Chairman of the National Security Council, the final recipient of the data and the arbiter, as Chairman of the National Security Council, as to the question of the appointment of the Director of the SIA, to this day she has not said a word, neither

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has the Minister of National Security. I asked him here: What action has been taken? He got up and told us she was relieved. So, she walks away with a clean record, probably going to take up to a job in NP. [*Interruption*]

Sen. Ramlogan: Mr. President, what relevance is this to the Data Protection Bill? The Senator is being allowed a latitude that, quite frankly, on any interpretation of the Standing Orders, has no relationship with the Data Protection Bill. He is going on and raving and ranting about the same issue time and again and stretching the boundaries of reason and logic to try and relate it back to anything that is under discussion. Quite frankly, we have to confine ourselves to the Data Protection Bill, or else we would be here all day and all night. I know my learned friend wants to raise this time and again. It is like a mantra. He could chant it from now until next election, that is fine, but let us debate what is before the Senate.

Mr. President: Senator, I would suggest you are stretching the boundaries. I am not sure that you have tipped over the boundary, but you are taking a fair amount of latitude. I ask that you keep within the boundaries.

Sen. F. Hinds: Two things struck me about the Attorney General's intervention, rather three, how keen they are to cover up; to be surreptitious— [*Interruption*]

Mr. President: Sen. Hinds, I cannot allow you to say that.

Sen. Panday: Standing Orders 35(5)?

Mr. President: Sen. Hinds, have a seat.

Sen. F. Hinds: I am obliged.

Mr. President: I would have to ask you to refrain from saying that and to take it back.

Sen. F. Hinds: A Government that promised openness and transparency, what other word could I use, clandestine, Mr. President? Okay?

7.50 p.m.

Mr. President: Sen. Hinds, you cannot use that language with reference to a specific person in this Senate, thanks.

Sen. F. Hinds: The other thing that struck me about the Attorney General is his yellow shirt. It perfectly matches the colour of the backhoe that bulldozed the farmers' lands.

Sen. Panday: Standing Order 35(1), please, Sir.

Sen. Ramlogan: We want data.

Mr. President: Let us move on, Sen. Hinds.

Sen. F. Hinds: We are moving on. The other thing that strikes me about the Attorney General is that he got up in this Senate already and arrogantly told the people—there is no bad word in “arrogant”. He arrogated power unto himself; told the people of this country that we could talk about Reshmi Ramnarine until “we blue in the face”—

Mr. President: Senator, you are going outside the boundaries of the—

Sen. F. Hinds: The arrogance!

Sen. Ramlogan: You in love with Reshmi, boy.

Sen. F. Hinds: Clause 37 on page 26 of the Bill—[*Desk thumping*]

Sen. Ramlogan: Much better; a dramatic improvement.

Sen. F. Hinds: I quote. I have it highlighted in yellow like your shirt, so I can see without my glasses.

Sen. Ramlogan: Lovely. I will get you a shirt like that, man. Do not worry.

Sen. F. Hinds: I do not want a shirt like that just because it is yellow. On May 23, I do not want that at all.

Sen. Ramlogan: A balisier tie will get you nowhere.

Sen. F. Hinds: That is for people with a backhoe ethic.

Sen. Ramlogan: That tie is for people with a backward ethic. [*Desk thumping*]

Sen. F. Hinds: Mr. President, I understand the position of the Attorney General, so I will move on.

Sen. Ramlogan: Good idea.

Sen. F. Hinds: I will move on. The man whose rating is 1 per cent in the poll; I will move on. [*Desk thumping*]

Sen. Ramlogan: As an apprentice, you never made it to the poll. [*Desk thumping*]

Sen. F. Hinds: Mr. President, clause 37—you heard him? *Sotto voce*. It was he who told us that he is not a knife-and-fork man; he is a fig leaf man, so we understand.

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Clause 37 says:

“A public body shall dispose of all personal information in its control or custody in accordance with Regulations made by the Minister under this Act.”

My friend, Sen. Beckles, I heard enough of this element of her contribution where she quite properly demonstrated the adverse circumstances and possible adverse consequences of not having for our consideration the regulations which must be a part of this Bill by virtue of clause 37.

Sen. Panday: Sen. Hinds.

Sen. F. Hinds: I do not wish to be interrupted.

Sen. Panday: The substantive legislation must be passed first.

Sen. F. Hinds: May I continue, Mr. President? [*Crosstalk*] You remind me of an old star from Bonanza called Dan Blocker.

Sen. Deyalsingh: “Hoss” Cartwright.

Sen. F. Hinds: Is “Horse”? Cartwright? You can imagine a yellow horse? My friend, Sen. Beckles-Robinson, pointed out the adversity of the circumstances that surround us in the absence of the regulations. I have always made it clear that I have absolute difficulty in ever trusting any word of that Government. I cannot and will not trust them.

Sen. Panday: What about Patrick Manning? You trust his word?

Sen. F. Hinds: They are capable of anything, so you see the way they would manage data, as I demonstrated to you a while ago, and the way they would dispose of it. They disposed of information from the SIA. Right now we do not know where it is. I am being reminded that one of their Ministers told us that a strange person from Israel came, went into a sub-office and tore it up. You heard what they told this country? Another Minister—

Sen. Ramlogan: Mr. President, on a point of order. My learned friend cannot impute improper motives. [*Interruption*] He says it is a fact.

Sen. F. Hinds: It is a fact.

Sen. Ramlogan: Had my learned friend been paying attention to the debates in this honourable Chamber, he might have recalled participating in the passage of the Interception of Communications Bill. That Act makes it a criminal offence to be in possession of intercepted communication. My learned friend is

saying that we are in possession of that and, more importantly, that a Government Minister said that someone tore it up.

That is making an indirect accusation of criminal conduct on the part of a Government Minister since the passage of that Bill, as my learned friend well knows, or ought to know if he is sober enough to figure it out, that since the passage of that Bill, the retention and disposal policy in the Interception of Communications Bill, which is now part of the law of this country, makes that a criminal offence. I ask him to desist from making such allegations. It is highly improper.

Mr. President: I did not understand him, Attorney General, to be referring to any specific Minister. I heard him mention about an Israeli person tearing it up.

Sen. Ramlogan: He said a Minister.

Mr. President: I did not hear that. He might have said a Government Minister said that an Israeli person came and caused it to be torn up. Again, once you are crossing the boundaries relative to the question of relevance—and I have asked you to keep within the Bill—I do not see that you have transgressed on that occasion. Please continue.

Sen. F. Hinds: Mr. President, I was making the point that Government cannot be trusted and we feel rather uncomfortable passing serious legislation like this.

Let me tell you how serious this legislation is. Clause 19(1) of the Bill says:

“The Commissioner”—an office that is established under this—“may appoint officers within the Office of the Information Commissioner to be inspectors according to their qualifications for the purposes of this Act and shall furnish each such inspector with a certificate of his designation.”

I will go right on to subclause (3) which says:

“An inspector shall, subject to sections 20 and 21 have the power to do all or any of the following things for the purpose of the execution of this Act:

- (a) if he considers it necessary, take with him when entering any premises a police officer;
- (b) to require any person whom he finds in or on such premises to give such information as is in his power to give as to who is the owner or occupier thereof and the employer of workers employed to work thereon;”

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I can continue right up to (f):

“(f) 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 this Act has been contravened.”

This, when it becomes an Act of Parliament, when it is converted, with our support, into law, accords to inspectors appointed by the commissioner—and we heard an Independent Senator today raise the red flag, the issue of the appointment of the commissioner and the deputy commissioner of information because they have demonstrated—

I cannot talk until I am blue in the face. I am already proudly blue; it is in my genes and God knows I love it as indeed I love yours and that of everyone else in Trinidad and Tobago. I would say, without fear of becoming bluer, that when we leave the appointment of the Information Commissioner to that Government, we are running a serious risk because we are still to find out the basis on which they decided that Reshmi Ramnarine should have become the director of an important institution like the SIA/SSA.

You see the point? Every time I try to go past it, it is more than a lurking doubt; it troubles me. You recall the Financial Intelligence Unit, that Attorney General, shouting the loudest, with a 1 per cent rating in the national community done by the MFO poll; 1 per cent.

Sen. Ramlogan: To think that I faulted Manning for deeming you an apprentice. My God!

Sen. F. Hinds: That Attorney General got in this House and bulldozed through here the appointment of a young, bright, public servant, whom he called from where she was, quite comfortable, and put her in a most invidious position—

Sen. Ramlogan: Relevance! Relevance! We are talking about the Bill.

Sen. F. Hinds: We are talking about the appointment of officials and why they cannot be trusted. The national community wonders if this is all misstep and mistake. I, Fitzgerald Ethelbert Hinds, tell them no. It is deliberate!

I want to quote Sparrow who said in a song—and I know this is not unparliamentary, we have quoted calypsonians here before: “You will come to no other conclusion but that they are either drunk or staring mad.” Then he had to renege; he had to resile from that, when the Leader of the Opposition promptly pointed out that it was not a proper appointment. Today, I think it was Sen. Al-

Rawi who had to remind us that right now the lady is still ensconced in that office at the behest of the Cabinet, led by the legal advisor to the Government, that Attorney General. Now you understand why he is at 1 per cent.

Sen. Ramlogan: I beat Mr. Manning with that 1 per cent and you were never even—

Sen. F. Hinds: The last poll showed that he was at 14.

Sen. Ramlogan: I faulted that man for saying that you are an apprentice. I defended you when that man did not want to make you a Minister, boy. Good grief!

Sen. F. Hinds: I do not want your defence.

Sen. Ramlogan: Martin wanted to ditch you long time, you know. Poor Martin! It was not Martin Joseph, you know. It was not Martin.

Mr. President: Let us proceed, thank you.

Sen. F. Hinds: Mr. President, will I get injury time from the screams and screeches I am hearing from the Attorney General?

Mr. President: Just ignore them.

Sen. F. Hinds: Ignore them, right. Is it an environmental hazard; just like seagulls.

Mr. President, this is the concern that we have.

Sen. Panday: Toxic.

Sen. F. Hinds: I like your word for him, toxic. I thank you, Sen. Panday. He is toxic, you said?

Sen. Panday: You are toxic.

8.05 p.m.

Sen. F. Hinds: Mr. President, the Constitution enshrines certain freedoms. I know as a fact that in section 4, the right to the enjoyment of privacy, one's personal and private life. I can read it from the Constitution if I have to. Section 4 of the Constitution, actually says at subsection (c) "the right of the individual to respect for his private and family life;" and that is very simple. When we passed the interception legislation here—as they did in St. Kitts, I think in Jamaica as they did, I think in the United Kingdom. Well, in the United Kingdom there are no entrenched provisions that require a special majority per se. Many people say that the constitution of the United Kingdom is unwritten, that is not entirely

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correct, it is partly unwritten, and there are written elements of it. As a matter of fact, the case law that comes out of the European court is now part of the British constitution. [*Crosstalk*]

Sen. Ramlogan: You are now sounding like a lawyer.

Sen. F. Hinds: As indeed is the Magna Carta [*Interruption*]—

Sen. Ramlogan: You are sounding like a lawyer now.

Sen. F. Hinds:—and the treaty with Scotland. [*Crosstalk*]

Sen. Ramlogan: Blue gut, blue gut!

Sen. F. Hinds: So that, it is partly written and partly unwritten. But at any rate, when we passed the Interception of Communications Act, as it now is, we found it necessary to apply a specified majority. Because we understood in very banal terms that if persons are communicating by way of email, text messages or by way of the telephone, other persons can intercept those communications and interfere with that privacy and their personal information. I might be talking to my doctor and telling him of my condition. I may be discussing with my wife, my family, my friends, my personal affairs and if someone is going to eavesdrop, it requires a majority to have allowed that under our Constitution. Similarly, the information that would be garnered by a Minister or by a department can be equally private and relating to persons' personal lives. And therefore, there is a view that this legislation for that reason requires as well a special majority, there is a view.

Sen. Beckles made reference to the case with Magistrate Ejenny Espinet, when a former Prime Minister of this country, Mr. Basdeo Panday, went to the court. She told us. And in an effort to force her recusal from his matter, he alleged that her father was a Member of the People's National Movement—not Magistrate Ejenny Espinet. He alleged that her father was, and that she might have been a part of an organization in Laventille that established the Morris Marshall Development Foundation. That matter went all the way to the Privy Council. And of course, about a week and a half ago the Privy Council rejected it.

A lot of time, a lot of money, but in the process, as my learned colleague tells us, they asked as part of the disclosure, for a list of every member of the People's National Movement, all 120,000 or so of us! I could see the shock and consternation on your countenance, Mr. President. I too was shocked and thank God that there are courts in this country! Thank God that there are independent bodies of which the Judiciary is one.

Justice Kokaram in his wisdom and the Privy Council upheld it eventually rejected that application and did not demand, or order that all the names of party members of the People's National Movement be given to that Government. You could imagine what they would have done with it? Vindictive, as they have demonstrated to be.

8.10 p.m.

Mr. President, we have asked, quite sensibly, and I am sure you will agree for good reason, because you too understand. You are a citizen of this country and, in fact, sitting where you do, you have a very vantage point. I am sure you see things in this Chamber that none of us else would and, at other times, you hold a lofty office, and it gives you a vantage point of this society. You will agree with me, as we have suggested to the Government that we need a little more time to discuss these issues more thoroughly. This is not as easy as bulldozing some lands in Pineapple Smith, and upsetting a few farmers. In fact, I was upset when I saw it. This is a serious matter. This Government has demonstrated that it cannot be trusted for seriousness; whether it was the appointment of Susan Francois incorrectly, and as Sen. Al-Rawi pointed out today, you have a situation today where the Public Service Commission, an independent organization, has advertised the position of director and deputy director of the FIU while the Attorney General and the Prime Minister still have someone sitting in that office waiting for a day of embarrassment. Interviews will be conducted and data will be collected on all the applicants. In fact, data was previously collected.

As I remind you, Mr. President, there was an interview process for the appointment of the director of the FIU taking place when a phone call came. We would like to find out who made that phone call; aborted the process. That is a fact, and then they supplanted the young lady to that office. Now, we are heading for a probable constitutional crisis where an independent organization has done and is doing what it is required to do under the law and the Constitution, and the awkward Attorney General and the Cabinet has done something else.

Sen. Ramlogan: What did you all do? What did you all do? Nothing!

Sen. F. Hinds: I refuse to be drawn. I will take the knife and fork path. So, Mr. President, these are our concerns. I say to my friend, a man who from time to time demonstrates flashes of reason, Sen. Panday, he does not always, but from time to time—*[Interruption]* You see! You do not have to bring your internal squabbles here; you do not have to. Take it easy, Mr. Attorney General. Take it easy! We have suggested—bite your tongue right! Take it easy. We have suggested that we have some more discussions.

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I heard my friend, Sen. Al-Rawi and I am not in the habit—I do not really like congratulating any of them, but I thought it was a good thing on the part of Minister Partap [*Desk thumping*], although it may just be a sham and a pretence, you know.

Sen. Al-Rawi: He was genuine.

Sen. F. Hinds: He was genuine? All right. I would take your word for it, Sen. Al-Rawi.

Sen. Ramlogan: Take some advice from your colleague. [*Crosstalk*]

Sen. F. Hinds: I would take Sen. Al-Rawi's word for it. [*Crosstalk*] I would take his word for it. He permitted over the last weekend some interface between elements of the Independent Bench, elements of the Opposition and elements of the Government to look at some of the issues around the Bill, and I think that was a good thing. We have done that on several occasions in official joint select committees. As you would recall, the anti-gang legislation was one such experience.

Again, as I wind to a conclusion—[*Crosstalk*]—as I move toward the conclusion, I call on the Government to listen to the voice of reason. I know, as I said, at the top of my intervention they have deadlines. I know they want to go tomorrow night at Rienzi Complex or at the Mid Centre Mall when they dance and sing—

Sen. Panday: About our successes.

Sen. F. Hinds:—and eat and drink, they want to tell this national community that they passed another Bill last night. “Even last night we passed the Data Protection Act.”

Sen. Ramlogan: “If you rehearsing to come on we platform, with that kind of thing, you cannot make with that, yuh know.” [*Laughter*] Sen. Moheni—[*Crosstalk*]

Sen. F. Hinds: Sen. Moheni, you heard the insult you just got from the Attorney General! He said even Sen. Moheni will do a better job. You hear what came out of him? [*Crosstalk*] You said “even”!

Sen. Ramlogan: Even if I did—

Mr. President: You were winding up or some other movement.

Sen. F. Hinds: I hope you know your place, Sen. Moheni.

Sen. Ramlogan: That is why he is here.

Sen. F. Hinds: Mr. President—

Sen. Ramlogan: That is why he is here.

Sen. F. Hinds: Mr. President, as they celebrate themselves tomorrow, and as they practise the art of self-gratification—[*Crosstalk*] I was tempted to use another term, Mr. President, but I thought long and hard about it. I would content myself with self-gratification, but as they engage in self-gratification tomorrow night, and they wear their pristine yellow shirts, we are deeply concerned as, indeed, all of the persons of Trinidad and Tobago, at the possibilities that legislation like this could wreak on this nation in the hands of that Government. They are reckless; they are careless—[*Crosstalk*]

Mr. President: I would allow Sen. Hinds to wind up or make a movement toward his conclusion, sorry. You are well into injury time.

Sen. F. Hinds: How much more time?

Mr. President: You are well into injury time.

Sen. F. Hinds: Did I get an extension?

Mr. President: No, injury time.

Sen. F. Hinds: Well, I am not in the realm of injury time as yet. As a matter of fact, I have not even broken a sweat. I am glad you reminded me. [*Crosstalk*] Yes, I know you are hurry for me to take my seat, but that is quite all right. Mr. President, I was saying that we really have deep concerns because they are reckless—

Sen. Panday: Mr. President, Standing Order 35(4).

Sen. F. Hinds: Is the word “reckless” unparliamentary?

Mr. President: I do not think that the Senator was speaking to any specific person. I would allow him to make his debate as he pleases.

Sen. F. Hinds:—they are careless; they are incompetent—

Sen. Panday: You all in the PNM! Which faction? Friday is judgment day! Friday is judgment day!

Sen. F. Hinds:—they are dangerous; they are deceptive and they have demonstrated to the national community that they are not given to speaking the truth. [*Desk thumping*] It is as simple as that. I fear what they would do with the additional powers that this legislation will bring them.

