

*Leave of Absence*

*Tuesday, April 03, 2012*

**SENATE**

*Tuesday, April 03, 2012*

The Senate met at 1.30 p.m.

**PRAYERS**

[MADAM VICE-PRESIDENT *in the Chair*]

**LEAVE OF ABSENCE**

**Madam Vice-President:** Hon. Senators, I wish to inform you that the President of the Senate, Sen. The Hon. Timothy Hamel-Smith, is currently acting President of the Republic of Trinidad and Tobago.

Hon. Senators, I have granted leave of absence to Sen. Nicole Dyer-Griffith and Sen. Elton A. Prescott SC who are both out of the country.

**SENATORS' APPOINTMENT**

**Madam Vice-President:** Hon. Senators, I have received the following correspondence from His Excellency the Acting President, Timothy Hamel-Smith:

“THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

By His Excellency TIMOTHY HAMEL-SMITH,  
Acting President and Commander-in-Chief  
of the Republic of Trinidad and Tobago.

/s/ Timothy Hamel-Smith  
Acting President.

TO: MR. ARNOLD RAM

WHEREAS the President of the Senate has temporarily vacated his office of Senator to act as President of the Republic of Trinidad and Tobago:

NOW, THEREFORE, I, TIMOTHY HAMEL-SMITH, Acting President as aforesaid, acting in accordance with the advice of the Prime Minister, in exercise of the power vested in me by section 40(2)(a) and section 44 of the Constitution of the Republic of Trinidad and Tobago, do hereby appoint you, ARNOLD RAM, to be temporarily a member of the Senate, with effect from 3<sup>rd</sup> April, 2012 and continuing during the period that Senator Timothy Hamel-Smith has temporarily vacated his Office as Senator to act as President of the Republic of Trinidad and Tobago.

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 2<sup>nd</sup> day of April, 2012.”

*Senators' Appointment*

*Tuesday, April 03, 2012*

“THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

By His Excellency TIMOTHY HAMEL-SMITH,  
Acting President and Commander-in-Chief  
of the Republic of Trinidad and Tobago.

/s/ Timothy Hamel-Smith  
Acting President.

TO: ARCHBISHOP BARBARA BURKE

WHEREAS Senator Nicole Dyer-Griffith is incapable of performing her duties as a Senator by reason of her absence from Trinidad and Tobago:

NOW, THEREFORE, I, TIMOTHY HAMEL-SMITH, Acting President as aforesaid, in exercise of the power vested in me by section 44(1)(a) and section 44(4)(a) of the Constitution of the Republic of Trinidad and Tobago, do hereby appoint you, ARCHBISHOP BARBARA BURKE, to be temporarily a member of the Senate, with effect from 3<sup>rd</sup> April, 2012 and continuing during the absence from Trinidad and Tobago of the said Senator Nicole Dyer-Griffith.

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 2<sup>nd</sup> day of April, 2012.”

“THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

By His Excellency TIMOTHY HAMEL-SMITH,  
Acting President and Commander-in-Chief  
of the Republic of Trinidad and Tobago.

/s/ Timothy Hamel-Smith  
Acting President.

TO: DR. LENNOX BERNARD

WHEREAS Senator Elton A. Prescott is incapable of performing his duties as a Senator by reason of his absence from Trinidad and Tobago:

NOW, THEREFORE, I, TIMOTHY HAMEL-SMITH, Acting President as aforesaid, in exercise of the power vested in me by section 44(1)(a) and section 44(4)(c) 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 3<sup>rd</sup> April, 2012 and continuing during the absence from Trinidad and Tobago of the said Senator Elton A. Prescott.

*Senators' Appointment*

*Tuesday, April 03, 2012*

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 2<sup>nd</sup> day of April, 2012."

**OATH OF ALLEGIANCE**

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

Sen. Arnold Ram, Archbishop Barbara Burke and Dr. Lennox Bernard.

**PAPER LAID**

Administrative Report of the Sangre Grande Regional Corporation for the period 2010—2011. [*The Minister of Public Utilities (Sen. The Hon. Emmanuel George)*]

**BACTERIOLOGICAL (BIOLOGICAL)  
AND TOXIN WEAPONS BILL, 2011**

[Fourth Day]

**Madam Vice-President:** Hon. Senators, the committee stage on the following Bill which was in progress when the Senate adjourned on Tuesday, March 20, 2012 will be resumed.