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So, again, as I conclude, we recommend that we meet in a joint select committee. The Independent Senators have expressed some concerns. There is a view, as I said, that this may require elements, at any rate, consideration of the constitutional provisions, and we need to sort these things out before we could give our support. We support it in principle. We know the importance of management of data, and the need to protect data. Even people in the intelligence world understand how data could be used effectively in protecting the society against the behaviour of those who intend to break the law.

We passed the advance passenger information legislation, where in light of 9/11, the United States of America and other countries demanded that before any vessel or aircraft come into their territory, they should have advanced information, because it was difficult from their experience to go through the information when the plane load, 400 persons, would have arrived, or the ship. So, when they were about ready to leave the port from their point of departure, the information is sent electronically to the United States of America or to Trinidad and Tobago like in the case where we have an agreement with them, so that we could know as the vessel is on its way, who we must expect; profiles of certain individuals. That is important.

An intelligence operating in United Kingdom told me that when they are investigating a crime, even the garbage of the suspect is an important source of information. When you go through somebody's garbage, you could find out if that person has a child in the house, and whether the child is male or female. All of this is data.

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. [*Sen. P. Beckles*]

Question put and agreed to.

Sen. F. Hinds: I thank you very warmly. I even thank my semi-enthusiastic colleagues for the extension. I was making the point that by rummaging through even people's garbage you get a whole lot of information. You could determine whether the occupant or occupants smoke a particular type of cigarette, whether it is Du Maurier or Broadway, or whatever other types they have. You may find a Broadway butt on the scene of a rape crime or murder. If the fellow is a Broadway smoker, then you know that is one more possibility. A pink pamper, you know, it is a boy or a girl?

Hon. Senators: A girl.

Sen. F. Hinds: And the blue, you know they have a boy. Perhaps, the size of the pamper tells you the age of the child. In fact, when you purchase, for example, in a store a pack of pampers for a toddler say between the ages of two and three years old, and you are purchasing pink pampers, they have that on their database and they share that information with other producers of garments and other items for toddlers. So they send you what we call “junk mail”, and that is how information is shared. We understand the need to protect information, because it can be used in very dangerous ways.

So, Mr. President, for those reasons and more, not the least the fact that the idea came out of the collective mind of the past administration, we support the thing in principle, but we have some concerns about elements of it. As I conclude again, I call on the Government to take heed and dispel for the moment the bulldozer ethic, which Minister Bharath takes objection and umbrage to. He knows! Take it nice and easy, and let us pass legislation that we will all be happy with and proud of.

8.25 p.m.

You have heard some suggestions from the Independent Bench, you have heard some suggestions from us today. Minister Partap has in his hands, some of the amendments suggested by Sen. Al-Rawi and others on this side over the last weekend, and we do hope that they would take them seriously into account. Mr. President, having said those very few words, I thank you for the opportunity. [*Desk thumping*]

The Minister of State in the Office of the Prime Minister (Hon. Collin Partap): Thank you, Mr. President. I would like to thank all the Members of this honourable House, who have contributed to the debate on this critical Bill, even Sen. Hinds. [*Desk thumping*]

Mr. President, before I begin, I would first of all like to take this opportunity to thank the Members opposite, particularly, Sen. Basharat Ali, Sen. Corinne Baptiste-Mc Knight, Sen. Faris Al-Rawi, Sen. Dr. Rolph Balgobin and Sen. Helen Drayton for meeting with both myself and officers of the Office of the Prime Minister and the Chief Parliamentary Counsel on Friday last, to discuss some of the issues and concerns regarding this Bill. It was indeed a very frank and cordial session and it demonstrates how Members of this august House should work together in the national interest. Again, I say to you a very heartfelt thanks.

Mr. President, there exists in today’s world, a myriad of different technologies that have within them the capability of invading the privacy of an individual, and

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that, Mr. President, is the main reason why we are here today, looking at this legislation. Mr. President, as you would know, the current Bill has its genesis from the National Policy on Data Protection that was adopted in 2005, and the object of that policy and this Bill as stated under clause 4, is:

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

The keyword in this objective being the “right to privacy”, if one were to examine the Constitution of Trinidad and Tobago closely, one would see that under section 4, the section that outlines the recognition and declaration of the rights of the individual, there is a provision that deals with one’s right to privacy. Section 4(c) of the Constitution, states that there shall exist and I quote:

“the right of the individual to respect for his private and family life;”

Mr. President, this Bill seeks to further the rights of privacy. Let me stress, it seeks to provide for their protection, for the right to privacy by providing concrete provisions that will seek to regulate the conduct of private and public bodies in the treatment of information. Previously, there has been no legislation governing information and this Bill will seek to provide protection to such information that public and private bodies have. In short, Mr. President, this Bill enhances rights, it does not take them away.

When one delves deeper into the aspect of privacy, one would see it is important within a democratic society. The framers of the Constitution sought to strike a balance between the right to providing freedom of information and the right to privacy. Mr. President, such a debate is occurring right now in the UK, just for an example.

In 1890, the US Supreme Court Justices Samuel Warren and Louis Brandeis, published an article entitled “The Right to Privacy” in the *Harvard Business Review*. In this article they define privacy as, “the right to be let alone”. This definition is concise and simple as it underscores both the personal and social dimensions of the concept of privacy that will linger long after its publication. Within the UK, the Calcutt Committee of 1990, in a report entitled “A Report of the Committee on Privacy and Related Matters”, defines privacy as:

“The right of the individual to be protected against intrusion into his personal life or affairs, or those of his family, by direct physical means or by publication of information.”

8.30 p.m.

The Australian Privacy Charter further states that and I quote:

“A free and democratic society requires respect for the autonomy of individuals, and limits on the power of both state and private organisations to intrude on that autonomy.”

[MADAM VICE-PRESIDENT *in the Chair*]

From the above definitions, Madam Vice-President, one can see that the idea of privacy is not only historic in nature but also relevant in today's context.

One only has to look at events over the last month with regard to the breaches of the Sony online play station programme, as well as the Amazon Cloud Computer Platform, to see how vulnerable individuals are to having their information fall into the hands of notorious individuals. According to Sony, customer names, mailing addresses, country, email addresses, birthdays, play station network passes, logins, online ID, profile data, purchase history, billing address, password security answers and credit information of over 80 million users were compromised.

While the Bill cannot prevent these events from occurring, it would ensure that organizations that collect personal information put in place proper systems and procedures to prevent these breaches. It would also empower individuals to complain on those organizations that are not in compliance with the Bill.

One can clearly see, Madam Vice-President, in today's digital economy the consumer's information is more important than ever. Companies are using information in innovative ways to provide consumers with new and better products and services. Although many of these companies manage consumer information responsibly, some appear to treat it in an irresponsible and reckless manner. And while recent announcements on privacy innovations by a range of companies are encouraging, many companies, both online and offline, do not adequately address the consumer privacy interests.

Although as I mentioned earlier, privacy is often said to mean the right to be left alone, the application of this concept in the modern times is by no means straightforward. We live in a world where freedom about our purchasing behaviour, online browsing habits, shopping, eating habits and other activities, both on and offline, are collected, analyzed, combined, used and shared often instantaneously and invisibly.

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Mr. President, the Bill aims to ensure that in promoting effective government and building, oh—sorry, Madam Vice-President. The Bill aims to ensure in promoting effective government and building a new economic order, we create the enabling environment where citizens are free to exchange their information in a global communication environment, secure in the knowledge that their personal information is afforded the basic and necessary protection. It is important for us to remember that the main reason and purpose for which we have come to Parliament is to serve the people, and to safeguard the rights of the citizens of Trinidad and Tobago.

Madam Vice-President, the issue of the warrants existed in the previous administration's Bill when it was brought in 2008 and 2009, and it was the intention of this Government to upgrade the warrant issue to make the warrant an order of the court; instead of a mere warrant, to make it an order of court.

Sen. Panday: So, we improved it, so what is the quarrel? The Bill has been improved. And you argued against the Bill.

Hon. C. Partap: Madam Vice-President, I heard from the other side that we were trying to use this Bill clandestinely—sort of like what they did when they were in office—wiretapping and spying. [*Desk thumping*]

Sen. Panday: Take that! Have that!

Sen. Ramlogan: Reckless Opposition!

Hon. Senator: Repeat that!

Sen. Ramlogan: Reckless, incompetent and irresponsible Opposition!

Sen. Hinds: You need to be courteous—

Hon. C. Partap: My apologies, but you all did wiretap.

Sen. Ramlogan: Yes!

Hon. C. Partap: Illegally!

8.35 p.m.

This Government, when we met on Friday, we listened. The warrant issue was there and we listened and we changed it to an order of the court where instead of going for a mere order from a magistrate there was a higher level, a higher

threshold where you would go to a judge and you would bring an application with an affidavit and you would have to lay that affidavit and the application before the judge and you would have to make a motion before the judge in order to get it.

Sen. Panday: People's Partnership versus the PNM.

Hon. C. Partap: We listened and we changed it; clauses 20 and 21 were changed. [*Desk thumping*]

I also want to touch on another issue, the issue of the information commissioner. In clause 8 the—[*Interruption*] That is part of a Government that listens.

Sen. Ramlogan: “Yeah, yeah, yeah.” [*Desk thumping*]

Hon. C. Partap: Whenever a good idea is brought forward we listen and we take it on board [*Interruption*] unlike the previous administration where they did not listen. It was pure arrogance. [*Desk thumping*] I hate to say it, that is why a year ago tomorrow you guys lost and you are over there and we are over here, because you did not listen.

Sen. Ramlogan: Arrogance! [*Crosstalk*]

Sen. Hinds: Could you have some decorum in this Senate.

Hon. C. Partap: We are listening, it is a listening Government. [*Laughter*]

Sen. Panday: What is your point of order? What is your point of order?

Hon. C. Partap: I think listening hits a nerve, Sen. Hinds. Listening is a concept you know.

Sen. Hinds: He is a stranger to this Senate.

Sen. Panday: What is your point of order?

Hon. C. Partap: Anyway, let me continue, I would not be led astray. [*Laughter*]

Madam Vice-President, clause 8, the information commissioner will be appointed for five years and the office of the information commissioner, the expenses, will be under a sub head of Parliament as stated in clause 27(1) and he would have to bring—no, 22(1), sorry and under clause 27(1) he would have to bring reports to Parliament on his activities.

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[MR. PRESIDENT *in the Chair*]

To date, Mr. President, the office of the Prime Minister has already developed a draft organizational structure to fully operationalize the functions of the office of the information commissioner. [*Desk thumping*] I think that would allay some of the fears of those on the other side. It is the intention of this coalition Government that following the passage of this Bill the proper procedures would be followed, such as consultation with the Public Management Consulting Division of the Ministry of Public Administration to bring to the Cabinet before the end of this calendar year a finalized organizational structure for its approval.

Sen. Panday: You hear that? You hear that? [*Desk thumping*]

Hon. C. Partap: Mr. President, a draft estimate for the running of the office has already been completed and will form part of the submissions of the Government for the next fiscal year. [*Desk thumping*]

Mr. President, we have also engaged the services of the International Telecommunications Union via its project for enhancing competitiveness in the Caribbean through its harmonization of the ITC policies, legislation and regulatory procedures, also known as HIPCAR project to assist the Government via international and regional experts in drafting the necessary policies to inform the creation of regulations for this Bill which will be brought to this Senate subsequently.

Sen. Panday: The Government is working. The Government is working. This Government is working. The PNM could not do that. [*Desk thumping*]

Hon. C. Partap: Mr. President, the passage of this Bill will entail a major change in the operation and the mindset of both public and private sectors in the way they collect and manage the personal information of our citizens. As part of this initiative we would seek to inform the relevant regulations under both data protection with holistic cyber security policies and protections which would operate in tandem with the cybercrime legislation soon to be introduced.

Sen. Panday: The Government is working. The People's Partnership Government is working. [*Desk thumping*]

Hon. C. Partap: As such, Mr. President, it would be the intention of this office to embark on a holistic national public education and training campaign to inform the national community of their roles and responsibilities under this legislation. [*Interruption*]

Education, Mr. President, we will have an education programme. This will include meeting with the various chambers of commerce, financial sectors, health sectors, Ministries, state agencies and even political parties.

Sen. Panday: Which one of the PNM?

Sen. Al-Rawi: I do not know, whichever one shows up on the day, I guess.

Hon. C. Partap: One should not be fooled and one should not fool oneself into thinking that once this Bill is passed everyone would get on board. It just does not work that way, Mr. President. It is, however, the intention of this Government to ensure that proper structures, processes and resources are allocated to ensure proper implementation of this legislation.

Mr. President, it is the intention of this Government not to renege on our responsibility to fully implement major pieces of legislation that are meant to benefit and protect the citizens of Trinidad and Tobago. We would continue to bring legislation such as the Data Protection Bill, to this honourable Senate to continue to protect and safeguard all of the citizens of Trinidad and Tobago to whom we have a sworn duty to serve.

Mr. President, I thank you and I beg to move. [*Desk thumping*]

Question put and agreed to.

Bill accordingly read a second time.

Bill committed to a committee of the whole Senate.

Sen. Al-Rawi: Mr. President, if I may, this is an enquiry and may perhaps lead to a point of privilege. We have been here for a considerable run and there are 102 clauses to be considered in committee stage, if I could just enquire through you to the Leader of Government Business, if we intend on taking a short break for, perhaps 10 minutes or 15 minutes to allow us—[*Interruption*] We are ready for human trafficking, if I have heard the Attorney General correctly, that is no problem to deal with both. [*Interruption*]

Mr. President, then I will now say, having heard what I just said on a point of privilege, that I consider that for the Members present it is our privilege to make sure that we pay proper attention, we are ready to do it, but regrettably, I suffer from lower back problems and I do need to contribute to this Bill, one; and two, I am ready to do so but I respectfully would like to understand if this Government

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in its listening, as it has a mantra of doing, and in understanding that we are facilitating them in all aspects, including starting early so that they can party tomorrow at two o'clock, if they are going to facilitate a short break.
[*Interruption*]

Sen. Beckles: You got your break you know; it is three hours and four hours—[*Inaudible*]

Sen. Panday: Mr. President, we will concede. Five minutes? Ten minutes?
[*Inaudible*] We will break for 10 minutes.

Sen. Al-Rawi: Nine o'clock is 15 minutes away.

Mr. Chairman: Nine o'clock it will be.

Sen. Panday: No problem. [*Interruption*]

Mr. Chairman: Hon. Senators, I propose to suspend the sitting until nine o'clock when we would resume and at that point we would go into committee.

8.43 p.m.: *Sitting suspended.*

9.01 p.m.: *Senate resumed.*

Senate in committee.

Clause 1 ordered to stand part of the Bill.

Clause 2.

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

Sen. Panday: Mr. Chairman, there is an amendment to clause 2 which has been circulated:

In the definition of "data" delete the word "physical".

That is the penultimate line, the first word in the penultimate line of "data" delete the word "physical".

Then as we go along again, Mr. Chairman, the last paragraph under the "Head of a Public Body"—

- (i) insert after the words "Minister,"—that would be in line two after the Prime Minister—the words "the Speaker of the House of Representatives, the President of the Senate."

I have been advised, Mr. Chairman, in the order of the hierarchy, the President should precede the Speaker.

Mr. Chairman: Do I have to declare my interest in this matter?

Sen. Panday: No, no, no. No, Sir; no, Sir! [*Laughter*]

(ii) delete the word “a corporation” and substitute “an enterprise”.

C. In paragraph (h) of the definition of the word “personal information”—

D. (i) delete the words “acid or” and substitute the word “acid,”;

9.05 p.m.

Mr. Chairman: So you really mean delete “acid”.

Sen. Panday: It is really “or”.

Mr. Chairman: Delete the word “or”.

Sen. Panday: Mr. Chairman, I have been advised that “acid or”, the reason why acid or has been deleted, we want to add a comma.

Mr. Chairman: Senators, do you understand that? It is “acid,” and the “or” gets deleted?

Sen. Panday: All right, thank you.

(ii) insert after the word “type” the words “or the biometric characteristics”.

Mr. Chairman: Not “the”.

Sen. Panday: Pardon, Sir, “or the biometric characteristics”.

Mr. Chairman: And then it will read on “of the individual”.

Sen. Panday: Yes. Thank you very much.

Mr. Chairman: Hon. Senators, the question is that clause 2 be amended as follows:

A. In the definition of “data” delete the word “physical”.

B. In the definition of the word “Head of a Public Body”

(i) Insert after the words “Minister,” the words “the Speaker of the House of Representatives, the President of the Senate,” and

(ii) delete the word “corporation” and substitute the word “enterprise”.

C. In paragraph (h) of the definition of the word “personal information”—

I am not going to try and pronounce that word—Sen. Deyalsingh will help us.

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- D. (i) delete the words “acid or” and substitute the words “acid,”;
(ii) insert after the word “type” the words “or the biometric characteristics”.

Sen. Al-Rawi: Mr. Chairman, if I may through you, thank you hon. Leader of Government Business for accepting the amendments proposed at last Friday’s intervention. Just for clarity, there is one question I had asked your technocrats to just double-check on, and that is on page 5 under the definition of “premises”, includes “land”, that they had double-checked that land includes in the classic context appurtenances and other factors. Just for clarification.

9.10 p.m.

Sen. Panday: Hon. Senator, under ordinary law land includes that.

Sen. Al-Rawi: I accept. We had the discussion on Friday and I just asked them to double-check; if it is a yes I am good to go. So it is a yes?

Sen. Panday: Yes.

Sen. Al-Rawi: Thank you very much.

Sen. Panday: If it was not that then it probably have the [*Inaudible*]

Sen. Al-Rawi: Sure, *quicquid plantatur solo, solo cedit*. Got it.

Sen. Panday: Thank you so much.

Sen. Al-Rawi: Just being sure.

Question put and agreed to.

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

Clauses 3 to 7 ordered to stand part of the Bill.

Clauses 8.

Question proposed, That clause 8 stand part of the Bill.

Sen. Panday: Mr. Chairman, I have been advised that in clause 8(2) [*Interruption*] No after the word “standing” my advice is delete “at the bar”.

Sen. Dr. Balgobin: Just a quick question on 8(2), although I would like to go back to 8(1) as well, but first 8(2). Is it the Government’s position that this person must be an attorney-at-law?

Sen. Panday: What happened is the legal profession defines an attorney-at-law, so you do not have to say at the Bar any longer. The moment you are called to the Bar and you sign the register you fall within the definition of the Legal Profession Act, and therefore the words “at the Bar” there are superfluous.

Sen. Dr. Balgobin: Yes. However—thank you for that—what I was getting at was, I was not clear that having regard to what obtains elsewhere in the world—

Sen. Panday: Pardon Sir, could you kindly speak up.

Sen. Dr. Balgobin: I was not clear that the case was made, that the person should be an attorney as opposed to anyone with valid training and experience.

Sen. Panday: Our information is that these persons will be exercising quasi judicial functions, hence the necessity to have somebody with legal training.

Mr. Chairman: What is notable is that in addition to having training as a lawyer you have to have economics, finance, information security technology, audit or human resources management.

Sen. Dr. Balgobin: Mr. Chairman, that is almost a definition of an academic superhuman; what I mean, it is a very, very small subset of people with a first degree in law.

Mr. Chairman: Well, I do not think it is all of them, there is an “or” at the end—“or human resource management”. So I suspect it is any one of these disciplines.

Sen. Panday: Our instructions are and for the purpose of subsequent interpretation it is disjunctive.

Sen. Moheni: Mr. Chairman, (2) should read “be a person.” It is just “a person” it should be “be a person.” 8(2) who shall be a person under (2). [Interruption] Who shall a person is what is here; “be” is supposed to be inserted before “a”.

Sen. Panday: Under subsection:

“(1) shall be an attorney at law...” subject to the law “of the Legal Profession Act...”

Sen. Moheni: And subsection (2) “be a person” “be” should come in before “a”.

Mr. Chairman: I am not sure if we dealt with Sen. Moheni—

Sen. Al-Rawi: Sen. Moheni's position, I think refers to the "chapeau" in 8(1), insofar as it ends with the word shall. I do not agree with his point, but I am trying to lend some assistance. I think that he thinks that it means "shall" and then you jump to (2) and the word "be" appears to be missing "be a person", so I understand what he is saying but I do not necessarily agree with that point because I think they are two separate positions.

9.15 p.m.

Mr. Chairman: You realize that (c) has a different—

Sen. Al-Rawi: Yes, Mr. Chairman.

Sen. Moheni: Okay.

Sen. Al-Rawi: But just before we ran there, just by way of clarification, insofar as the Bill proposes implementation of sanctions and recommendations, et cetera, I do concur that we do need an attorney-at-law. There are some case laws to that effect, that you are exercising quasi-judicial functions. I am comfortable with that, through you, to my learned colleagues on the Independent Bench. I do also accept that "or" is disjunctive, therefore making it not an intellectual superhuman as my learned colleague puts it, and he is quite right to put it that way.

If we are getting there, but I was just wondering if we could get to 8(1) when it is convenient, Mr. Chairman, because my concern really is in 8(1)(b) and this is relative to the consideration I had asked—and I am sure that it is a policy point—that the information commissioner be appointed by the President. Under the Constitution, appointments by the President means on the advice of Cabinet and, in looking at the *Suratt* principles from the Privy Council judgment and looking at other factors, I was concerned to introduce the consultation of the Leader of the Opposition so that there is some degree of balance in the appointment of the person. [Interruption] Hold on! Just so that you could get where I am coming from before you go. That is also factored by the position that the information commissioner can be guided by the Minister in clause 47, I think it is, and rules and regulations have to be made by the Minister and the Minister again is just the Prime Minister. In a body like this that has a degree of independence associated with it, I was concerned to preserve that independence by including in (1)(b) the consultation factor with the Leader of the Opposition as prevails in other pieces of legislation.

Sen. Drayton: Mr. Chairman, if I may? While I understand what Sen. Al-Rawi has said there, since this is a very critical position which should be fairly independent, I believe the position should be appointed at the sole discretion of the President. This position should not be under the influence of the political directorate.

Sen. Al-Rawi: Mr. Chairman, that will be an acceptable alternative if it is possible.

Sen. Panday: Mr. Chairman, that is a policy position and the Cabinet has decided that as a matter of policy and it is difficult to change it at this stage.

Sen. Al-Rawi: If I could, Mr. Chairman, just for the benefit of discourse and understanding, that is the policy decision, but why?

Sen. Ramlogan: Perhaps I can assist. There are a number of judicial and extra quasi-judicial bodies where this formula has been used in the past under successive regimes and it has presented no problem. In fact, the judicial committee of the Privy Council in the *Suratt* case, upheld the constitutionality of the Equal Opportunity Act and, the formula for appointment of equal opportunity commissioners is one and the same. The same thing obtained in the Environmental Management Authority Board, Tax Appeal Board, Industrial Court and matters of that ilk. So this has been a long-standing formula, well established and entrenched in the law-making procedures that deal with quasi-judicial functions and we are simply following what has been established by previous administrations because it is something in which we see good reasoning. We feel that the President in his wisdom, acting on the advice of Cabinet, will appoint someone to this position who will be able to discharge the functions in a fit and proper manner.

Sen. Al-Rawi: Thank you, hon. Attorney General. Through you, Mr. Chairman, I am grateful that my learned friend has mentioned the *Suratt* case, because it is completely distinguishable as are all the other points. In the *Suratt* case in particular—*Suratt No. 1*—the position as upheld by the Privy Council was that because the rights were very similar to those of judges in the Constitution—and that formulation was dealt with.

In fact, the stark dispute in *Suratt* was whether it in fact created a different category beyond the Court of Appeal and the High Court, and it was only after careful distinction that Baroness Hale held that it was—remember there was a descending judgment there. Lord Bingham had a completely different point of view—I have the text of the case right here with me—and Baroness Hale in

delivering the majority judgement, 2:1, really went down to the fact that there were other savings and entrenchments in that Bill, and that Bill was a very particularly drafted Bill which does not have any form of replication here. So I do not accept, most respectfully, the explanation given as to why we cannot have the consultation if it is that we really want to keep the independence intact.

Sen. Prescott SC: Thank you very much, Mr. Chairman. I too would like to be heard on this. It seems to me that when we consider the breadth of the invasive powers that are proposed for the commissioner, that one ought to consider that he cannot be compared with the statutory appointments to which the Attorney General refers. This commissioner invades people's privacy to a great extent and with great statutory force, and in most cases on the exercise of a perception really, that things are contrary to the law. So I am inclined to make the suggestion that we give consideration to an appointment being done after greater consultation with the Prime Minister and the Leader of the Opposition, or at best that the President in the exercise of his own discretion should select such a person. In fact, the Attorney General by some chance did say in his own wisdom, and I thought he meant to say precisely that, that the President in his own wisdom would choose. I am sure he is not going to withdraw it now, but I, myself, would have preferred that approach.

Sen. Drayton: I think to balance what the hon. Attorney General has said and the invasiveness in terms of the powers of the commissioner, I see this pretty similar to the appointments of the Integrity Commission as well as the Auditor General. So there are equal arguments and, we are dealing with the privacy of information, we are dealing with constitutional rights, we are dealing with very invasive powers and I feel that this should be done in the sole discretion of the President.

Sen. Al-Rawi: Mr. Chairman, if I may add on, *a fortiori* that that argument is emboldened by the fact that the Integrity Commission, being introduced under an amendment to the Constitution, employs the mechanisms for dismissal in the form of section 137 of the Constitution. That is where tribunals are appointed when you are dealing with for cause dismissals.

In this particular Bill, when you look at the dismissal provisions, we do not have similar effect. Add on to that, the fact that the Freedom of Information Act has to be now managed by the information commissioner and you are getting really into a very broad concept, and I think it is very important for us to have the best form of scrutiny as to the appointment of the individual, particularly, when the individual can be dismissed for cause under the Bill.

Sen. Drayton: May I just add one other piece of information. The Government had said that this is best practice state-of-the-art legislation. Best practice anywhere, all the legislation that I have looked at—if we look at the United Kingdom from which we take many of our laws, our customs, our very system of Parliament, there is no information commissioner reporting to a Minister and, most of all, a Prime Minister. In some instance it reports directly to Parliament. So on one hand, we cannot say that we are making best practice state-of-the-art legislation and when it comes to the very substance of the legislation, the role of the commissioner, we are satisfied that it is under the political directorate, and we are speaking about the privacy of individuals.

Sen. Dr. Balgobin: Could I be permitted to ask one quick question before we get into a response to those two points? Could someone clarify for me when we talk about the “Minister responsible”, where this office would lie and to whom it would report?

Sen. Al-Rawi: I can answer that, through you. It is currently in the Office of the Prime Minister. That is the Minister with the responsibility for administration of this Act. So it is squarely in the Office of the Prime Minister, and this is why my learned friend, Minister Partap, is in fact here, he being Minister of State in the Office of the Prime Minister.

Sen. Dr. Balgobin: Thank you, Sen. Al-Rawi, for answering my question. That was a little rhetorical, but, thank you. What I wanted to get to was, do you not feel, Minister, that it would best protect the perception of objectivity to have the appointment done by the President in his sole discretion? I actually do not think that consultation is ideal between the Prime Minister and the Leader of the Opposition. For me, the best case is an appointment by the President of the Republic, but just to ensure that there is as much objectivity around this office as possible, or put another way, to avoid the perception that it is a political appointment and giving someone significant power to look into other people’s business. It is just a question I am putting forward to you and asking you to consider. My view is, probably best having the President appoint in his sole discretion.

Sen. Panday: I have been informed that serious thoughts were put into this matter, and it is a policy position as reflected in 8(1)(b).

Sen. Drayton: And all I could comment to that, through you, Mr. Chairman, that is not good legislation, it is not best practice, it is not good state-of-the-art and it is highly inappropriate.

Sen. George: I just want to make one little comment on this, resulting from a comment the goodly Sen. Drayton just made. The Attorney General did argue a few minutes ago that there is precedent in other organizations that have been set up in Trinidad and Tobago, and nobody has gainsaid that. So why then, must we say it is inappropriate to have in this legislation a situation as exists in the legislation? Why must it be more appropriate to have the President do it when there is precedent set already and nobody has argued against that—*[Interruption]*—the Industrial Court exists and so and so. So to use the word “inappropriate” is a bit extreme, I think.

Sen. Al-Rawi: Mr. Chairman, if I could just repeat, the examples offered a short while ago—and I thank my learned colleague, Sen. George—are off point for a fact. You can ask the technocrats sitting to the left of the Leader of Government Business here. Those bits of legislation have in aid different mechanisms and we must compare apples with apples. We cannot trivialize this point. It is a serious point about perception, particularly when you look at current debate in Trinidad and Tobago. By way of example, I will not go into it, but the issue of propriety of persons acting as heads of institutions is in discussion in the public domain now and you have not compared, respectfully, apples with apples. I know that for a fact. I am prepared to stand down, have somebody bring the legislation and show me that I am wrong.

Sen. Prescott SC: Mr. Chairman, may I, once again? The office of commissioner as recommended in clause 8 does have certain powers, in particular, under clause 19 and onwards, and they do have an oppressive nature about them. He or she is going to be permitted to enter into persons’ homes—is that clause 19? *[Interruption]* Twenty? Clause 19—says material, demand information, in a way that our society is probably not yet prepared for.

9.30 p.m.

In circumstances where we are contending that we are acknowledging our rights to privacy and to the protection of the Constitution, to impose upon us, an individual who, from all appearances, is accountable only to the Office of the Prime Minister is to trivialize that constitutional protection that we think we all should have. I am really pressing that this is a very oppressive piece of legislation if it leaves the powers in the hands of such a person unguarded.

Sen. Panday: Mr. Chairman, if one looks at clause 22, one will see that he should be paid out of the Consolidated Fund, and also another part of the legislation where he has to present a report—clause 27, I think it is.

“The Commissioner shall submit a report annually to Parliament on the activities of the Office of the Information Commissioner for the previous year commencing one year after the coming into operation of the Act.”

Sen. Al-Rawi: Mr. Chairman—

Sen. Panday: “The Commissioner may submit a special report to Parliament at any time commenting on any matters...”. So therefore, he is accountable to Parliament.

Sen. Al-Rawi: Mr. Chairman, if I may? If I were to say, by way of example, that the Government which is currently the Government was in Opposition, and their most hated figure amongst the PNM was in charge, what would they say relative to the policy? I am just going back to basic principles of law when we study the concepts of justice, we are meant to put on a veil of ignorance and choose without regard to circumstance or positions, and most respectfully, I just do not think that we are achieving the degree of balance and caution in view of the powers under this Act.

The reporting mechanism and the fact, if my learned friend, Sen. Panday wishes to go there, anything that is to be laid is by way of negative resolution and by way of reports, and we are not even seeing the regulations as to what the contents are supposed to be—if you would just allow me—so the position is that it really does not hurt you to either have the President appoint in his sole discretion or to have the consultation with the Leader of the Opposition. I cannot see how you could be prejudiced from your policy point of view to say otherwise.

Sen. Panday: Two things. You spoke about the regulations, this is primary legislation—

Sen. Al-Rawi: Understood, regulations follow.

Sen. Panday:—subordinate legislation—

Sen. Al-Rawi: I accept, but—

Sen. Panday: And you have to have your primary legislation in place before you come to the subsidiary legislation.

Sen. Al-Rawi: But usually there is a national policy first and there is consultation.

Sen. Panday: That is one point. Let me answer you there. And the second point is we do not look at personality whether you are in Government or Opposition; I have been advised, it is a policy position.

Sen. Al-Rawi: But it does not make sense respectfully, Sen. Panday.

Sen. Ramlogan: In your opinion.

Sen. Al-Rawi: Hon. AG, you really agree with what you have just said, in all honesty?

Sen. Ramlogan: I cannot not agree with that. I do not know—[*Crosstalk*]

Mr. Chairman: Sen. Drayton.

Sen. Drayton: I just wanted to respond to Sen. George because, yes, there is precedent and I have indicated the precedent in terms of this position to audit all departments of Government including the Office of the Prime Minister, which is pretty similar to the role of the Auditor General—

Sen. Al-Rawi: Correct!

Sen. Drayton:—and this is why I said it is inappropriate. It is also inappropriate in the context in which the Government presented this legislation—

Sen. Al-Rawi: Correct!

Sen. Drayton:—a state-of-the-art, best practice legislation.

Mr. Chairman: Sen. Dr. Armstrong.

Sen. Dr. Armstrong: Mr. Chairman, could I enquire from the Government as to what is the substance of this policy that they are talking about because I do not quite understand it. What is the substance of this policy that necessitates that we should leave it as it is and not be more objective?

9.35 p.m.

Sen. Panday: I think the hon. Attorney General has answered that issue.

Sen. Dr. Balgobin: Could I just ask or make the point? Does it injure the Government's position at all to have the President appoint at his sole discretion, given the kind of concerns for transparency and objectivity that—

Sen. Panday: Hon. Senator, can you speak a little louder, please?

Sen. Dr. Balgobin:—sorry, given the concerns for transparency and objectivity that have been expressed, that form very much a part of the public concern? I rather—I am not sure but I am asking the question: Is there some way in which, having the President in his sole discretion make the appointment that the

agenda of the Government would be injured, keeping in mind that this is an office that we are putting in place for successive governments as well? In all fairness, this is the Government that is bringing it forward. Is there a disadvantage to the Government from going this particular route?

Sen. Panday: As I said, Senator, we have thought about it long and hard and the Government intends to go with it as it is.

Sen. Dr. Armstrong: I still would like to know what the policy is. Could they state the policy that necessitates the preference that it should be left as it is and not entertain the points that are being raised, with respect to objectivity, transparency and so on?

Sen. Panday: The learned Attorney General has indicated that there is precedent where there are persons who performed quasi-judicial functions and this is similar to that. In those circumstances, this appointment of the commissioner is in sync with those.

Sen. Baptiste-Mc Knight: Mr. Chairman, please. I am interpreting Sen. Dr. Armstrong's question as very simple. Please tell us what the policy is. A policy, we are given to understand exists. Please what is it? That is the only question we are asking. It has not been dealt with during the course of this whole debate. There has been no discussion on the policy that underlies this bit of legislation. We have hit crunch time now. We want to know what is the policy that permits only this particular form of appointment.

Sen. Ramlogan: Sure. Mr. Chairman, I think I have dealt with this point before. I shall repeat the point, and it is this, during the course of this debate I listened to colleagues on the opposite side and in particular Senators on the Independent Bench and I did not hear anyone take objection to the many laws passed under successive administrations, whereby this formula has been utilized, whereby Cabinet would advise the President of the country to make appointments to offices that exercise and wield far greater and superior powers than this information commissioner. Those offices would include, for example, and explain why in the Industrial Court you would have persons appointed on the advice of Cabinet, in the Equal Opportunity Commission, in the Tax Appeal Board, in the Environmental Management Court and in many other quasi-judicial bodies, and that formula is the very same formula in this Act.

I heard no criticism of the appointment process for those bodies that are already in existence and laws that have already been passed. If we are to deviate—and we are now, as a Government, in fact simply following that

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established formula, practice and procedure. That is the policy and the policy is well known, well in keeping with what has gone before and we are simply saying that is the policy of the Government. I do not think we need to—we can collaborate beyond that, suffice it to say that we are following a well-established and long line of legislative authority in this regard, whereby His Excellency the President makes an appointment on the basis of the advice of Cabinet. In practice and reality, these things are done in a particular way that would normally yield a person of good stature and good standing and that is the reality of our situation.

Insofar as my learned friend, Sen. Al-Rawi, has been at pains to distinguish the lone case that he cited, which is the equal opportunity case, may I point out that none of the other examples I have mentioned in fact have led to any constitutional challenge or any allegation of impropriety or anything of the sort. In fact, on the contrary, it was the Opposition that led a constitutional challenge for the first time in our legal history. It was the first time that a government, in the form of the State, challenged the constitutional validity of its own legislation. It has never been done before, and it was the PNM administration that challenged the constitutionality of the Equal Opportunity Act and put that Act into a state of suspension and abeyance during the time that challenge went all the way to the Privy Council. It was the Privy Council that held that the Act was valid as is.

One of the points that was raised in the course of argument in that matter had to do with the methodology used to appoint commissioners who serve and people who serve on the Equal Opportunity Commission and that point, if it had any merit and the constitutional ramifications of that point, had it fallen on fertile soil, rest assured the Privy Council would have upheld the challenge to the constitutional validity of that Act. It is on that well-worn path that has been trodden before that we rest our case and say that is the policy position of the Government in this regard and I say nothing further.

Sen. Al-Rawi: Mr. Chairman, if I may. Number one, if you read the *Suratt* case, and I have read Nos. 1 and 2, from cover to cover, I do not know where the hon. Attorney General has just got what he has just said. I have the case here right now. Number two, the distinction is that the Industrial Court is a court of record. The Environmental Commission is a court of record. The equal opportunity body is a court of record. [*Interruption*]

Sen. Ramlogan: And makes it superior to this.