*Senate in committee.*

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

*Clause 4.*

*Question proposed:* That clause 4 stand part of the Bill.

**Dr. Rambachan:** Madam Chairman, I beg to move that clause 4 be amended as circulated.

In the definition of "biological agent", insert after the words "substance or virus" the words "whatever its origin or method of production".

**Sen. Al-Rawi:** Madam Chairman, I humbly propose to the hon. Senator, we consider deferring the issue of clause 4 as it is the definition section, until after we should have dealt with certain concerns arising in relation to other parts of the Bill. It is a practice which we have observed from time to time in the Senate.

**Madam Chairman:** Senator?

**Sen. George:** We could agree with that.

**Madam Chairman:** That is fine. Accepted.

*Clause 4 deferred.*

**1.45 p.m.**

*Clause 5, ordered to stand part of the Bill.*

*Clause 6.*

*Question proposed:* That clause 6 stand part of the Bill.

**Dr. Rambachan:** Madam Chair, I beg to move that clause 6 be amended as circulated:

6 A. By deleting subclause (1) and substituting the following subclause:

“(1) The Minister may, for the purposes of this Act, establish a Committee to be known as the Bacteriological and Toxin Weapons Committee (hereinafter referred to as “the Committee”) consisting of at least seven and not more than fifteen members as the Minister may from time to time appoint in writing.”

B. By inserting after subclause (1), the following clauses:

“(2) The members appointed under subsection (1) shall comprise—

(a) a medical doctor;

(b) a toxicologist;

(c) a geneticist;

(d) microbiologist; and

(e) no more than eleven persons who by virtue of their skill or experience can contribute meaningfully to the work of the Committee.

(3) The Minister shall appoint a Chairman and Deputy Chairman from the members of the Committee.”

C. By renumbering subclauses (2) and (3), as subclauses (4) and (5) respectively.

**Sen. Ramlogan SC:** Madam Chairman, just one further minor matter of detail. In the proposed amendment at 2(e) it is no more “than” 11 members as opposed to “that”. So it is no more “than” 11 members. In the circulated amendment B (2)(e), no more “than” as opposed to “that”.

**Sen. Dr. Balgobin:** Attorney General, by that same token, in B (2)(d), did you want to put in the letter “a” before microbiologist?

**Sen. Ramlogan SC:** We should yes, and “a” before microbiologist. Thank you.

**Prof. Ramkissoon:** I wonder if we do not want to include a representative from the National Health Surveillance Unit.

**Sen. Ramlogan SC:** I have no fundamental objection to that, save and except that there are 11 persons. We had discussed some of the core competencies. I have no doubt that someone like that would be relevant as to whether or not you want to legislate it, is a matter entirely for us. I would have thought, Senator, that could have been a matter that they would deal with in making up the rest of the membership. It is obviously a relevant discipline and position.

**Sen. Al-Rawi:** Madam Chair, I would want to agree with the hon. Attorney General that with the proposal as it is, we have a de minimis of certain people we consider to be absolutely essential and then others whom we assume would be appointed on the basis of ability to add to the thing which we hope to legislate. What concerned me, so I would want to echo the hon. Attorney General’s position, I think that it would be open to include those persons. I am also very cautious about casting a position that we may not be able to fill because that may become a difficulty. For instance, I do not know how many geneticists we have in Trinidad, just by way of example.

What concerns me though, for the consideration of the Members opposite and for Members of the Senate is, insofar as clause 7 deals with coordination of activities of other agencies and also insofar as this Bill proposes to deprive people of property, which is one of the main reasons we have the sections 4 and 5 exception, I am wondering if we wanted to include as an essential person to this panel, somebody with some form of judicial/legal training as a mandatory inclusion. The reason specifically would be to take conscious regard to the issue of property deprivation which is a subject feature of this Bill.

**Sen. Ramlogan SC:** Well, we are trying to strike a balance. You may recall that when this matter was being debated, one of the concerns raised was that there was in fact no specified and stipulated qualifications and expertise to comprise the committee. We had in fact explained that it is precisely to avoid a situation that occurred under the DNA legislation and others, where boards cannot be constituted because the competencies that have been stipulated in the law are not available in Trinidad and Tobago. We are a small society.