Sen. Al-Rawi: Yes, precisely. He is catching my point. [*Interruption*]

Sen. Panday: That strengthens the argument.

Sen. Al-Rawi: No, it does not and you cannot trivialize it, because you have not answered the question on policy.

Sen. Drayton: Mr. Chairman, may I just add—[*Interruption*]

Sen. Al-Rawi: Sen. George, the difficulty that I am having is, a simple question is on the table—maybe the hon. Minister Dr. Roodal Moonilal needs to come and answer this, because he is the man who comes and answers things. We have asked a question: “What offends, in terms of policy, to accept the President’s sole discretion for the appointment of as important a position as dealing with privacy of information, when the person to be appointed operates by appointment from the President on advice of the Cabinet and you are dealing with reporting to the Minister, in this case the Prime Minister?” The simple question to be answered is: “What offends their unarticulated policy in accepting that the President’s sole discretion can be used to get past this crunch?” Simple question.

Sen. Panday: We have accepted the statement of the learned Attorney General that there are other organizations and bodies—

Sen. Al-Rawi: Name them!

Sen. Panday:—which go this way and the policy position is to follow that procedure.

Sen. Al-Rawi: If you could name them I would be grateful. The red books are right there.

Mr. Chairman: I had Sen. Drayton next in line and I would come back to you.

Sen. Drayton: Just basically to say that there always seem to be a fallback position that one did not object to what transpired under the last government and, therefore, one should not object to it now. I could only give one response to that and that is, this Bench, each Member acts independently and I certainly will not be held accountable for whatever actions went in the past.

Secondly, I would hold this Government to a higher standard if what was done in the past was not to standard.

Sen. Dr. Armstrong: Mr. Chairman, I am not even troubled by the legal precedence as we have been hearing a while ago. My concern is that we have been dealing quite loosely with information, confidential information, in this country. Even this evening we have been hearing about it; what has happened to certain information, about people coming in and destroying information, and these

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are the concerns that I have. That has happened because of, I would say, partisan controls, and it is for that reason, unless there is a stated policy that is rational, that is objective and that is transparent, unless that is advanced, I have some concerns. I am even more concerned about the fact that there seems to be some insistence that it should remain as it is and this is why I think we need some sort of explanation.

Sen. Hinds: Thank you very much, Mr. Chairman. Just for the benefit of the record, I am almost certain I heard the Attorney General say a moment ago that the PNM took the equal opportunity issue to the court. That certainly is not the case.

Sen. Ramlogan: Perhaps I can clarify. What I said is that it was the first time the State challenged the constitutionality of its own Act. That is what I said.

Sen. Hinds: For the record, a previous administration had put the legislation in place and the PNM administration did not establish a commission, because it felt that the Act was unconstitutional, and it was a private citizen who challenged that failure on the part of the PNM government in the court. So, it is not correct, as the Attorney General has so very wantonly described it. I am concerned as much has been expressed by Sen. Dr. Armstrong, that we are really dealing very loosely with an important matter, and what you have heard Sen. Dr. Armstrong express on behalf of this side and the thousands of citizens of this Republic who we represent, is a lack of confidence and a lack of trust. We believe that the insulation of those offices from political involvement by the President is a means of giving more comfort to those of us who are not comforted by the assurances of the Attorney General. That is what Sen. Dr. Armstrong is really saying.

Sen. Oudit: Mr. Chairman, if I may add, this is the third day of debate of this particular Bill. In addition to that, based on what was indicated by Sen. Al-Rawi and Senators of the Independent Bench, a sub-meeting on Friday, was facilitated, through the Minister of State in the Office of the Prime Minister, Hon. Collin Partap. Almost every Senator in the Chamber spoke on this Bill and at no time was this such an important matter as to be raised—[*Interruption*]

Sen. Baptiste-Mc Knight: Oh yes!

Sen. Oudit:—in the way that it is being raised at this point.

Sen. Drayton: Oh no! No!

Sen. Oudit: No. In fact we heard of how compromising and facilitating that particular Friday meeting was. Now, in the spirit of discussing the merits and demerits of the Bill itself, is it that one—there are 102 clauses as pointed out by

Sen. Al-Rawi. The fact that the policy that drives this, is it that this Bill by itself somehow becomes less, or is it that it is no longer a very good Bill, or is it no longer a necessary Bill, especially when Sen. Nan Gosine-Ramgoolam indicated the connection between this Bill and the Electronic Transactions Bill? At no point even then, in that one—I do not have the legal background, so if you will forgive me for not having that legal background, but I think we have sat here—it is now 9.50 p.m. for the record—and this particular thing that did not come up in the same way, can we probably find some means of compromise in this particular aspect and move on and find a way to compromise on how else you can do this, so that you move on to the 102 clauses?

9.50 p.m.

Sen. Al-Rawi: Mr. Chairman, for the record, and the technocrats are here, this clause 8(1)(b) was raised by Sen. Ali, Sen. Baptiste-Mc Knight, Sen. Drayton and Sen. Dr. Balgobin in great detail at the Friday meeting. I would not cause any difficulty for the technocrats present, but I can tell you that it was a clear discussion. I raised it in the context of my contribution this evening.

Number one, it has been raised; number two, to answer Sen. Oudit, yes, it does affect the very heart of the legislation because the centre figure to the operationalization, implementation and exercise of powers under this Act lies in the hands of the information commissioner and, therefore, the independence is central to its operation.

On the last point, a compromise can be had, and I am warned that she should recommend it. We have offered two suggestions: “the President in his sole discretion” or “in consultation with the Leader of the Opposition”. I am comfortable with either one. The difficulty I have is where the Prime Minister is the person to whom reports are made and the Cabinet directs the President whom to appoint.

We are asking for impartiality and for a perception of it in as important an office as that. I am grateful that Sen. Oudit has recognized that compromise is to be discussed and can be had.

Sen. Oudit: Could I clarify one thing, though? Are you saying that the President on the advice of only the Leader of the Opposition?

Sen Al-Rawi: Of course not.

Sen. Oudit: I just wanted to clarify.

Sen. Hinds: I would also like to add, in furtherance of the very useful suggestion from my friend, whether the Government feels by putting in that amendment it would weaken or take away from the policy position behind this legislation at all, it would not do anything to it.

Sen. Baptiste-Mc Knight: Mr. Chairman, as a non-legal person, I would like one of the legal luminaries to tell me which of the other people to be appointed in this fashion by the President enjoy the wide-ranging, absolutely invasive authority that this commissioner does.

Sen. Ramlogan: Mr. Chairman, I believe I have cited the examples before. The power enjoyed by those who perform the judicial functions in the Tax Appeal Board, the Industrial Court, the Environmental Court, the Equal Opportunity Commission—

Sen. Baptiste-Mc Knight: Can all these people seize people's property at will with a warrant?

Sen. Ramlogan: Perhaps if you will allow me to answer, you will get the answer.

Sen. Baptiste-Mc Knight: I am trying to get clarity as you go along.

Sen. Ramlogan: I know, but I needed no clarification on your question. I understood the question, Ma'am. I am trying to answer it.

Sen. Baptiste-Mc Knight: I am trying to get clarity in the answer.

Sen. Ramlogan: You are not allowing me to answer. How could you seek clarification?

The powers enjoyed by these various tribunals are very wide-ranging and even in this Bill we have compromised to say that the warrant is something that you can go to a judge to get. We have introduced that judicial barrier and hurdle so that there is that measure of protection.

When you look at the powers enjoyed by the Environmental Court, they are wide-ranging. When you look at the powers of the Equal Opportunity Commission and the tribunal, for example, they have powers to investigate and can demand any documentation. They have powers to inspect documents and powers that, if you do not cooperate, could lead to potential sanctions.

I do not see that this is any different. In fact, as I pointed out to Sen. Al-Rawi, in those instances the legislation has created bodies that are courts of superior record. Courts of superior record could never be compared to this information commissioner. They are really miles apart.

In the management of information, we are seeking to correct a situation that exists by adding, strengthening and bolstering the constitutional rights enjoyed by citizens. We are seeking to enhance the protection of their information. Nothing exists right now, so we are improving a situation as it exists right now and we have not at all curtailed anyone's right to sue at common law for breach of confidentiality. Your constitutional right to private and family life remains intact, so you can still sue if you feel that your rights have been infringed. You still have that recourse to the court.

Be that as it may, the management of information is a matter for the Executive arm of the State. It is a government function; it has always been. Furthermore, the Minister with responsibility for the management of government information, in this particular area, is something that we feel is an Executive function.

We are trying to regulate and manage that with the assistance of a commissioner who will be appointed by the President and whose tenure is one that the Government will respect in accordance with the Act, given the fact that you appoint him, but you cannot just pluck him out. In those circumstances, we really feel that the policy position of the Government is solid, in keeping with a long line of established authority and legislative making models that have gone before.

That is our policy position. We have heard the voices on the other side. This is a Bill that, as you know, passed through the other place and this point is not new. This point was raised in the other place and the Government's position and commitment to this policy issue remained resolute and firm in the other place, as it shall in this place.

Mr. Chairman: The question is that clause 8 be amended as follows:

By the removal of the words "at the Bar" after the word "standing" in subsection (2), line 4.

Sen. Dr. Balgobin: Mr. Chairman, just before we put that to a vote, just to come back to hon. Sen. Panday's earlier point with regard to clause 8(2), I am not persuaded that this person is exercising quasi-judicial functions or powers and, therefore, needs to be an attorney. Unless this is a job description for someone who already exists, I am not clear, in looking at the other legislation that exists around the world—there are people who are journalists, who have experience in human rights, who also serve as information commissioners elsewhere in the world. There is no reason, to my mind, to lock this in to an attorney. If that logic were to hold—and I am not a legal person so I stand to be corrected—then I

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suppose every police officer should be a lawyer. I wonder whether we could not expand it a little so that we could broaden the net to give ourselves the best chance of getting the best person. That is open to the Government to consider.

Sen. Panday: What is the suggestion, may I kindly ask?

Sen. Dr. Balgobin: Just say that it is a person with experience or training in law, economics, finance, information security, technology, audit or human resource management.

Sen. Panday: Do you wish to add any other qualifications?

Sen. Dr. Balgobin: No, Sir.

Sen. Ramlogan: Senator, we are advised that, having regard to the research that has been done and more so having regard to the nature of the role, duties and functions to be performed, we prefer to err on the side of caution and leave it as is. The legal training and background we feel is something that gives a certain comfort zone. I see Sen. Al-Rawi agreeing with me in a rare moment of reason.

Sen. Ali: Just alongside the words “Legal Profession Act” should be “Chap. 90:03”.

Sen. Panday: Thank you very much. Delete in the marginal note “Chap. 7:07” and insert “Chap. 90:03”.

Change the marginal note from Chap. 7:07 to Chap. 90:03; and that the words “at the Bar” in line 4 of subsection (2) be removed.

Question put:

The Committee divided: Ayes 14 Noes 10

AYES

Panday, S.

Sandy, Brig. J.

Ramlogan, A.

George, E.

Bharath, V.

Tewarie, Dr. B.

Karim, J.

Ramnarine, K.

Oudit, Mrs. L.

Abdulah, D.

Watson, Prof. P.

Maharaj, D.

Moheni, E.

Burke, Archbishop B.

NOES

Beckles, Ms. P.

Hinds, F.

Henry, Dr. L.

Cudjoe, Miss S.

Al-Rawi, F.

Deyalsingh, T.

Baptiste-Mc Knight, Mrs. C.

Drayton, Mrs. H.

Armstrong, Dr. J.

Bernard, Dr. L.

The following Senators abstained:

B. Ali, Dr. R. Balgobin and E. Prescott SC

Question agreed to.

Clause 8, as amended, ordered to stand part of the Bill.

10.05 p.m.

Clause 9.

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

Sen. Panday: Mr. President, in clause 9(b) delete the words “offer comment” and substitute the word “advise”; and also in paragraph (g)—are you there with me, Mr. Chairman?

Mr. Chairman: Yes, 58!

Sen. Panday: In paragraph (g), delete the words “58 or 76” and substitute the words “58, 78, or 79A”. Capital A please, Mr. Chairman.

Mr. Chairman: Is that it?

Sen. Panday: Mr. Chairman it goes like this: and substitute the words “58, 78, or 79A”. I made an error by saying 70— put a comma after 78. Thank you.

Sen. Prescott SC: Mr. Chairman, may I invite the hon. Attorney General to assist us with paragraph (j). How is it proposed the President should act, if it is on the advice of the Cabinet? Is there are policy position on that?

Sen. Ramlogan: The answer is no. We want to allow some flexibility and latitude to the President in the event—for example, I suppose one may conceive of situations where the President may, in a time of emergency for example, wish to restrict information of a particular classification perhaps, and that may be dealt with by way of a direction from the President. It really is to leave some elbow room on that part as the Head of State.

Sen. Prescott SC: So pardon me? He acts in his own discretion in that regard? Has it been addressed at all?

Sen. Ramlogan: Normally, the President would act on the advice of Cabinet, but this is a situation where the President is acting—[*Crosstalk*]

Sen. Panday: On his own.

Sen. Prescott SC: Clearly?

Sen. Ramlogan: Yes, I see what you are getting at.

10.10 p.m.

Mr. Chairman: Sorry, Attorney General, I do not quite follow that though. You are saying that the reference to “President” here is in his own discretion?

Sen. Ramlogan: No, no. I did not commit myself to that, because I see the point the learned Senator is making. I am grateful to Sen. Prescott SC. What we propose to do is to delete the words from “subject to specify” and insert the following words:

“exercise his corporate powers in relation thereto in such manner as he thinks fit in accordance with this Act.”

Sen. Panday: In those circumstances, we will delete the “,” and everything after the word “fit”

Sen. Prescott SC: Mr. Chairman that is a formula I think we can live with.

Sen. Panday: Pardon?

Sen. Prescott SC: It is a formula I think we can live with.

Sen. Panday: Sure. May I wish you long life?

Mr. Chairman: The question is that the amendment to (j) reads as follows:

“exercise his corporate powers in relation thereto in such manner as he thinks fit in accordance with this Act.”

We will delete the last three lines starting from “subject always to any special or general directions as the President may from time to time specify.”

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. Dr. Armstrong: Mr. Chairman, if you were to look (f)—

Sen. Panday: Pardon, Sir?

Mr. Chairman: You have, “or upon the request to the President;”

Sen. Dr. Armstrong: Yes, where it says again “initiative or upon the request of the President;”

Mr. Chairman: Thank you, Sen. Dr. Armstrong. [*Crosstalk*] The proposed amendment to subclause “(f)” —sorry, Sen. Prescott SC.

Sen. Prescott SC: I beg your pardon?

Mr. Chairman: I thought you had some other comment. Perhaps, I should indicate what the amendment proposes.

Sen. Prescott SC: Maybe we should just delete the reference to the President.

Mr. Chairman: What we propose is that clause—what the Government proposes is that subparagraph (f) read by deleting the word “either” in line 2, and put a semicolon after the word “initiative” and delete the rest of that sentence.

Sen. Dr. Bernard: Mr. Chairman, can we get from the Attorney General, whether there was an underlying reason for wanting this, because I do not think this would have been put in haphazardly. Was there an underlying reason for putting

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in (j), the fact that the President from time to time would specify something and then back again in the area of research. Does it not suggest that the President had some sort of active involvement in the work of this individual?

Sen. Ramlogan: It does, but as Sen. Prescott SC quite rightly reminded us, that in law means that the President would act on the advice of the Cabinet. So that there is not much point in having it, which is why we have deleted it to be consistent with the previous position adopted.

Sen. Prescott SC: Do you mind reading (f) once again, please?

Mr. Chairman: “(f)” would now read:

“carry out special studies or research regarding privacy or related issues upon his own initiative;”

Sen. Prescott SC: Yes, I agree with the Attorney General that it should end after the word “issues”.

Mr. Chairman: All right! So it would now read:

“carry out special studies or research regarding privacy or related issues;”

Question put and agreed to.

Clause 10, as amended, ordered to stand part of the Bill.

Clause 11.

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

Sen. Panday: Mr. Chairman, in clause 11(1) delete the words “possess the same qualifications and experience required for” and substitute with the words “meet the same requirements for qualifications or experience as required for”.

Sen. Dr. Balgobin: You do not want to say “similar” instead of “the same”? I do not know, I am not a lawyer. Do you want to stick with “the same”? So you have three persons with the same profile so one can act for the other and so on. How do you then decide who is going to be the information commissioner and who should be a deputy?

Sen. Panday: Hon. Senator, what happens is that it requires the same qualification, that is, the qualification of an attorney-at-law, hence the word “same” is used and not “similar”, because there is really very little that is similar to the qualification of an attorney-at-law.

Sen. Dr. Balgobin: As a question of law and language, just for my education, does the same qualifications and experience mean what that says? What that sounds like to me is the same qualifications and experience.

Mr. Chairman: In other words, it is identical.

Sen. Dr. Balgobin: So, it just meets the criteria of clause 8.

Mr. Chairman: That is the question you are asking, identical.

Sen. Dr. Balgobin: Yes.

Sen. Al-Rawi: Mr. Chairman, in our discussions on Friday, that was the genesis for this recommendation. We had made the recommendation that the same qualifications did not quite hit it, because if the commissioner was particularly qualified in one way, the other person had to be exactly qualified to meet that. So we had recommended, in fact, words which would give effect to the broad categorization as the Attorney General says, to create a little elbow room for the appointment of the deputy commissioners, and that is specifically to meet clause 8 requirements.

Sen. Ramlogan: We are advised that in keeping with the principles enunciated in the *Suratt* judgment that once the information commissioner is unavailable, the deputy steps into his shoes, and because we have already agreed that the commissioner should have some legal training, as it were, we felt that we should keep it the same for this. In some legislation you could broaden the scope. I was exploring the possibility of seeing whether we could do that here, but because they have the same duties, powers and responsibilities, it would be difficult to deviate.

Sen. Al-Rawi: Correct. That is to be added to the fact that we have powers of delegation under this particular Bill.

Sen. Ramlogan: Agreed.

Sen. Prescott SC: May I make an enquiry though? We have now introduced three chiefs, all of whom may possess the exact same qualifications, and the distinction among them—the thing that distinguishes the commissioner from his deputies will be the mind of the Cabinet. How does one select among three chiefs the big chief? There are three persons in office; a commissioner and two deputies, each of whom possesses the same qualification, who is going to draw the tab?

Sen. Panday: What has happened is that if that is the situation, then it would be the one with more experience.

Sen. Prescott SC: Well, I do not think that we could just say it like that, if you would forgive me, Sir. We could not just say, “Well, okay, somebody is going to choose the man who has nine years as opposed to eight and a half or 11.” There is need for some distinction between the big chief and the other two chiefs.

Sen. Dr. Balgobin: If I may add to that, that was really where my question was coming from. I was not clear on what basis you would decide who would be the information commissioner and who would be the deputy commissioner if they have the same profile.

Sen. Al-Rawi: Mr. Chairman, if I may, the point is that they do not have the same profile. They are meeting the requirements of clause 8 and, therefore, the profiles may be different. That is why we were careful to move away from the word “same”; before “same” meant that they had to be literally all four is equal.

Sen. Panday: Identical.

Sen. Al-Rawi: Yes.

Sen. Prescott SC: Mr. Chairman, my question is, what if they do? You have three applicants, each of whom has the same number of years at the Bar; they are all trained in the same discipline, accounting, and they all look alike.

Sen. Ramlogan: Well, I suppose it brings to mind the phrase “the first among equals” that would be the principle that would have to operate there. I understand the point you are making. I think what would happen in practice is that one would want to ensure some blend and mix of expertise. So you might find that they will appoint a lawyer with one of the additional expertise and another lawyer who might be trained in a different area. So, you will want to get the blend in terms of the postgraduate training and experience or the work experience.

Certainly, one of the areas that would be an immediate area of distinction would be the work experience of the lawyer, because it would be hard-pressed to find someone in all square fours that would be identical, even to the last letter in terms of the work experience. The cases they worked on would be obviously different, and thinks like that. I see the point, and that is why I say it may very well be, how does one choose a chief justice? All judges are presumed to be competent or else they should not be a judge in the first place. So, it is really a case where you have to choose from the first among equals, as it were.

Sen. Dr. Balgobin: So, is it the Cabinet will decide then?

Sen. Ramlogan: Sorry?

Sen. Dr. Balgobin: Is it that the Cabinet will decide?

Sen. Ramlogan: Well, I presume that is the way it is structured.

Sen. Prescott SC: I had answered Sen. Panday abruptly, but we cannot do it just like that. We cannot leave it to a whim if you like.

Sen. Ramlogan: Would you be comforted if we say the most senior of the three?

Sen. Prescott SC: Well, no, I do not think that answers the question; any attorney with 10 years' experience at the Bar.

Sen. Ramlogan: Yes.

Sen. Prescott SC: And who can claim some modicum of training or experience in any of the other areas. I am sure one of them is sitting here now will qualify. How does one choose that other part of this training? His training in economics cannot be measured unless you look at his profile at the university. His experience in human management cannot be measured unless his former employer were to say something nice about him and fail to say it about the other chap. We need to have legislation or regulation or something that tells us how are we going to identify deputy one from deputy two and big chief from those two. It seems to me that you could have accepted a lesser degree of standing at the Bar or training in these other areas.

10.25 p.m.

Sen. Deyalsingh: Mr. Chairman, if I may. When these positions are being advertised, for want of a better word, I would think that the applicants will be vying for the post of director as advertised, so that that post will be filled. Whether other applicants applied for the post of deputy or whatever, will then be taken in due course, but I do not think that looking at the Bill, it is envisaged that you appoint three persons and then choose one of the three to be the director. I do not know if the hon. Attorney General agrees with that, that when you do advertise these posts, you will be appointing the first person to be the director and then you would choose the deputies.

Sen. Ramlogan: Whilst I see legitimacy in the point raised by Sen. Prescott SC., I think the way this will work itself out in practice, is one that will find some measure of distinction between the three persons on a rational basis, that will

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ensure that there is some differentiation from among the three candidates. I am not of the view that you will find the three persons chosen to be on “all square fours” with each other and to be identical as though we have three Siamese twins. I think that what will happen in practice is that you are bound to find—Cabinet would be looking for a blend of experience and expertise that will give you a potpourri of the right ingredients, and I think in reality although on paper, I see the point he is making, in practice and reality I think what is going to happen is that you are going to find three persons that you can differentiate among.

Mr. Chairman: It seems to me that the appointer will just identify who is going to be the commissioner and who would be deputy.

Sen. Ramlogan: Indeed.

Sen. Panday: Also, Mr. Chairman, it is the same requirements for qualifications or experience, so that gives the elbow room.

Sen. Prescott SC: Regrettably, Mr. Chairman, I will intervene again. The only measurable instrument in the Act is 10 years experience at the Bar, 10 years standing at the Bar; it is the only thing that is measurable. Everything else resolves itself in the discretion of the person choosing and nobody knows how that person is going to go about it. I would hate to see next week, next year, when reading the newspaper, that somebody took this matter to the Privy Council on the ground that he was discriminated against because he came from Toco, or he looked like Morgan Job.

Sen. Ramlogan: But he would not be able to because he does not have a right to be appointed to any of the offices. So he would not have a leg to stand on.

Sen. Prescott SC.: I am sorry, I was doing it too glibly. I was saying, I have 10 years standing at the Bar, I have training and experience in many of the other disciplines and between myself and the candidate who is chosen, there is nothing to differentiate us.

Sen. Panday: You are saying that the only measuring rod is the length of time you are at the Bar.

Sen. Dr. Balgobin: Yes.

Sen. Panday: What do you recommend as a differentiation?

Sen. Prescott SC.: If he has 11 years, then fine, you say, “Well, boy, he has 11 to your 10”.

Sen. Dr. Balgobin: Could I just try to shine a light here. This method of identifying a suitable candidate is reasonably Jurassic and people like Sen. The Hon. Nan Gosine-Ramgoolam is an expert on assessment centres and these kinds of things, Sen. The Hon. Dr. Bhoendradatt Tewarie knows a lot about these kinds of things; is there scope, perhaps, for some kind of experiential element to the selection that allows the Government to decide who the commissioner is? I do not know I am just suggesting a way forward.

Sen. Panday: Do you think by inserting “experience” gives that elbow room to differentiate, if everyone has the same paper qualifications? Do you think that the insertion of the word “experience” gives that elbow room to differentiate the various candidates?

10.30 p.m.

Sen. Dr. Balgobin: No, well you are talking about experience at the Bar and experience in industry or in some other technical profession, but what I am saying is that, for these kinds of positions outside of this particular fora, you would have people assessing the candidates in other ways. There are assessment centres, there are different types of interviews that are scale-rated scored, there are all sorts of evaluations that are done and these things might be reasonably incorporated. Because this is a very high level position that you are doing here, and so that you want to have something other than some certificates or some years of service or experience. While that is valid—I know that I am fairly sure that I can find some reasonably incompetent people who have 10 years service at anything, so the certificates do not do anything. So, I think there is an opportunity for us to leverage on the intelligence that we have in the Government because the knowledge is there on selection of people, of candidates at this kind of level. I certainly do not think that the qualifications base approach is wide enough, would be my respectful view.

Sen. Ramlogan: As I have said before, I think that there is merit in the point, I just do now see that it is necessary to put it in the legislation, but one would expect that in coming up with some system for differentiating some of the points that you have made, both you and Sen. Prescott, would obviously be taken into account. But I do not think that needs to be in the legislation because the last time we put it in legislation—which is in the Police Service Regulations—we had \$7 million and Penn State University and we are none the wiser. So that really and truly it is a point worth making and it is taken on board and perhaps we can—

Sen. Dr. Balgobin: Could you commit then to putting it in the regulations?

Sen. Ramlogan: I can commit that we will consider it. I cannot commit that we will, in fact, do it; but I could commit to considering it.

Sen. Dr. Balgobin: Okay, so that means no?

Sen. Dr. Bernard: Mr. Chairman, I am thinking that and I wish that we could make the case that some form of psychometric testing can be done with these individuals because of the important nature of what they are about. Psychometric testing is well known to my colleagues on the opposite side.

Sen. Ramlogan: That is an important process point and we take it on board. It has not fallen on deaf ears and in fact, it is a valid point and we will take it on board, but I simply do not think that it is right to legislate it. Every time we have legislated the process, in terms of following a particular procedure we have run into difficulties. For example, in the police service, the psychometric testing was successfully challenged in a court of law, so that you have difficulties when you legislate the mythology, and the technique and the human resource system that you want to use. It is better to leave it to some discretion because it is also an evolving and developing area. Methodologies and techniques may change from time to time but, of course, one would want to have some rational basis for differentiating, and the point is well taken. Thank you all very much.

Mr. Chairman: The question is that clause 11 be amended by deletion of the words starting with the second line and continuing “possess the same qualifications and experience required for” and replacing that with “meet the same requirements for qualifications or experience as required for the Information Commissioner under section (8)”.

Sen. Prescott SC: Mr. Chairman, would you care to read it slowly please. You have the words requirements and required in the same sentence?

Mr. Chairman: I am following exactly what is in the circulated definitions. We have not moved from that.

Sen. Prescott SC: Do they wish to look at it again?

Mr. Chairman: So, in clause 11(1), you are going to delete the words “possess the same qualifications and experience required for” and you will replace them with “meet the same requirements for qualifications or experience as required for”.

Sen. Prescott SC: As stipulated or as defined or identified; why as required again? There is some grammatical—what is the word,—onomatopoeia?—No, alliteration. What? Repetition? Redundancy!

10.35 p.m.

Mr. Chairman: You have “specified for”, but I do not know—

Sen. Prescott SC: “Meet the same requirements for qualifications or experience as specified in section 8.”

Mr. Chairman: You prefer “specified” is that—

Sen. Prescott SC: Prefer? No Sir. It strikes on the tympanum badly the way it is written.

Mr. Chairman: There is a lot of requiring in it.

Sen. Prescott SC: There is and we only need those that are in clause 8, so may I suggest “meet the same requirements for qualifications or experience as specified in section 8”.

Mr. Chairman: You could say, “as specified for the Information Commissioner under section 8”.

Sen. Prescott SC: “As specified for the Information Commissioner under clause 8”, let me see. It appears that that is working.

Mr. Chairman: Senator, it is being suggested that rather than “required”, it should say “specified” instead of “required”. “Meet the same requirements for qualifications or experience as specified for the Information Commissioner under section—“

Sen. Panday: No, problem.

Mr. Chairman: So the amendment proposed is that we delete, starting in line 2, “possess the same qualifications and experience required for”, and insert in place of it, “meet the same requirements for qualifications or experience as specified for the Information Commissioner under section 8.”

Question put and agreed to.

Clause 11, as amended, ordered to stand part of the Bill.

Clauses 12 to 19.

Sen. Panday: Sorry, Mr. President, could we kindly take 12 individually?

Clause 12.

Question proposed, That clause 12 stand part of the Bill.

Sen. Panday: If one looks at the marginal notes you would see that it says, “Resignation, removal and suspension of Information Commissioner and Deputy Information Commissioner”. In the circumstances we humbly request that after the word, “removed”, insert “or suspended”. Clause 12, line 2, after the word “removed” insert “or suspended”.

Mr. Chairman: The amendment put before us is that in line 2—

Sen. Prescott SC: Sorry, 12.

Sen. Dr. Armstrong: Mr. Chairman, when I was reading this I had a note, I do not know whether it is appropriate, but where it says, “physical or mental inability”, I had a note saying “as certified by an appropriate medical or qualified medical”. I do not know whether that is—

Sen. Panday: Save and except that if you have a mental inability and you are trying to discipline somebody on that score, it is expected that you must have the sort of expert evidence to determine mental inability, because mental inability itself is a technical term.

Sen. Dr. Armstrong: Do you not need someone that is qualified to make that determination?

Sen. Panday: The Attorney General said he thought about Gene Miles, so he is agreeing with you. [*Laughter*]

Sen. Ramlogan: I think there has been ample precedence whereby people have dared to presume who possesses that competence, but I think you are right in suggesting that there should be a qualified expert to determine whether or not someone is in full possession of their mental faculties. Thank God, that does not apply to this honourable Senate and our own eligibility, but I think it is a useful thing to add in. Accepted.

Mr. Chairman: What are you proposing then, Attorney General?

Sen. Panday: Mr. Chairman, we have accepted the proposal by the hon. Senator and after the word “inability” in line 4 of clause 12 insert “as certified by a medical practitioner under the Medical Profession Act”.

Sen. Dr. Armstrong: I will be happy with that. Yes, I will be happy with that.

Sen. Panday: Sure.

Mr. Chairman: Under the Medical Profession Act.

Sen. Panday: Yes, Sir. Sorry, “a medical practitioner registered under the Medical Profession Act”.

Sen. Deyalsingh: Mr. Chairman, does that imply a GP or somebody like a psychiatrist? What does that definition mean, the Act? [*Interruption*] No, because a GP cannot make—

Mr. Chairman: An appropriate, can we say appropriate; an appropriate suitably qualified medical—

Sen. Deyalsingh: Yes, because a GP cannot make that call.

Sen. Ramlogan: I said it would not apply to Senators what are you worried about? [*Laughter*]

Sen. Deyalsingh: Would it apply to the CAL board?

Sen. Prescott SC: Mr. Chairman, I have a question for the hon. Attorney General. Would you give us the justification for introducing—

Sen. Panday: Save and except—sorry.

Sen. Ramlogan: I would defer this question with the greatest respect to Dr. James Armstrong who raised the point and lured me into accepting his rather valid contribution.

Sen. Prescott SC: Sorry, I am on to something that you said earlier, the introduction of the words “or suspend”, are we thinking of two different disciplinary actions, punishment? Why do we want to introduce—

Sen. Ramlogan: I did not say anything about that.

Sen. Panday: On 12, the hon. Senator is speaking on 12, “the Commissioner or Deputy Information Commissioner may be removed”—

Sen. Dr. Balgobin: When you say “removed” you mean terminated?

Sen. Prescott SC: Yes.

Sen. Ramlogan: Removed once and for all, but I suppose—

Sen. Panday: Removed from office.

Sen. Ramlogan: You could have a—

Sen. Dr. Balgobin: You could suspend somebody and—

Sen. Ramlogan: It may not happen but you could be temporarily incapacitated—your wife “dead” or something has happened to cause you a temporary frame of mind that renders you unable to fulfil your duties, so you might want to suspend them for that period rather than—and put them back here.

Sen. Prescott SC: It is not a disciplinary step?

Sen. Ramlogan: Sen. Brig. Sandy has given me another live illustration that leads to that condition as well, but the point is that—I suppose that is why you would want to have, rather than the draconian all-out removal—

Sen. Dr. Balgobin: Yes, but clause 11(4) caters for bereavement and clause 11(4) would cover you there, right. It would say that the Deputy Information Commissioner will act in the incapacity or absence of the—[*Interruption*—]—so you are covered there.

Sen. Ramlogan: Sure.

Sen. Dr. Balgobin: The thing with a suitable—if I could come back to “suitably qualified person”, once you are qualified and you are registered I would think that is appropriate, because, for example if you have an injury and you become incapacitated, I do not know that you need a specialist to certify that. It depends on what the nature of injury or ailment is.

Sen. Ramlogan: Yes, well that was the Government’s thinking. The reason I conceded on the point when it was raised in terms of saying suitably qualified is that I know sometimes in the public service I have seen it happen whereby they refer to the Government medical doctor and the medical doctor certifies one thing and people have come now and gone on the outside to a specialist and they have gotten a completely, a diametrically opposed diagnosis and you have had to battle—I have actually fought cases in court on that basis with respect to the classification of their leave, for example. So, we might be able to—

Mr. Chairman: But certainly psychiatric elements would be somebody different from a GP.

Sen. Ramlogan: Yes, and then the psychiatric element as well.

Sen. Dr. Balgobin: I am concerned that it would open itself to legal challenge about what is suitably qualified.

Sen. Panday: I want to agree with that and to say that a GP cannot refer you to St. Ann’s. A GP can refer a mentally ill person to St. Ann’s.

Mr. Chairman: Well then he is suitably qualified.

Sen. Panday: In the event, Sir, that if you put “suitably qualified” it might lead to litigation later on. That is the problem we are having by tying it so tightly to include suitably qualified, might create legal—

Sen. Al-Rawi: Mr. Chairman, I have been listening to the discourse. Whilst I appreciate the recommendation by my learned colleague, Sen. Dr. Armstrong, for the qualification, and I would imagine that that is to exercise caution, I am fearful

that we may be fettering best practice in the court and best practice—I actually prefer the wording without any qualification as to “suitable qualification or Medical Profession Act in Trinidad”. Because it means that you are excluding foreign professionals; for example, somebody may be abroad and cannot be certified locally and there may be logistical problems. The courts have evolved a well-established set of precedents as to what is fair in the circumstances and I would prefer to leave it in as generic a position without description to leave room for the courts to develop what is best practice in positions like this.

Sen. Panday: To further support your argument, the medical profession has two registers, one for the GPs and one for the specialists, so therefore, having regard to the presence of those two registers I think we should leave it as generic as you say.

Mr. Chairman: So we are taking out “suitably qualified”?

Sen. Panday: Yes.

Mr. Chairman: And we are taking out “registered under the Medical Profession Act”?

Sen. Ramlogan: No, no, no.

Sen. Al-Rawi: I think we should, because let me give you an example and this is where we included the word “suspended” which I think should go before “removed”. So I would put “suspended” before “removed” first of all because it is the preliminary step to removal and the context in which we are considering suspension is for example some genuine incapacity; my learned colleague, the Attorney General, mentioned a bereavement factor. Suppose somebody is travelling—and this has actually happened in cases I have managed—and they are abroad and they get sick, if I have to have certification from a medical practitioner registered in Trinidad I have got to fly a man to Abu Dhabi to examine him there as opposed to receiving a certification from a doctor who may be abroad under the British Medical Council for instance, the GMC qualifications. So I actually prefer to leave the clause as is quite frankly. That is without the recommendation for certification by the medical board or certification by any doctor suitably qualified or otherwise.

Sen. Panday: The only problem with that is that the levels of qualification may vary in different parts of the world and as such we wonder if you may have a situation where you have a board which carries lower qualifications.

Sen. Al-Rawi: You see that is why I am recommending—and this is just for discussion—that we allow room for interpretation by a court.

Sen. Panday: Okay.

Sen. Al-Rawi: You see, I am sure that the court could come up with a formula on that.

Sen. Panday: Okay, we agree. So delete “registered under the medical profession”—

Sen. Al-Rawi: So for clarity I would leave the clause as is, of course subject to any objections by Sen. Dr. Armstrong.

Sen. Panday: Yes, we will leave it as is.