So to try and strike some measure of compromise and balance, we thought that we would include those that we felt—the Independent and the Opposition Benches had advocated ought to form part of the core competency. So we had a medical doctor, a toxicologist, a geneticist and a microbiologist. If there is the feeling that any one of these professions exist in such small numbers or there is a paucity of that talent that we should take it out, then please by all means speak now or forever let us hold our peace.

**Sen. Ramkhelawan:** I was wondering how many geneticists we had, through you, Chair.

**Sen. Ramlogan SC:** That was a suggestion I believe that—[*Interruption*]

**Sen. Dr. Balgobin:** The thing is, whether how much we have is only relevant to a point. If you are putting this kind of legislation in place, you are dealing with a certain type of material. If you are going to establish a committee to deal with a certain type of material, you have to have the competencies necessary to treat with it. If you do not have it—the thing is, there are geneticists on the island; it is not that we do not have any. We may not have a flood of them.

**Sen. Ramlogan SC:** The problem is not just finding—I mean, this was a suggestion made by Sen. Balgobin and we acceded to it. But the point is, it is a very valid practical point that the Government has been making throughout the debate. It is not just that people exist, it is that people exist but who are willing to serve, and that is also part of the problem. Sometimes you have people who exist but they are not willing—not everyone is prepared to devote their time to public service; it is a thankless job as we all know, and there is no big remuneration attached to it as well. So that if that is the feeling, I would want to propose that we delete the requirement of a geneticist, but obviously it would be captured in clause (e) which says that:

“no more than twelve persons who by virtue of their skill or experience can contribute meaningfully to the work of the Committee.”

Because that would obviously be a relevant discipline.

Similarly, Sen. Prof. Ramkissoon had mentioned the point about someone from the Health Surveillance Unit. I agree that that would be a relevant person. I would love to put them in, but I am worried about what should happen if that unit no longer exists in the future. It can change and then if that happens then you cannot, in law, constitute this committee and that presents problems of its own.

**Prof. Ramkissoon:** The role of that unit is in fact to look at what is going on with respect to diseases that are contagious in the region and around the world. They link up with PAHO and WHO. So I think they need to play a role here. I see a greater role for them to play here than a toxicologist, for example.

**Sen. Ramlogan SC:** Yes.

**Sen. Al-Rawi:** Madam Chairman, if I could add in to the development of the thought we are having. I accept the recommendations in the course of the debate relative to the expert disciplines involved, toxicology, geneticist, et cetera. My fear is the same as the hon. Attorney General's. Not only do we have to consider whether people are available and if they are willing, but in such a limited pool, we also have conflicts of interest.

Secondly, we have the factor that we have other legislation in Trinidad and Tobago which deals with similar subject matter, in fact, biotoxin weapons are covered by the Anti-Terrorism Act, and we do not have a committee established under that Act. If we jump back to the purpose of the dualist approach in bringing this legislation forward, the approach is to enact specifically Articles 1 and 4 being the most relevant of the Articles in the Convention into law, and to demonstrate in our legislation the method by which we seek to prohibit the development and stockpiling of these particular weapons.

I would think that it is open to us to have expert advice given to a committee by way of request for advice, similar to the way legal services are given, and advice on a particular point, by persons such as a toxicologist or a geneticist. I am fearful of—and I am putting it forward for everyone's consideration—specifying these two realms specifically because of the limited aspect.

Now, if I switch gears to what I think the other committee members ought to have for consideration, the fear in developing this type of legislation is that one of the positions put forward under a veil of ignorance is that, the Minister appoints these people, and therefore there is a Machiavellian thought that can come up that you may have someone who is interested in doing things that they ought not to do. That being the purpose, one of the shields is usually, well you have got a degree of independence or integrity associated to the persons who comprise the committee. Particularly, when you have a committee of this type that has extremely large and heavy powers, including the right to recommend to the Minister that you be deprived of property, et cetera.

That being the case, perhaps we could develop a formula to describe some form of person to take avail of the situation where the hon. Attorney General has said, you may have a current position that is modified in the future, et cetera. If we could have a formula to describe some form of public officer who serves in that capacity, even though we know that those persons, it is likely that they would normally be brought on to the committee, the point is to introduce a degree of perceived and apparent independence into the committee.