Sen. Dr. Armstrong: I am not in agreement with that, Mr. Chairman. I am very sorry. If somebody starts behaving in an insane manner while on the job you cannot leave that to the discretion of a superior who is not qualified to then say, okay, they are going to discipline you in some way or get rid of you in some way. That, in my view, is something that has to be determined by the competent professional.

Sen. Ramlogan: Senator, I tend to agree with you and we will accept your suggestion and we shall move on, because I see the stocks on the Opposition Benches are depleting as fast as we go along [*Laughter*] and I would not want to run out of Opposition Senators to pass this in their absence. Sen. Hinds is no longer with us, Dr. Henry is no longer with us, and Sen. Cudjoe is missing, and I think that it is great disrespect to the Parliament that we are passing law and they are not present at this early stage. [*Laughter*] [*Desk thumping*]

Sen. Al-Rawi: Mr. Chairman, I actually agreed that the infallibility of bladder control is something that must be dealt with and I can assure him that the Opposition Senators are here and would be back to their chairs momentarily.

Sen. Ramlogan: Given the fact that Sen. Hinds walked out with his briefcase and the excuse you proffer has me extremely worried. [*Laughter*]

Sen. Al-Rawi: Only to get material from the library. [*Laughter*] I have the same hotline that we call the Attorney General with.

Sen. Panday: Let us move on. Let us move on.

Mr. Chairman: The amendment under consideration is to insert the words “suspended or” before the word “removed” in line 2, and to insert in line 4 after the word “inability” “as certified by a medical practitioner”.

Sen. Prescott SC.

Sen. Prescott SC: Mr. Chairman, I am not comfortable with “suspend” being where it is. [*Interruption*] Why are we suspending him if he is guilty of misconduct? Why are we suspending him if he is suffering from a mental or physical inability, when indeed there is a provision that allows for someone to stand in his shoes temporarily?

Sen. Ramlogan: Remember, if you do not put in the suspension then you fall back on removal simpliciter, and if you remove him the fact that you could put someone to act in his shoes does not deal with the situation I had mentioned, where, for example, the man could be temporarily disabled from performing the functions. Perhaps Sen. Dr. Armstrong can assist; I am not too familiar with the temporary insanity outside of the political arena. [*Laughter*]

10.50 p.m.

Sen. Prescott SC: There is legislation which actually identifies a number of causes, so that a suspension from office can be the instrument by which you remove somebody who is temporarily unable to fulfil his responsibilities. When you juxtapose it with removal, it appears that you are exercising a disciplinary process in relation to someone who is suffering from a physical or mental inability.

Sen. Ramlogan: So you want us to take out “suspension” and leave it at “removal”.

Sen. Prescott SC: I cannot imagine where you can put it, but I do not like it where it is.

Sen. Panday: If you agree with that—if we delete “suspension” then in the marginal note, we have to delete in the second line, “and suspension”.

Sen. Prescott SC: I have another suggestion. If you just hold that thought for a while.

Sen. Panday: Sure.

Sen. Prescott SC: If we go back up to 11(4) and introduce there, the concept of the person being physically or mentally unable to fulfil the responsibilities of his office.

Sen. Dr. Balgobin: But it is there. It says “incapacity”.

Sen. Prescott SC: In case “incapacity” is not a sufficiently broad suggestion. So, “A Deputy Information Commissioner may, in the absence or incapacity due to physical or mental inability, . . . et cetera, act in the place of the Commissioner”. And then we reserve 12(1) to deal with removal from office for cause—misconduct only.

Sen. Panday: But Senator, do you think the word “incapacity” is wide enough to embrace mental incapacity?

Sen. Prescott SC: One of my colleagues is actually saying the same thing. So let us remove “physical or mental inability” from 12(1), leave it entirely—solely—to deal with removal on the basis of misconduct in office. Is that a suggestion you would like to work with?

Mr. Chairman: Are you going to remove it from the marginal note?

Sen. Panday: From the marginal note.

Sen. Prescott SC: Well, of course, the marginal note will be addressed.

Mr. Chairman: So it will be resignation or removal in the marginal note?

Sen. Panday: Yes, Sir. Yes, Sir.

Mr. Chairman: The amendment being proposed is that we insert in line 4 after the word “inability”, as certified by a medical practitioner”, and in the marginal note, that it reads “resignation or removal of Information Commissioner and Deputy Information Commissioner”.

Sen. Dr. Balgobin: Further trouble. Everything else was fine for me there, but the part where you said “by a medical practitioner”; is it then that you will accept the diagnosis of a medical practitioner from—[*Interruption*]

Mr. Chairman: Timbuktu.

Sen. Dr. Balgobin:—Tuvalu or Micronesia? I was okay with registered with or acceptable” to the medical board or the medical council of Trinidad and Tobago which would then allow you to accept foreign advice, where that foreign advice is deemed to be as good as or superior to whatever we have locally.

Sen. Panday: The point that Sen. Dr. Balgobin made before which deals with the different qualifications and we thought we would have heard the persons in practice—if you have a medical report from a medical practitioner outside the jurisdiction, could it not be confirmed in the local jurisdiction, and for that reason put a medical practitioner registered under the Medical Board of Trinidad and Tobago?

10.55 p.m.

Sen. Dr. Balgobin: I was just broadening it to say registered under or acceptable to the medical board, so the medical board can say well, we will accept an opinion from a specialist in this country or this person or that person.

Sen. Panday: We do not know if the Medical Profession Act makes provision for that, that is the problem we are having, and if we legislate in that manner we may be legislating in the dark which may lead to further problems in the future. So it is either we say registered with the Medical Board of Trinidad and Tobago or delete.

Sen. Al-Rawi: Mr. Chairman, if I could just ask; the purpose of including a medical practitioner certification is to meet a mischief and that mischief is a capricious removal of someone, correct? If somebody is removed capriciously there is a right of complaint to the courts of Trinidad and Tobago. I think genuinely that we are fettering the court's ability to describe what is capricious or not, and there is a host of employment law cases in the courts of the Trinidad and Tobago. My problem with accepting a certification by a medical practitioner registered in Trinidad and Tobago is that, if you are looking at the circumstance where someone genuinely gets sick—look I am a child of two jurisdictions Iraq and Trinidad in the sense that I have got family there. No medical certificate in Iraq is acceptable here in Trinidad and Tobago or in Syria, or anywhere in the Middle East. What happens if—and I travel there every year—what happens if I get sick there and I happen to be filling this post?

So I think that we should leave it to the courts to describe whether the circumstance is capricious and whether damages would be paid for breach of some employment principle.

Sen. Ramlogan: We would like to move on from this point. I accepted the point made by Independent Sen. Dr. Armstrong because I thought maybe it was a strong point—and that had nothing to do with his name. [*Laughter*] But the point is, if one looks at section 137 of the Constitution, section 137(1) of the Constitution deals with the removal from office of a judge and it says that:

“A judge may be removed from office only for inability to perform the functions of his office (whether arising from infirmity of mind or body or any other cause) or for misbehaviour,…”

And it carries on. But there is nothing about a medical practitioner or anything, and that is for a judge, and it is in the Constitution which is the supreme law. But in reality what happens is obviously you would have to have a medical practitioner. All the questions about certification and so on may or may not be raised, but the reality is we could kindly move on, because I think we can leave it as is, and move on. Because really, if we have it in the Constitution for removal of judges and chief justices we should be all right.

Sen. Al-Rawi: Just to add that the removal under section 137 is protected insofar as a tribunal must be appointed in those circumstances. I accept—

Sen. Ramlogan: Sure, sure but that is process, that is process—

Sen. Al-Rawi:—that is process and my point is that process is met with the clause as drafted, because the court can be there to complain to and I would leave it the way it is.

Sen. Ramlogan: We will probably have to agree with you on this one, but Sen. Dr. Armstrong, in practice and reality, I do not think that one would—

Sen. Armstrong: Mr. Chairman, if you want to remove the reference to physical and mental inability, then I do not have a problem with that, but if you have it in there—

Mr. Chairman: What is being suggested, as I understand it, is that even in relation to a judge there is no requirement for a medical certificate. The reason is that if you are wrongly, capriciously removed, you would take an action in the court and the only way that the State could defend that matter is if they could demonstrate that you were physically or mentally incapacitated.

Sen. Ramlogan: Well, then there is no need to put it in here, Mr. Chairman.

Mr. Chairman: Then the only way to do it would be to produce a medical certificate. So for the State to protect itself, it would in fact follow that process.

Sen. Ramlogan: Mr. Chairman, what I am saying is then there is no need to make reference to mental or physical ability.

Mr. Chairman: Well, misconduct would not amount to insanity.

Hon. Senator: Hopefully—

Mr. Chairman: I presume he would fall short of that; or physical disability. It may not be misconduct at all, I imagine.

Sen. Panday: Mr. Chairman, it could be disjunctive.

Sen. Al-Rawi: You see, we are dealing with the concept of “for cause”, and cause can be constructed by way of mental and physical issues. So I am quite happy with the clause as drafted.

11.00 p.m.

Mr. Chairman: The amendment before—

Sen. Dr. Balgobin: Sorry, just one last question. I hear what everyone is saying, maybe I am the only person who has seen this, but I have seen people in these kinds of positions who have diseases or illnesses, they come down with something, they have cancer or something like that, but they work the system; so they are there one day for the month or two days for the month. How are you going to treat with that? That is a very common thing in the service, in the public domain. How do you, as an Executive, propose to deal with that, if someone is physically or mentally troubled, diseased?

Sen. Ramlogan: We will put them in Opposition—[Inaudible] [Laughter]

Sen. Dr. Balgobin: I was just curious as to how—

Sen. Ramlogan: The point is, Sen. Dr. Armstrong, the Constitution is not limited to infirmity of mind, you know. Let me read it again:

“...for inability to perform the functions of the office, whether arising from infirmity of mind or body or any other cause.”

That is in the Constitution, and it has never really posed a problem. I accept your point.

Sen. Dr. Armstrong: I have no problem with that. I am just saying that in here you have “physical or mental inability”.

Sen. Ramlogan: Would you rather we amend it and use this language from the Constitution?

Sen. Dr. Armstrong: Yes.

Mr. Chairman: It uses the word “including”, so it is not limited to these factors.

Sen. Ramlogan: Yes.

Mr. Chairman: The proposal is that the marginal note be amended to read:

“Resignation or removal of Information Commissioner and Deputy Information Commissioner” but that the clause remains as is otherwise, the substantive text.

Question put and agreed to.

Clause 12, as amended, ordered to stand part of the Bill.

Clauses 13 to 16 ordered to stand part of the Bill.

Clause 17.

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

Sen. Al-Rawi: Just for clarity, through you, hon. Leader of Government Business and Mr. Chairman, in subsection (1) the last line:

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

Is that in keeping with the SRC concepts—is it CPO, sorry?

Sen. Panday: My instructions are that the SRC will apply to the commissioner and deputy commissioner. This here deals with the staff, persons employed. I have been informed that this will be done in accordance with the Public Sector Negotiating Committee.

Sen. Al-Rawi: Just for clarity, the PSNC, this is actually where I was going, that is CPO’s recommendation and then there is the PSNC. But is there a PSNC currently functioning in this Government, because I am instructed that they have been disbanded?

Sen. Panday: I will get back to you on that. The experts will look at that.

Sen. Dr. Balgobin: You must know if you have one or not. Chances are you do not.

Sen. Al-Rawi: Why I am asking is that the operationalization of this legislation is going to involve a mix. You have got the information commissioner, deputy information commissioner—

Sen. Panday: SRC.

Sen. Al-Rawi: Right—SRC, section 141 of the Constitution, agreed; then you have the public officers and “other persons”.

Sen. Panday: CPO.

Sen. Al-Rawi: CPO, as it relates to other persons as well, so the concept of a contract person, not fixed—*[Interruption]* That is what I understood. I understood that “other persons” was not CPO, and that is where the room for importing expertise you could not otherwise attract from CPO salary levels, would allow you to actually perform in the unit. So, just to point out that if “other persons” are going to be subject to limit of remuneration, as the Minister may determine, just to understand that, is that going to be in line with CPO recommendations?

I have no problem if there is room for discretion on the Minister's part, beyond CPO's recommendation. I personally have no difficulty with that, because you have got to perform. So just for clarification on the issue.

Sen. Panday: My understanding is exactly what you said, because when you are on contract, security of tenure is limited. In those circumstances, there might have to be variation in remuneration to accommodate such circumstance.

Sen. Al-Rawi: Thank you.

Sen. Dr. Bernard: One of my colleagues did raise the point that in 19(1) we did have a sense of the qualifications of these inspectors. Do you have somewhere an idea as to whether these inspectors are peripatetic, will they belong to a body and what are their qualifications?

Sen. Panday: The reason no specific qualifications were placed was because these inspectors may have to perform varied functions, maybe IT or investigation. In those circumstances, it was thought necessary to not circumscribe the situation by putting specific qualifications, because of the different types of jobs inspectors may have to perform.

Question put and agreed to.

Clause 17 ordered to stand part of the Bill.

Clauses 18 and 19 ordered to stand part of the Bill.

Clause 20.

Question proposed, That clause 20 stand part of the Bill.

Sen. Panday: Mr. Chairman, I beg to move that clause 20 be amended as follows:

Insert after subsection (5) the following new subclause:

“(6) Where the Head of a Public Body referred to in subsection (3) refuses to—

- (a) allow the Information Commissioner or any person acting for or under him to enter and inspect premises under subsection (i)(a);
- (b) produce a document or record under subsection (1)(b);

the Information Commissioner may apply to a Judge for an order to direct the Head of the Public body to—

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- (c) allow the Information Commissioner or any person acting for or under him to enter and inspect the premises and seize any document found therein for the purposes of an audit or enquiry: or
- (d) produce the document or record.”

There is one small error, Mr. Chairman. Under (c) you would see “a-c-i-n-g”, could you put “a-c-t-i-n-g”. Delete “a-c-i-n-g” and insert “a-c-t-i-n-g”.

Mr. Chairman: In line two should be the word “acting”; the “t” is omitted. It is just a typo. In the amendment to clause 20 there is paragraph “c”, line 2, the last word. The amendment before us is to introduce a new subsection (6) in the form and wording as circulated in the amendment, subject to the amending of the word appearing at the end of paragraph “c” which should read “acting”, a-c-t-i-n-g.

Sen. Al-Rawi: If I could just express my gratitude, through you, Mr. Chairman, for the acceptance of this amendment. I am happy that you have accepted it. Thank you for allowing us to agree on that point.

Sen. Panday: If I had a bugle, I would lend it to you. [*Laughter*]

Sen. Al-Rawi: Thank you so much, and I play the bugle.

Question put and agreed to.

Clause 20, as amended, ordered to stand part of the Bill.

Clause 21.

Question proposed, That clause 21 stand part of the Bill.

Sen. Panday: Mr. Chairman, I beg to move that clause 21 be amended as follows:

- A. In subclause (1)(b)—
 - (i) delete the words “a warrant” and substitute the words “an Order of the Court;”
 - (ii) insert after the word “conduct” the words “and seize any document or record found therein.”
- B. In subclause (2) delete the words “a Magistrate for a warrant” and substitute the words “the Court for an Order”.

Sen. Prescott SC: Mr. Chairman, may I suggest a slightly different approach. It will now read, if we accept the amendment:

“any document or record found therein for the purposes of an audit...”

You may want to put “for the purposes of an audit” before. So it would read that he:

“ may by an Order of the Court enter and inspect any premises occupied...for the purposes of an audit.”

Let me just say that B could probably read:

“by an Order of the Court for the purposes...”

Sen. Panday: No objection. It makes it more elegant.

Sen. Prescott SC: That is what I am trying to achieve.

Sen. Al-Rawi: Just to point out, learned senior, Sen. Prescott, the chapeau at 21(1):

“Where the Commissioner is conducting an audit or enquiry into compliance...”

I humbly suggest that if we were to introduce the words as recommended by Sen. Prescott SC, that we may be limiting the “entry and seizure and taking away for the purposes of an enquiry” by confining it only to audit.

Sen. Prescott SC: Let us include enquiry.

Sen. Al-Rawi: If he is including “enquiry” then I would be more comfortable with that.

Mr. Chairman: Where are you inserting it, after “person”?

Sen. Prescott SC: I am saying:

“by an Order of the Court for the purposes of an audit or enquiry enter and inspect...”

Mr. Chairman: I see.

Sen. Al-Rawi: In terms of elegance as well, if we were refitting clause 21 at the word “by” in the chapeau, because you have got “Order of the Court” applying to both A and B, you could put “by an Order of the Court” and then you could go:

- “(a) require the production of any document or record that is in custody; and
- (b) enter and inspect any premises occupied by a person subject to an enforceable code of conduct and seize and take away any document.”

I guess “seize” would imply “take away” and then remove “for the purposes of an audit or enquiry” from the end of that, because it is taken care of in the chapeau.

Sen. Panday: We have no objections to that.

Sen. Al-Rawi: One last point, Mr. Chairman. Between A and B, the use of the word “or”, just for rules of interpretation.

Sen. Panday: Just one second, Senator.

Sen. Al-Rawi: Sure. I am not sure if it should be “and or” or if “or” takes care of “and” as well.

Mr. Chairman: “And or” will suit you?

11.15 p.m.

Sen. Al-Rawi: I am not sure, maybe the technocrats could tell us.

Sen. Panday: Senator, am I right if I say after the word “conduct” in the second to last line in 21(1)(b), we insert “and seize any document or record found therein” and then continue “for the purposes of an audit or enquiry”?

Sen. Al-Rawi: I would delete the words “for the purposes of an audit or enquiry” because it is in the chapeau already. The chapeau starts with “Where the Commissioner is conducting an audit or enquiry”—he may do certain things and then it is taken care of in (a) and (b).

I am just wondering whether take away is incorporated into seize as well, that is another point I would like to get some guidance on, because you can seize it on the premises but may not be able to take it away, which is a concept of law.

Sen. Panday: Just one second, please. Yes, we agree because it is contained higher; so we say “and seize any document or record found therein relevant to the audit or enquiry”.

Sen. Al-Rawi: I do not know if you want to fetter because it is for the purposes—okay, if I could just explain where I am coming from.

Sen. Panday: Yes.

Sen. Al-Rawi: In an Anton Piller Order, I would normally have the right to copy, seize and take away—three separate elements—

Sen. Panday: Yes.

Sen. Al-Rawi:—because I did not necessarily need to take it with me, and the right to copy must be included because there are copyrights on certain things as well, so those are three concepts. The other thing is that you would usually have a supervising attorney attending pursuant to an order of the court and a report is given. But I do not know if you want to necessarily confine it by the words suggested at the end of your recommendation, and that is for the purposes of that audit, because it must in its nature be associated with that purpose.

Sen. Panday: My instructions are the reason we need to place this is that you cannot seize any document but you are circumscribing a document which is relevant.

Sen. Al-Rawi: Agreed, but that is already contained in the common law under the rules of the Anton Piller, and in particular, the requirement for supervising attorney. It is specific law that you cannot go on a fishing expedition so you cannot seize anything, that is already in the common law.

Sen. Panday: But would it make any difference or any problems if we include it in the legislation?

Sen. Al-Rawi: No. I understand where you are coming from, I was just trying to give you the latitude for it.

Sen. Panday: Okay.

Mr. Chairman: So you are retaining “for the purposes of an audit or enquiry” at the end of 21(1)(b)?

Sen. Panday: No, not “for the purposes”. It says “and seize any document or record found therein relevant to the audit or the enquiry”, so it is not a wild chase to go and pick up anything and—.

Sen. Al-Rawi: Do you want to include as well the right to copy and take away?

Sen. Panday: Not really, because as you said, the common law covers that area—the Anton Piller Order. We have this here to prevent you from going at any document but it must be relevant to the audit or enquiry.

Sen. Al-Rawi: Much obliged.

Sen. Panday: Thank you.

Mr. Chairman: And you had something in subsection (2)?

11.20 p.m.

Sen. Panday: In subclause (2) delete the words “a Magistrate for a warrant” and substitute the words “the Court for an order”.

Sen. Al-Rawi, and other Senators, the problem that you were advancing about the appointment of the commissioner earlier, this is where you are introducing some safeguards where you are no longer going to a magistrate. When you say “court” here you mean High Court. It is not for a warrant but an order. When you

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have to go for an order, under the new civil proceeding rules, you come with the notice of application, Senator, Senior Counsel and it must be supported by an affidavit.

Sen. Al-Rawi: Yes, but this may be done, one, ex parte, so there is not necessarily the need for requirement of notice. Two, I am grateful that you have taken the recommendation. On Friday we went through it in detail. I am grateful to my colleague Senator—

Sen. Panday:—and we are grateful to both of you.

Sen. Al-Rawi: Sorry, Minister Partap.

Sen. Panday: Thank you so much.

Mr. Chairman: I am having a little difficulty. At subclause (2), it says:

“Where a private enterprise refuses to allow the Commissioner or any person acting for or under him to enter and inspect premises under subsection (1)(a)”

But subsection (1)(a) does not say anything about enter and inspect premises.

Sen. Panday: Sorry, Sir, it should be 1(b). I apologize. Delete “(a)” and replace it with “(b)”.

Mr. Chairman: The amendment before the Senate is as follows: That clause 21(1), at the end of the chapeau, to introduce the words “an Order of the Court—” and in paragraph (a) to remove the words “an Order of the Court” and in paragraph (b), to read “enter and inspect any premises occupied by a person, subject to an enforceable code of conduct and seize any document or record found therein relevant to the audit or enquiry.”

In subclause (2), the reference in line 3 to (1)(a) should be (1)(b) and to delete the reference in line 4 “a Magistrate for a warrant” and replace it with “the Court for an Order”.

Question put and agreed to.

Clause 21, as amended, ordered to stand part of the Bill.

Clauses 22 to 26 ordered to stand part of the Bill.

Clause 27.

Question proposed, That clause 27 stand part of the Bill.

Sen. Drayton: I was wondering if in clause 27, whether we should put in a time premium there, which is usually three months after the end of the year.

Sen. Panday: Yes, Sen. Drayton. Thank you very much. We will take that on board. Mr. Chairman, clause 27(1), in the second line after the word “Parliament”, insert the following words “within”—Sen. Drayton, do you have a time period ?

Sen. Drayton: Three months.

Sen. Panday: —“within three months after the close of the financial year.” Thank you very much, Sen. Drayton.

Sen. Al-Rawi: The Interception of Communications Act used three months after the end of each year. Do you want to confine it to financial year?

Sen. Panday: Well, it does not make a difference really, in that—why did we say that? What happened is that we had accepted Sen. Drayton’s recommendation and hence the reason for using the words. I have been further advised that, to synchronize the legislation, we should indeed say at the end of the calendar year, so we would have all the legislation synchronized.

Sen. Al-Rawi: That is my thought. Thank you.

Sen. Panday: Thank you very much, Sir.

Mr. Chairman: The amendment proposed for clause 27 is to insert after “Parliament” in line 2, the words “within three months after the end of the calendar year”.

Question put and agreed to.

Clause 27, as amended, ordered to stand part of the Bill.

Clause 28.

Question proposed, That clause 28 stand part of the Bill.

Sen. Al-Rawi: Mr. Chairman, the issue is published where, how often, *Gazette*, newspapers, how many of them? Because this has such wide-ranging application, I think that it would be important of us to—

Mr. Chairman: All he says is “by Order”.

Sen. Al-Rawi: “shall by Order publish a list of countries...”

Mr. Chairman: *Gazette*.

Sen. Al-Rawi: Corrected, gazetted. My recommendation is that we look at publication in at least two daily newspapers as well.

Sen. Panday: One would not know the extent of the report and we humbly submit that the *Gazette* will be the official document.

Sen. Al-Rawi: The reason I suggested is, for your consideration, the safe harbour provisions, if you want to call it that, the cross-border jurisdictional flow points, apply to the wide private sector and that is where I am really concerned that they have notice of at least which countries they are allowed to interact with. I mean—

Sen. Panday: My advice is that the *Gazette* is as good as any and in those circumstances—[*Interruption*]

Sen. Al-Rawi: Mr. Chairman, most respectfully, I am a lawyer with access to the *Gazette* and I hardly ever come across these things. I cannot accept that the *Gazette* is—[*Interruption*]

Sen. Panday: Okay, the hon. Attorney General is very generous at this time. Clause 28 would read like this:

The Commissioner shall by Order publish in the *Gazette* and at least—

How many newspapers you wanted?

Sen. Al-Rawi: I would suggest two. It is the norm.

Sen. Panday:—two newspapers—

Mr. Chairman: Daily newspapers.

Sen. Panday:—two newspapers in daily circulation in Trinidad and Tobago.

Sen. Al-Rawi: Much obliged.

Sen. Panday: Which one do you have an interest in?

Sen. Al-Rawi: Anyone that published the PP 12-page manifesto. I cannot see that our list would be longer than that.

Mr. Chairman: The amendment before us, in clause 28 is to insert after the word “publish”, the words “in the *Gazette* and at least two newspapers in daily circulation in Trinidad and Tobago.”

Question put and agreed to.

Clause 28, as amended, ordered to stand part of the Bill.

Clauses 29 to 36 ordered to stand part of the Bill.

Clause 37.

Question proposed, That clause 37 stand part of the Bill.

Sen. Prescott SC: Mr. Chairman, while Sen. Dr. Armstrong gathers his thoughts, clause 37 troubles me, the disposal of personal information. We have been told before that regulations are going to follow the primary legislation and it is disconcerting. Can we have some assurances about what are likely to be in these regulations about how, where or when disposal should take place?

Sen. Panday: The regulations are subsidiary legislation and as such, there will be an holistic review of the Act. As the Act is being implemented, we will have the regulations coming on board and we hope that would be very soon after the proclamation of the—or before the proclamation even, we will have the subsidiary legislation.

Sen. Dr. Balgobin: Are those regulations to come back here for approval?

Sen. Panday: Yes, they will come here. I think it is section—[*Interruption*]

Sen. Dr. Balgobin: Not by negative resolution.

Sen. Panday: Negative resolution.

Sen. Dr. Balgobin: No, no. We want it to be affirmative. Would you consider that? I will tell you why. The disposal of data that is held on citizens is a very sensitive subject, and much of this data is not going to be held in paper form, so you are going to need a fairly comprehensive approach to the destruction of data or the disposal of data that you are holding on people. Those regulations are going to have to—[*Interruption*]

Sen. Panday: Senator, you will remember the Standing Orders which state that, on the laying of a negative resolution, I think we have 40 days in which to file a Motion to have it debated. Of course, it will come to the Parliament and any Senator will have that opportunity to file a Motion to have it debated if they so desire.

Sen. Dr. Balgobin: Yes, I accept that and I thank you for graciously reminding me of the rules. I would, however, like to point out that there is something of a distinction between what is enunciated in the rules and what actually occurs, and that is that the regulations fly right by us. I have never, in this place, seen an instance where someone has filed a Motion to treat with regulations that are subject to negative resolution. However, if I may just say, the work that

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you did for the FIU, I think, was really very powerful, because you brought the regulations with you. I would have thought that new legislation like this, as complex as it is, would benefit from a quick review by—[*Interruption*]

Sen. Panday: Do you remember Act No. 6 of 2006, which deals with the appointment of a commissioner of police? Do you remember that regulation was subjected to a negative resolution and the Opposition filed a Motion and had it debated? The question is if you come with a negative resolution, it becomes law at the time of laying and, of course, it could be debated and amended if necessary. But to save parliamentary time, we thought it was necessary to come with negative resolution, but there is nothing clandestine about that.

11.35 p.m.

Sen. Al-Rawi: Could you refresh my memory? Is it positive or negative resolution that we have in the regulations under both the Interception of Communications and Freedom of Information Acts? I believe it is affirmative; I am not sure.

Sen. Ramlogan: No, it is negative.

Sen. Al-Rawi: For both?

Sen. Panday: FOI is negative.

Sen. Ramlogan: FOI certainly is negative, I know.

Sen. Al-Rawi: I think Intercept is positive.

Sen. Ramlogan: The Intercept, yes, we had put positive; but FOI is negative.

Question put and agreed to.

Clause 37 ordered to stand part of the Bill.

Clauses 38 and 39 ordered to stand part of the Bill.

Clause 40.

Question proposed, That clause 40 stand part of the Bill.

Sen. Panday: Mr. Chairman, there are circulated amendments as follows:

Subclause (2)(a):

Insert after the word “professional”, the words “or an employee or agent of a health care body at the direction of a health care professional”.

New subclause (3)(g):

After paragraph (e), remove the word “and” after the semicolon and insert, at the end of (f), “;and” and we introduce a new paragraph (g) to read:

“the Emergency Ambulance Services and Emergency Medical Personnel Act, 2009.”

Sen. Al-Rawi: Mr. Chairman, I believe they can take care of that in the tidying up of the clause on marginal notes.

Mr. Chairman: Do we have a chapter for that? The marginal note for the others had it. Is there something else?

Sen. Panday: In (e), the Nurses and Midwives Registration Act, delete “and” and insert it after the word “Act” in paragraph (f).

Mr. Chairman: My Clerk reminds me that you have not consolidated the 2009 Act as yet, therefore you do not have a marginal note.

Question put and agreed to.

Clause 40, as amended, ordered to stand part of the Bill.

Clauses 41 to 43 ordered to stand part of the Bill.

Clauses 41 to 45.

Question proposed, That clauses 41 to 45 stand part of the Bill.

Sen. Dr. Armstrong: Mr. Chairman, under 44(a) something jumped out at me there and I do not know if anybody else has any concern about it. Under 44(a), it says that “the disclosure would not be an unreasonable invasion of...personal privacy”. What does that mean? How do you determine unreasonable invasion of professional or personal privacy?

Sen. Ramlogan: That concept is also one to be found in the Freedom of Information Act. The concept of reasonableness is a familiar legal concept which pervades the law.

Sen. Dr. Armstrong: It is just something that jumped out at me.

Sen. Ramlogan: It is a legal term that is almost omnipresent in the law.

Sen. Al-Rawi: Just a question for clarification, in clause 42, the chapeau says: “Except as provided under any other written law, personal information under the control of a public body may only be disclosed—

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- (d) to the Attorney General of Trinidad and Tobago for the purpose of, or in connection with, legal proceedings involving the State, where such disclosure is reasonably required in the interests of fairness.”

My concern there is that in law it may or may not cause an unfair advantage to the Attorney General, which is outside the rules of disclosure in the first place. People giving personal information to the State now under this Act do so with expressed conditions, and implied conditions if you look to the interpretation clause, clause 2, as it relates to personal information. So, potentially, (d) constitutes a movement away from the current principles of the law and is not even met with the kind of opportunity that paragraph (h) allows where you provide notice of your disclosure.

This is anchored in the concept of the fairness of disclosure generally at law and legal proceedings involving the State may include proceedings against the State. I do not know—insofar as a public body includes all corporations or companies in which the State has an interest and they could be legal companies—whether the State involvement is on a minority shareholding or not. This is a very curious clause.

Sen. Ramlogan: It may appear to be curious at first blush, but the point is that you would need to have this exception for the purpose of litigation, which is really what it has within its contemplation. Furthermore, the Attorney General, as custodian of the public interest—let us look at the recent example involving the welfare of the child where the parent refused to give permission for the child to remain in hospital. In evaluating whether the Attorney General wishes to make an application in the child’s interest to have the court determine whether the child should be a ward of the State, one would need to have access to the child’s medical records, for example. It is for that kind of situation and the endless possible permutations that one would anticipate that that clause would be properly placed in the Bill.

Mr. Chairman: Should you be required to give notice?

Sen. Al-Rawi: It could be met by the provision of notice, which is standard at law right now. The example that the Attorney General gave is a very good one. I could not object to that example. It could have been met by an application to make the child a ward of the court, of course, in normal circumstances, without the medical records. In fact, under the Children’s Life Fund, for instance, that could have been done as well through recent legislation.

My concern, really, is the concepts of disclosure which are very serious concepts at law.

Sen. Ramlogan: The notice provision to which we adverted earlier does not really have a time frame prescribed to it but it provides for the giving of notice. These are matters, really, that could be dealt with in the regulations if needs be. Normally, one would have to write to request information, but I do not think it is appropriate to legislate it in the body of the Act itself. It is not that the Attorney General would go with a ladder and hammer to try to get it out. There is a process, obviously.

Sen. Prescott SC: I wonder, Mr. Chairman, whether the Attorney General would give consideration to some form of words that exclude proceedings involving citizens against the State, so that the Attorney General does not appear to be—

Sen. Ramlogan: Citizens against?

Sen. Prescott SC: Legal proceedings where the State and the citizen are the combatants. I understand your explanation about wardship and so on, but this appears to give the Attorney General an unfair advantage over the citizen who may bring action against him.

Sen. Ramlogan: I see your point. The only concern I have is that you may run the risk of someone simply filing an action against you—

Sen. Prescott SC: Against the State?

Sen. Ramlogan: Yes, for the purpose of avoiding your getting disclosure to documents. Suppose, for example, it touches and concerns a matter of national security that the Central Authority had an interest in and the person sees that exception and files an assault action against a police officer or some other action against the State thereby debarring you from access to the information. You see what I mean?

Sen. Prescott SC: That is a clever piece of footwork, yes, but we need to be sure that we have not given the Attorney General—

Sen. Ramlogan: I agree.

Sen. Prescott SC: Would you like to think about it some more?

Sen. Panday: Would you be happy if, after the word “fairness” in subparagraph (d), we insert “and prior notice of such disclosure is given to the owner of the personal information”?

Sen. Ramlogan: I do not mind that, if it will satisfy—

Sen. Panday: Sen. Prescott?

Sen. Prescott SC: Would you mind repeating it?

Sen. Panday: After the word “fairness” in 42(d) insert “and prior notice of such disclosure is given to the owner of the personal information”.

Sen. Prescott SC: The owner there means?

Sen. Dr. Balgobin: [*Inaudible*]

Sen. Panday: To whom the information relates, yes.

Sen. Prescott SC: Not the owner.

Sen. Dr. Balgobin: [*Inaudible*] [*Crosstalk*]

Sen. Panday: It seems to me I am learning law.

Mr. Chairman: The amendment under consideration is that paragraph (d) of clause 42, the insertion after the word “fairness”, in the last line, the words “and prior notice of such disclosure is given to the person to whom the information relates”.

Sen. Al-Rawi: Mr. Chairman, if we could just glance at 42(e) as well. That is again disclosed:

“to an investigative body specified by the Minister by Order, on the written request of the investigative body, for the purpose of investigating compliance with any written law or carrying out a lawful investigation, if the request specifies the purpose and describes the information to be provided;”

11.50 p.m.

Now at law as my learned colleague, Sen. Panday would know, when we do discovery, particularly in civil litigation there are classes of information that are privileged and that you do not disclose. This is to circumvent that potentially. So, I have concerns about that as well.

Sen. Panday: You are speaking about privileged information.

Sen. Al-Rawi: Yes, you see—I am in civil proceedings required to make disclosure. Standard disclosure, for instance, under the rules, the Civil Procedure Rules, would require I state documents that I will produce and those which I will not produce on the basis of an objection or privilege.

Sen. Panday: That is civil law, but this is for criminal investigation.

Sen. Al-Rawi: No, respectfully, it is not because you may be investigating an audit. In the course of an audit or an enquiry, and one is invoking these kinds of powers, you may enquire into things which, at first, are civil and then lead to criminal. I accept that this Act deals with offences and therefore, the criminal realm, but in getting there we may traverse civil aspects. Even in criminal disclosure there are privileges that prevail as well.

Sen. Panday: Example?

Sen. Al-Rawi: Well, unfortunately, I am not a criminal practitioner, but I would imagine that there are—*[Interruption]*

Sen. Panday: Lawyer/client relationships.

Sen. Al-Rawi: Yes. For instance, attorney/client relationships. Remember, this applies to information banks in attorneys-at-law's offices as well.

Now, I believe that there is a clause in the Bill that says subject to any written law. I do not know if the written law includes the codification of LPP (Legal Professional Privilege)? *[Interruption]* It does? Okay.

Sen. Ramlogan: Senator, the point is one that caused me a little bit of trouble but I think as rightly pointed out, this really applies to information held by a public body and you would not find those situations applying in the case of a public body holding information. So, the concern is a valid one but it would not apply here.

Sen. Al-Rawi: If you would give me just a moment to double-check the definition but thanks for the clarification so far.

Sen. Ramlogan: Sure! Fair enough. Clause 42: "Except as provided under any other written law," so there is also that, "personal information under the control of a public body may only be disclosed—"You have the exception; "except as provided under any other written law". So you have that which will cover the other situations in appropriate cases but it is only in information for a public citizen, not a private citizen.

Mr. Chairman: Do you need more time, Sen. Al-Rawi?

Sen. Al-Rawi: Yes, please. Sorry, Mr. Chairman.

Sen. George: "But what de hell is dis, everybody waiting on you, it is late yuh know."