The second factor that I am sure the hon. Attorney General would have come back to, is my caution that we ought to include someone from a judicial background or a legal background specifically, perhaps a member nominated by the Law Association for instance, which could again provide a degree of supposed transparency in terms of integrity, as an appointee to the committee. So that we would be sure that the legal rights which we acknowledge in this Bill that we are about to trample upon would have some degree of conscious factor into the mind of the committee when it makes a recommendation to the Minister.

**Sen. Hinds:** Madam Chair, I am not prepared to dispose of the thought suggested by Sen. Prof. Ramkissoon as swiftly as others might. I think Sen. Prof. Ramkissoon made a very important point and there is no fear that we would be short on such a person. I take the Attorney General's point about if that unit is disbanded, but you are really looking for some core competencies on the one hand. But I think that Sen. Prof. Ramkissoon—some representative from that unit or from somewhere in the Ministry of Health should not be too hard to come by. I think that is a very worthwhile suggestion.

**Sen. Ramlogan SC:** Senator, your point has fallen on fertile soil and I do not disagree with it. I feel that is obviously a relevant competence and discipline that ought properly to be part of the committee. What I propose to do however, in light of the fact that Ministries restructure and reorganize all the time and bearing in mind that we want to legislate for the future, I was going to suggest that we put a representative from the Ministry of Health. Would you be happy with that, Sir?

**Prof. Ramkissoon:** Yes, I would be happy.

**Sen. Ramlogan SC:** Well good. With respect to Sen. Al-Rawi, I was going to suggest that we put an attorney-at-law—[*Interruption*]

**Sen. Al-Rawi:** Absolutely.

**Sen. Ramlogan SC:**—as a member of the committee. That would take care of it and I propose we take off the geneticist requirement from (c), Sen. Dr. Balgobin?

**Sen. Dr. Balgobin:** That is fine.

**Sen. Ramlogan SC:** Well, that is fine. So if we take off (c) and we substitute for (c) an attorney-at-law—[*Interruption*]

**Sen. Baptiste-McKnight:** Madam Chair—[*Interruption*]

**Sen. Al-Rawi:** Sen. Baptiste-McKnight, would you mind. Just on the point of the AG before—[*Interruption*]



**Sen. Ramlogan SC:** I just want to continue to get this and then—just to move forward. We take out geneticist and replace it with an attorney-at-law. We add after (d) a representative from the Ministry of Health and one would expect that they would put someone with the relevant discipline so a representative from the Ministry of Health and we would have to change—*[Interruption]*

**Madam Chairman:** Microbiologist too?

**Sen. Ramlogan SC:** No we leave microbiologist, we are just taking off geneticist and we are substituting that—for an attorney-at-law. Then we add after (d) a representative from the Ministry of Health and then (e) we would have to decrease the number from 11 to 10, because we have added on one.

**Sen. Hinds:** Just for clarification, is it that we are removing (c) the geneticist, purely because we fear that there may not be sufficient number?

**Sen. Ramlogan SC:** I think Sen. Ramkhelawan is in the best position to respond to that.

**Sen. Ramkhelawan:** I really asked the question because I do not think that there are that many. As you rightly said, Attorney General, through you Chair, we could have a situation where the Act cannot be operationalized because we cannot find a person or someone is not agreeable to serving.

**Sen. Baptiste-McKnight:** Madam Chair—

**Madam Chairman:** Just one second. After “shall comprise” “as far as possible”.

**Hon. Senator:** That may be too loose.

**Madam Chairman:** Then one other question from the Clerk, if you say microbiologist (d) and the representative from the Ministry of Health then—*[Interruption]*

**Sen. Ramlogan SC:** No, not “and”. The “and” will come after the representative of Ministry of Health.

**Madam Chairman:** So then you changed the figure from 11 to 10 and we renumber.

**Sen. Ramlogan SC:** That is correct.

**Sen. Hinds:** Madam Chair, in respect of the formulation at (e), notwithstanding the suggestion to renumber based on the amendments we have just entertained, is it, Attorney General, given that we have circumscribed the

width or the size of the committee at (a) necessary to mention a number in (e) whether it is 11 or 12 yet again? Seeing that we have already at (a) circumscribed the number of persons who can constitute the committee, I do not consider that it is strictly necessary to say no more than 12 persons who by virtue—[*Interruption*]

**Sen. Dr. Balgobin:** In (a), you have said seven.

**Sen. Ramlogan SC:** Well, it is not strictly necessary.

**Sen. Dr. Balgobin:** So you would take that reference out.

**Sen. Ramlogan SC:** I just want to confer with the draftsman to see if he had a particular reason for doing that.

**Sen. Dr. Balgobin:** It could be such other persons, et cetera.

**2.00 p.m.**

**Sen. Ramlogan SC:** It does not harm us to take it off.

**Madam Chairman:** Before you go on, Sen. Baptiste-McKnight had a contribution.

**Sen. Baptiste-McKnight:** Thank you very much, Madam Chair. I want to address the problem of the geneticist. In light of Article 5 of the Convention to which we are a party, I do not see the need for deleting the geneticist, because in the era of Skype and instant Internet connection, we can get assistance from the UN or from some other state party with a geneticist to help us in the work of the committee.

**Sen. Ramlogan SC:** Chair, we are not saying that the committee will not have a geneticist; the opinion of a geneticist or the expertise from a geneticist, what we are saying, we are not putting it as a mandatory requirement in the law in the unlikely event that you cannot operationalize the committee because none exists that is willing to serve. I mean, you would obviously look to the pool of talent you have in Trinidad and Tobago first, and if someone cannot be found there, then you will make use of the technology and the options that are available. But the Government's position is that we do not wish to have the geneticist specified, and I think the Senator that proposed that amendment, Sen. Dr. Balgobin, we have managed to obtain his agreement to that deletion and I think we can proceed.

**Sen. Al-Rawi:** If I could just address, hon. Senators, in consonance with the hon. Attorney General, we are also members and we have set up a specific international coordinating body that deals with this area. Forgive me, the legislation just slips me. I referred to it in my contribution. It is an international

obligation which we signed on to; I will come back to it in a moment. But we do have the ability in the regional position to have the input, but my concern relative to the attendance by Skype, et cetera, is that the rules of law prohibit us from having things like Round Robin or non-physical attendance, because one may argue that you did not give your full attention in law when challenged as to a decision that may arise. So, for that reason, I would not want to rely upon technology as a mechanism for making a recommendation concerning people's rights in particular.

Could I come back, please, hon. Attorney General, through you, Madam Chairman? My concern relative to the transparency aspect of attorneys-at-law, there is much debate in our profession right now that attorneys may be cleaved into various camps, and I was wondering whether we wanted to consider an attorney-at-law nominated by the Law Association as an appropriate person in this instance.

**Sen. Ramlogan SC:** The answer is, no. I think leaving it as an attorney-at-law, which is really how we have it in most of our legislation, would be sufficient, and we would leave that as it is.

**Sen. Deyalsingh:** Madam Chair, if I may be heard now. Hon. Attorney General, when we were debating this, I had mentioned the need for an epidemiologist, and at that time you had said that you do not want to include all these different specialties. I would suggest, given the nature of this Bill, an epidemiologist is essential, in that you need to have someone who can do the mathematical modelling. So for instance, if I drop a packet of Anthrax spores here, you need someone on this committee who can do the mathematical modelling to say what populations are going to be affected. I think that is crucial for this. I would like to suggest that the representative you are taking from the Ministry of Health be that type of person, not just a representative from the Ministry of Health.

**Sen. Prof. Ramkissoon:** Madam Chairman, that is assuming you have such a person.

**Sen. Deyalsingh:** We do.

**Sen. Ramlogan SC:** Well, that is the point I was going to make, yes.

**Sen. Prof. Ramkissoon:** I think if we need such a person, we pull that person from the general stream of 10 or more persons.

**Sen. Dr. Balgobin:** I now have arrived at a point where I have a conceptual difficulty, because we are talking about epidemiology; we are talking about geneticists. If you look at how these weapons are formulated, two of the things that a terrorist thinks about are dispersion and how you can manufacture

something that is difficult to identify, difficult to diagnose, difficult to stop, to use layman's language. Very often, in the formulation of this kind of weaponry, people with skills that you would find resident in the head of a geneticist, for example, would be employed.

So, on the one hand, we are trying to give life to an international agreement that has a lot of—for want of a better term—First World issues, with which we must treat and it is calling for competencies that may be in very short supply, but it is either we are doing it or we are not. I recall—and the reason I had made these suggestions after researching what other teams in the world would comprise of is—the debate having a serious issue with the legislation as put forward, because it did not specify what the competencies were, and that it was felt we did not want to empower any Minister with the authority to formulate a committee by “vaps” which could then deprive people of their property. That was my recollection of how this discussion went.