Sen. Ramlogan: "Boy, yuh back eh huttin' yuh boy?" *[Laughter]*

Sen. Panday: "Take yuh time."

Sen. Al-Rawi: Mr. Chairman, if we look at page 6, under definition of public body. And we look at letter “j” as in Juliet, “a body corporate or an unincorporated entity in relation to any function that it exercises on behalf of the State, or which is supported, directly or indirectly by Government funds and over which the Government is in a position to exercise control,”

11.55 p.m.

That causes me some concern, the explanation. That is on page 6, “j” which broadens the concept of public body into any body corporate in which the State may have an interest.

Sen. Ramlogan: That is right, because once the State—the RHAs, for example, are defined as body corporate and many other statutory bodies and so on, but the point is this definition is in keeping with what you will find in the Freedom of Information Act. In the definition section, you will see that a “public body” is described along these lines and it is probably replicated from that, but it is already known to us in law that once the State has that interest, under the Freedom of Information Act, we have given the citizen a right to access information held by the State where the State has even a controlling interest or an indirect. Correspondingly now, what we are doing is giving the State the right to access from its own bosom, information held relative to investigations and so on and that is it.

Sen. Al-Rawi: Thank you.

Sen. Dr. Balgobin: Could I just make a quick point on that definition as you have raised it?

Sen. Ramlogan: Sure. You seem to be familiar with this.

Sen. Dr. Balgobin: It says “owned and controlled by the State”, but there are instances where it is not owned by the State but controlled by the State.

Sen. Ramlogan: Yes.

Sen. Dr. Balgobin: Or the State has an indirect—so it should be “and or”

Sen. Ramlogan: Actually, that is a good point.

Sen. Dr. Balgobin: Or indirectly owned or whatever.

Sen. Ramlogan: That is a valid observation. Thank you very much, Senator.

Mr. Chairman: We are going to go back to clause 41.

Question put and agreed to.

Clause 41 ordered to stand part of the Bill.

Clause 42.

Question proposed, That clause 42 stand part of the Bill.

Mr. Chairman: The amendment before us is that in clause 42(d), that we insert after the word “fairness” the words “and prior notice of such disclosure is given to the person to whom the information relates.”

I would just read over the amendment. At subclause (d) after the word “fairness”, insert the words “and prior notice of such disclosure is given to the person to whom the information relates.”

Sen. Panday: Mr. Chairman, “the person to whom the personal information relates”.

Mr. Chairman: You want to put in “personal” before information.

Sen. Panday: Yes, thanks. [*Crosstalk*]

Question put and agreed to.

Clause 42, as amended, ordered to stand part of the Bill.

Clauses 43 to 45 ordered to stand part of the Bill.

Clause 46.

Question proposed, That clause 46 stand part of the Bill.

Sen. Panday: Mr. Chairman, in clause 46(1)(a) insert after the word “;” the word “and”.

Question put and agreed to.

Clause 46, as amended, ordered to stand part of the Bill.

Clauses 47 and 48 ordered to stand part of the Bill.

Clause 49.

Question proposed, That clause 49 stand part of the Bill.

Sen. Panday: Mr. Chairman, in clause 49:

- A. Renumber clause 49 as 49(1);
- B. Insert after subclause 49(1) as renumbered the following:

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“(2) An Order under subsection (1) shall be published in the *Gazette* and two newspapers in daily circulation in Trinidad and Tobago.”.

Sen. Al-Rawi: Thank you for accepting my amendment, hon. Senator.

Sen. Panday: I will get you a trumpet on the next occasion for your Christmas.

Sen. Al-Rawi: It is coming close well, happy anniversary to you. It is now 12.01 a.m. so it is a mark of greatness. [*Desk thumping and crosstalk*]

Question put and agreed to.

Clause 49, as amended, ordered to stand part of the Bill.

Sen. Ramlogan: I pause to note that we have reached our halfway mark on this Bill, Sir. [*Desk thumping*]

Clause 50.

Question proposed, That clause 50 stand part of the Bill.

Sen. Dr. Armstrong: In clause 50(5), at the top of page 35—

Sen. Al-Rawi: Through you, Mr. Chairman, I had actually raised the concept of Minister in our discussions, but felt that insofar as it was a public body, subject to the discretion of the Minister, in any event, there was no real difficulty in the Minister determining the appeal. Is that what you were alluding to, Sen. Dr. Armstrong?

Sen. Dr. Armstrong: No, Sen. Deyalsingh raised it, and I have it as a note here that he raised it.

Sen. Al-Rawi: I think we are okay with it.

Sen. Panday: Thank you.

Question put and agreed to.

Clause 50 ordered to stand part of the Bill.

Clause 51.

Question proposed, That clause 51 stand part of the Bill.

Sen. Panday: Mr. Chairman, clause 51 is amended as follows:

In subclause (2) delete all the words after the word “means” and substitute the words “title, business address, business telephone and facsimile number and business e-mail of an official or employee of the public body.”

Sen. Prescott SC: Mr. Chairman, before you proceed, may I just enquire, what precisely is the period in which the commissioner is expected to make this disclosure of his index? Can he go beyond a two-year period for example or a three-year period? Is there a maximum? In the chapeau we see that the commissioner shall—

Sen. Panday: In clause 51(1) it says.

“The Commissioner shall publish periodically but not less than annually...”

Sen. Prescott SC: And not more than, what? In short, can he do it every five years or whenever he chooses?

Sen. Panday: May I humbly ask, why do you need the outer limit? We said not less than annually.

Sen. Prescott SC: Because he could expand it to be on his term of office.

Mr. Chairman: I did not quite hear you.

Sen. Prescott SC: Sorry. Clause 51 requires him to do it not less than annually, and one wonders if there is no outer limit to the reporting period.

Mr. Chairman: He was doing it too often.

Sen. Prescott SC: No, he shall publish periodically but not less than annually, what does that mean?

Sen. Panday: At least once a year.

Sen. Prescott SC: At least once a year, that is what it means?

Mr. Chairman: Yes, that is what I took it to mean. No wonder you were complaining that he was publishing it too often.

Sen. Prescott SC: Well, I am chagrined. Thank you very much.

Question put and agreed to.

Clause 51, as amended, ordered to stand part of the Bill.

Clause 52.

Question proposed, That clause 52 stand part of the Bill.

Sen. Panday: Mr. Chairman, clause 52 is amended as follows:

- A. In subclause (1) delete the words “a citizen of or resident”.
- B. Delete subclause (4).

12.10 a.m.

Mr. Chairman: The amendment before us is in subclause (1) of clause 52, that we delete the words “a citizen of or resident”.

Sen. Panday: Delete the words “a citizen of or resident”.

Mr. Chairman: So it would read “every individual who is in Trinidad and Tobago”.

Sen. Panday: Yes.

Mr. Chairman: And the proposal is that the whole of subclause (4) of clause 52 be deleted.

Question put and agreed to.

Clause 52, as amended, ordered to stand part of the Bill.

Clauses 53 to 58 ordered to stand part of the Bill.

Clause 59.

Question proposed, That clause 59 stand part of the Bill.

Sen. Panday: Mr. Chairman, in clause 59, delete the words “Commissioner written” and substitute the words “Commissioner a written”. Or we could insert “a” between the words “Commissioner” and “written”.

Mr. Chairman: You just want to insert “a” between “Commissioner” and “written”?

Sen. Panday: Yes.

Question put and agreed to.

Clause 59, as amended, ordered to stand part of the Bill.

Clauses 60 to 63 ordered to stand part of the Bill.

Clause 64.

Question proposed, That clause 64 stand part of the Bill.

Sen. Panday: Mr. Chairman, in clause 64(3) delete the words “Deputy Commissioner”—Mr. Chairman, all we had to do was put an “s” after “Commissioner” and make it “Commissioners”. Mr. Chairman, my information from the experts is that we have to delete the words “Deputy Commissioner” and substitute it with “Deputy Commissioners”.

Mr. Chairman: And that is where it occurs—the last two words.

Sen. Panday: And my explanation, it is because of the way the subclause is drafted.

Mr. Chairman: The amendment under consideration at clause 64(3) is to delete the reference to “Deputy Commissioner”, the last two words of that subclause and replace it with “Deputy Commissioners”.

Question put and agreed to.

Clause 64, as amended, ordered to stand part of the Bill.

Clauses 65 to 68 ordered to stand part of the Bill.

12.15 a.m.

Clause 69.

Question proposed, That clause 69 stand part of the Bill.

Sen. Abdulah: Mr. Chairman, on page 42, the heading under Part IV, there is a typographical error, “Protection of Personsal” there is an “s” that should be deleted there.

Mr. Chairman: I did not quite catch where it was.

Sen. Abdulah: Sorry; page 42, Part IV the subhead, Protection of Personal Data by the Private Sector.

Mr. Chairman: An extra “s”.

Sen. Abdulah: There is an extra “s” in there. There is “Personsal data” it should be “Personal”, in the heading, yes.

Mr. Chairman: At the heading of Part IV the typographical error in the word “Personal” the “s” comes out, so it will read “Protection of Personal Data by the Private Sector”.

Question put and agreed to.

Clause 69, as amended, ordered to stand part of the Bill.

Clauses 70 to 75 ordered to stand part of the Bill.

Clause 76.

Question proposed, That clause 76 stand part of the Bill.

Sen. Panday: Mr. Chairman, clause 76(2)(a), insert after the word “professionals” the word—sorry “professional” the words “or an employee or agent of a health care body at the direction of a health care professional”. Are you there with me, Mr. Chairman?

Mr. Chairman: Yes, proceed.

Sen. Panday: Thank you very much. And in subclause (3), insert after paragraph (f), the following new paragraph (g). “The Emergency Ambulance Services and the Emergency Medical Personnel Act; 2009”.

Mr. Chairman: I am sure it is not “the” we have “the” in the chapeau.

Sen. Panday: Okay. Then “Emergency Ambulance Services, Emergency Medical Personnel Act; 2009”. And also, Mr. Chairman, if we go down in 3 again—go back to (3)—(3) paragraph (e) delete the word “and”—is that a colon or semicolon?—and in (f) after the word “Act”; and insert “and”, delete the “.”; insert a “;” and insert the word “and” and then we have, right—thank you.

12.20 a.m.

Mr. Chairman: The amendments under consideration are the insertion at paragraph (a) of clause 76(2), after the word “professional” in line 1, the words “or an employee or agent of a health care body at the direction of a health care professional”, and at subclause (3) the deletion of the word “and” at the end of paragraph (e) and the deletion of the “.” at the end of (f), the insertion of the word “and” and the introduction of a new paragraph (g), “Emergency Ambulance Services and Emergency Medical Personnel Act, 2009”.

Question put and agreed to.

Clause 76, as amended, ordered to stand part of the Bill.

Clauses 77 to 81 ordered to stand part of the Bill.

Clause 82.

Question proposed, That clause 82 stand part of the Bill.

Sen. Panday: Mr. Chairman, in clause 82(3), that would be on page 50, delete the words “Deputy Commissioner” and substitute the words “Deputy Commissioners”.

Mr. Chairman: The amendment before us is in subclause (3) of clause 82, to delete the reference to “Deputy Commissioner” in the penultimate and last lines and substitute it with “Deputy Commissioners”.

Question put and agreed to.

Clause 82, as amended, ordered to stand part of the Bill.

Clauses 83 to 93 ordered to stand part of the Bill.

Clause 94.

Question proposed, That clause 94 stand part of the Bill.

Sen. Panday: Mr. Chairman, in clause 94, delete the words “acquiesced in”, that would be in line 3.

Sen. Al-Rawi: A “,” after “acquiesced in”.

Sen. Panday: Delete the “,” and the words “acquiesced in”.

Mr. Chairman: What are you inserting?

Sen. Panday: No insertion, Sir.

Sen. Al-Rawi: In keeping it with other FIU, Mr. Chairman.

Sen. Panday: And the trumpet has been handed to you. Delete the words “whether or not the corporation has been prosecuted and convicted”—

Sen. Al-Rawi: “, whether or not”.

Sen. Panday: “, whether or not the corporation has been prosecuted or convicted” the penultimate and ultimate lines in 94—therefore, in those circumstances it would appear that we insert a full stop after the word “offence”.

Sen. Ramlogan: You do not need to.

Sen. Panday: Oh, sorry, sorry; the word is here. I did not see this, it is so far away.

Mr. Chairman: The amendment for consideration is the deletion of the “,” after “assented to” in line 3 as well as the words “acquiesced in” and the insertion of a “.” after the word “offence” in line 6 and the deletion of the words “whether or not the corporation is being prosecuted and convicted”.

Question put and agreed to.

Clause 94, as amended, ordered to stand part of the Bill.

Clauses 95 to 100.

Question proposed, That clauses 95 to 100 stand part of the Bill.

Clause 95 ordered to stand part of the Bill.

Clause 96.

Question proposed, That clause 96 stand part of the Bill.

Sen. Al-Rawi: Mr. Chairman, clause 96—I appreciate the intent of trying to amplify the sanction to better ensure compliance, but I am really quite uncomfortable with the concept in 96(1) of the annual turnover of the enterprise.

Sen. Panday: Hon. Senator, my instructions are, this phrase can also be found in the Electronic Transactions Act, which has been passed.

Sen. Al-Rawi: And which we took objection to as well, Mr. Chairman. However, I do want to point, in fairness, that it is open under the current rules of interpretation to take the “up to” as a maximum provision there. *[Interruption]* But I am really—and it is important for me to put it on the record—uncomfortable with the concept of annual turnover of the enterprise. I know I am outnumbered.

Sen. Panday: Okay, it is noted. Thank you.

Question put and agreed to.

Clause 96 ordered to stand part of the Bill.

Mr. Chairman: I am going to repeat that. We are dealing with clauses 95 to 100.

Sen. Dr. Balgobin: Mr. Chairman, if I may intervene just briefly, on clause 100—

Mr. Chairman: Can I just finish and we would come to that again, we would take it up to clause 99.

Sen. Dr. Balgobin: Oh, sorry, you just said 95 to 100.

Clauses 97 to 99 ordered to stand part of the Bill.

Clause 100.

Question proposed, That clause 100 stand part of the Bill.

Sen. Dr. Balgobin: Yes, 100(2), the negative resolution again, I want to raise it. I think that the legislation is sufficiently significant to justify a review by the Parliament of the regulations having regard to the fact that regulations like these ought to have come with this legislation even if it was in draft form. Recognizing that that has not happened, I would ask again. I know that you do not need my vote to get this through, but—

Hon. Senator: Hold on a minute.

Sen. Panday: The argument is that if you have an affirmative resolution, when it is laid it becomes operational. Sorry, sorry, no; a negative resolution once laid it becomes operational. Having regard to the legislative agenda, if you bring these resolutions they would probably clog up the legislative agenda. However, if a Member of Parliament thinks it is important enough to have it debated, as I say, the 40-day notice and we are going to debate it.

Mr. Chairman: All Senators would get notice of the regulations?

Sen. Panday: Yes, Sir, it will be circulated. When it is laid it is circulated.

Question put and agreed to.

Clause 100 ordered to stand part of the Bill.

Clause 101.

Question proposed, That clause 101 stand part of the Bill.

Sen. Panday: Clause 101, Mr. Chairman, 101(d), delete the word—

Mr. Chairman: The number.

Sen. Panday:—the number, sorry, “58” and substitute “57”. Delete the number “58”, that is the last line of (d) and substitute “57”.

Mr. Chairman: The amendment for consideration is the deletion in paragraph (d) of clause 101, the reference to “58” and substitute for it “57”.

Question put and agreed to.

Clause 101, as amended, ordered to stand part of the Bill.

Schedule.

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

Sen. Panday: Mr. Chairman, Schedule Part A, (section 8) “Form of Oath”, delete the word “an” and substitute the word “of”, that is the first line, and then in Part B—are you with me, Mr. Chairman?

Mr. Chairman: Yes, go ahead.

Sen. Panday: Yes, the same thing, delete the word “an” and insert the word “of”.

Mr. Chairman: For consideration is the Schedule both in Parts A and B the heading to read “Form of Oath” by deleting the word “an” and substituting “of” in both headings of Part A and B.

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): Thank you very much, Mr. President. I beg to move that the Senate be now adjourned to Tuesday, May 24, 2011 at 11.00 a.m.

Sen. Baptiste-Mc Knight: Why not Wednesday?

Sen. The Hon. S. Panday: Wednesday, the Lower House may occupy the Chamber.

Sen. Baptiste-Mc Knight: Thursday?

Sen. The Hon. S. Panday: Thursday is Cabinet and Friday the Lower House may be using this Chamber, hence tomorrow is the only—*[Interruption]* Pardon?

Sen. Al-Rawi: You could start now.

Sen. The Hon. S. Panday: You want to go now? *[Interruption]* I had indicated that tomorrow we would have done Trafficking in Persons Bill and then move on to Private Member's Day.

12.35 a.m.

However, Mr. President, in consultation with Sen. Subhas Ramkhelawan, he had asked that Private Member's Day not be held tomorrow and instead on the 31st. In those circumstances, I humbly ask my colleagues to be prepared for a very short Bill, the Bill by Justice, which is very short. It will only take a few minutes. It is merely giving justice—*[Laughter]*

Sen. Ramlogan: It is amending the law to create the Ministry of Justice.

Sen. The Hon. S. Panday:—amending the laws to create the Ministry of Justice, very, very short. *[Crosstalk]* It has been circulated. It was circulated some time ago, “An Act to amend certain enactments to provide for the vesting of functions and powers in the Minister of Justice”. And that is necessary.

Thank you.

Adjournment

Monday, May 23, 2011

Sen. Al-Rawi: Mr. President, I regret I did not catch that. Perhaps it is because it is the witching hour—little pass—but could you kindly repeat what it is, because I was in a little amazement as to the suggestion of the Hon. Leader of Government Business a little while ago. Could he please just restate—let me not be uncharitable—what is the agenda for tomorrow intended to be—today.

Sen. The Hon. S. Panday: I have indicated that tomorrow is Private Member's Day and the Private Members do not wish to have tomorrow as their day. In the circumstances we shall complete the Trafficking in Persons Bill and we shall also be doing a Bill to vest certain functions in the Ministry of Justice.

Sen. Beckles: Would the Bill be in that order.

Sen. The Hon. S. Panday: Not necessarily in that order.

Sen. Beckles: Until what time we will be going.

Sen. The Hon. S. Panday: I will meet with you privately and tell you about that.

Sen. Beckles: Be careful how you say that.

Question put and agreed to.

Senate adjourned accordingly,

Adjourned at 12.38 a.m.