So, I thought that a remedy for the issues raised in relation to that would have been to try to specify as much as possible, the technical competencies that would be necessary so that we could give the public and everybody in here a sense of comfort about the constitution of the committee. So, on that basis, for example, I do not have a difficulty with something like an epidemiologist being considered. In fact, there are things in Trinidad and Tobago that operate, for example, industry locations and so on, where nobody thinks about dispersion; if there is an explosion or a release, for example, of noxious fumes, and so on, and these are things that should be taken into account.

So, it is just something that I would want to support and what I gather the Attorney General was trying to do, which is to specify some of the competencies that should be resident in the committee, and to suggest that if you knock too many of them out, you would arrive back at the same point that everybody had a difficulty with when the legislation was first debated here.

**Sen. Ramlogan SC:** We take no hard and fast approach on this. What we want to do is to avoid the impractical situation of not being able to operationalize the committee. But what I do wish to say is the following: Bear in mind that these committees, insofar as they require the assistance of any expert, they can, in fact, call upon them, as committees do from time to time. But I do share Sen. Prof. Ramkissoon's concern as to whether or not we actually have the resident expertise in the Ministry of Health for an epidemiologist.

**Sen. Dr. Balgobin:** Is it that it should be said somewhere in the legislation then, Attorney General, that the committee can call on this expertise?

**Sen. Ramlogan SC:** You do not need to say that. Any committee is entitled to seek advice without that being said. We never put that in legislation, because it is understood. But on this one, I probably would want to get some guidance from Sen. Prof. Ramkissoon on this, because I know that he has some direct expertise in the area, perhaps. Sen. Prof. Ramkissoon, what say you to the inclusion of the epidemiologist?

**Sen. Prof. Ramkissoon:** I think if you have such a person or persons around, I see no harm in having them on the committee. I do not know how many are available. The same thing with geneticists. How many do we have in the country? As you said, we do not want to find ourselves where we set up this committee and then you do not have someone.

**Sen. Ramlogan SC:** That is the point.

**Sen. Deyalsingh:** Hon. AG, if I may, I can tell you for a fact that there are very few geneticists in Trinidad and Tobago. I can also tell you for a fact, there are many more epidemiologists within the Ministry of Health, within the public health sector, within CAREC.

**Sen. Ramlogan SC:** Senator, may I enquire—I mean, we have put one representative from the Ministry of Health; I do not mind putting two, but the point is, what I have a difficulty with is specifying the specialty from the Ministry of Health, and I think Sen. Al-Rawi understands why we have that difficulty, because, you know, let us give the Minister of Health the flexibility to nominate the person with the relevant expertise and not assume that they will put someone who does not have—I mean, they would not put a pediatrician when it requires a brain surgeon. You know what I mean?

**Sen. Al-Rawi:** Hon. AG, in consonance with that, we do also have CAREC, which is an institute that falls under the Ministry of Health. And just by way of reference back—and, again, it is for thought of a formula—the Act that I was looking for was the Basel Convention; the Basel Act, 2008; No. 2 of 2008, and that sets up the regional body for training in this specific area that we are seeking to protect against. So there is that Basel Convention. Trinidad and Tobago is a signatory there; there is a committee to be set up, and I am sure that the Ministry of Foreign Affairs would have an update as to its actual status and whether it could, perhaps, be an institution which would nominate somebody to us. Do we have a preclusion against persons serving on the committee being citizens of Trinidad and Tobago only?

**Sen. Ramlogan SC:** No, I do not think there is any such exclusion, but what I do think is that, as I said before, if the committee wishes to draw upon the expertise of anyone, local or foreign, they can so call upon them.

**Sen. Al-Rawi:** AG, I am not driving at the point of the resource availability, I am ad idem with you on that; I agree 100 per cent, nor would I want to specifically include people because of the conflict of interest point. However, what I am concerned at is, what is the safeguard and fetter to the perception that a Minister may cause mischief, if I am designing this law? It will come up later—I can flag it for you now—relative to the comments that I am going to make on the powers of the committee and the type of inspections for warrants, et cetera. So, if you have got a primary body in the form of this committee which has the ability to make very serious recommendations which infringe on fundamental rights, then the question is, what is the safeguard to that in terms of a transparency or, I have put in the best formula position? Right now we have Ministry of Health appointee; just any attorney-at-law, and we have a couple specific areas which I think ought not to be as specific as they are for risk of not finding availability and not comprising.

**Sen. Ramlogan SC:** This is the Bacteriological (Biological) and Toxin Weapons Bill and, you know, we have to have some faith in the qualifications of our professionals. This is not a matter that is as relevant as, perhaps, the Motor Vehicle and Road Traffic Act, as it were. But the point I wish to make is this. A medical doctor, an attorney-at-law, a toxicologist, a microbiologist, all of these people with relevant disciplines, when they are appointed to serve on a committee and it is a public officer in the Ministry of Health and so on, we have to vest in our people some degree of independence. We have had in this country a former Member of Parliament elected to serve a political party in the lower House being appointed by the electoral college to be the President of this country, and after great objection was serving as one of our more distinguished Presidents, and that is His Excellency ANR Robinson. So the point is, we need to trust in the individuals and the training and qualification that people have. What are they going to do? Conspire with the Minister to have a bacteriological, biological and toxic weapon?

**Sen. Al-Rawi:** AG, we may agree with you, save that the draft before us right now is devoid of the types of protections that exist in other jurisdictions.

**Sen. Ramlogan SC:** Could you tell me which jurisdictions you are referring to?

**Sen. Al-Rawi:** I will tell you exactly now, just give me a moment. The UK 1974 Bacteriological and Biotoxins Act, as amended by the 2001 legislation, introduced into it, and the Anti-Terrorism and the Criminal Justice balanced positions, is different. It is a subtle difference but a very far-reaching difference when you look at it in the context of how their law operates.

So the committee's qualifications may turn out to be of no moment if we do actually have better protections in terms of how the powers are carried out. I agree with you that there has to be faith and there must also be liberty to the Minister to populate this thing so that the mischief does not escape, but the point is that has to be balanced by the provisions that safeguard the powers. So maybe it is that when we deal with the powers, if the powers can be ameliorated, bettered, then we could perhaps have no issue with the committee as constructed or proposed to be constructed.

**Sen. Ramlogan SC:** Madam Chairman, the position of the Government is, we will rest on what we have said thus far. We will delete "geneticist"; we will include "lawyer"; we will include "two representatives from the Ministry of Health" to accommodate the epidemiologist and the possibility of including the person from the health surveillance unit, and we will ask that it be put to the Senate, please.

**Sen. Ramkhelawan:** Chair, before you leave this particular clause, there are two points that I would want to make on this clause 6. The first is a matter of interpretation and the second has to do with the organizational aspect. In clause 6(1) we speak of the Minister may establish a committee. Now, later on, when you go to clause 9, there is a requirement for the Minister to receive a recommendation from the committee in order to act in terms of several matters dealing with instructions which he may or may not give, in terms of giving directions under clause 9(2).

**2.15 p.m.**

And, I was wondering whether the word "may" is strong enough or whether it should be "shall" because, on one hand, he needs a committee to give directions.

**Sen. Ramlogan SC:** You mean in 9(1) whether we should change "may" to "shall"?

**Sen. Ramkhelawan:** No, in 6(1).

**Sen. Ramlogan SC:** 6(1), sorry.

**Sen. Ramkhelawan:** Because, 6(1) is saying the Minister "may" appoint a committee. But, then he must have a committee in order to give directions—

**Sen. Ramlogan SC:** Well, we can change "may" to "shall", that is fine. We can change "may" to "shall" in 6(1).

**Sen. Ramkhelawan:** The second point is, Madam Chair, through you, we have been debating and arguing the question of the composition of the committee. But, I think—

**Sen. Ramlogan SC:** Senator, just before you continue, do you mind, I just want to tidy up what we have so far before we make any further point.

**Sen. Ramkhelawan:** I thought you already had.

**Sen. Ramlogan SC:** No, there are two outstanding matters. As a matter of housekeeping at 6(1) we would like to change “the Minister may” to “the Minister shall.” We also have in (b) by inserting after subclause (1) the following subclauses. We need to insert the word “sub”. And, then we also have in (e) the change from before lest it falls of radar, “...no more than nine persons.” We said, we would say, “such other persons.” We would delete that and we would put “and such other persons who by virtue of their skill...” et cetera. So it would be “and such other persons”—[*Crosstalk*]

**Sen. Dr. Balgobin:** No, we do not need to specify.

**Sen. Ramlogan SC:** No, we do not need to specify, remember the point you made before. Yes, I am trying my best to make you a very happy man, Sen. Dr. Balgobin. ...and an such other persons.”

So we would be deleting “no more than eleven” and we put such other persons who by virtue of their skill” et cetera. No so?

**Hon. Senator:** Yeah, yeah. Shall is the important one.

**Sen. Ramlogan SC:** And, we have gotten the “may” to “shall” on the first part, which is a point Sen. Ramkhelawan had made during the course of his contribution in the debate as well.

**Madam Chairman:** Can we read the clause please?

**Sen. Ramlogan SC:** No, I think Sen. Ramkhelawan had one last point.

**Sen. Ramkhelawan:** Madam Chair, there was a second point which has to do with the organization. Now, clause 6 does not speak to a quorum neither does any part of the Bill. So, here is my concern. My concern is that you establish the composition of the committee, at least seven persons and so on, and then a decision can be made by the committee if three persons or two persons attended. And, I have not seen anywhere the question of a quorum, that a minimum of X persons should attend the meeting.

**Sen. Al-Rawi:** Hon. Attorney General, I actually had the same observations—specifically now, “may” to “shall” thank you—secondly, on subclause that was number (3) but will now be number (5). It was exactly there that I was coming to the issue of quorum. Right now it suggests—and I could see the prudence in



this—that the committee with the approval of the Minister may make such rules. And, rules obviously would dictate how quorum, voting, rescheduling and timing would be in the normal course. My question inside of here, insofar as this Act—when it becomes an Act—will contemplate regulations to come, did we want to leave this soft issue of quorum and other bits to rules which are subject to ministerial involvement as opposed to regulations where we would at least have the right of negative resolution or affirmative resolution?

**Sen. Ramkhelawan:** Well, if I may just add to that and continue my point. I would prefer to see a quorum in the Act itself, because we might find that regulations subject to negative resolution as being proposed, fly through the Parliament usually like a thief in the night, and, we find out about it afterwards. I think this committee, being so very important in terms of the recommendations that it would make with regard to directions that the Minister can give, we do not want to have all of these persons listed: a medical doctor; a toxicologist; a microbiologist on the committee and on the day in question when the decision is made, it is two persons from the Ministry of Health and the other three from a cricket team that we picked up in a country cricket match. So, while I accept some of the considerations of my learned friend, I want to see it in the Act, not in the rules or the regulations thereafter. It is a simple thing.

**Sen. Hinds:** Madam Chair, I want to endorse those comments wholeheartedly. Because, in Trinidad—hon. Attorney General, I do not want you to be sanguine about these circumstances. Everything is possible in Trinidad. Within the last couple days, a citizen was picked up from a Government office and sent to St. Ann's by persons who are not competent so to do. So, the Senator is quite right. And, the suggestion is that a Minister of Government was involved in that decision, who is not sufficiently competent.

**Sen. Ramlogan SC:** Has that raised personal fears, Sir? [*Laughter*]

**Sen. Hinds:** It raises very, very personal fears—

**Sen. Ramlogan SC:** But, I hear you, I hear you.

**Sen. Hinds:**—for the Government of Trinidad and Tobago, because the people are saying that you all are crazy.

**Sen. Ramlogan SC:** Yes, the point is—Madam Chair, it is very rare in legislation that you would put the quorum in the law, and they normally would have that in statutory bodies that are intended because of the nature and function and character of the entity, that is intended to meet on a regular basis.

**Sen. Ramkhelawan:** Hon. Attorney General, before you go on. The point is that this deals with persons' properties. When you go to clause 9, it is about the direction, it is about confiscation, and so on. I think it is sufficiently important when we deal with property and when you are looking for a special majority that you make it very clear that—the Minister that we have now might be a perfectly sane person, but we do not know who the next Minister could be, but the law would subsist, whoever the Minister is. I would like to see a quorum when you are dealing with matters of property. The committee itself is still fairly loose.

**Sen. Ramlogan SC:** Well, the rationale given by the draftsmen is that in 7(2), there is the power that they can have general or special directions from the Minister. Then we have in 6(5) the rules point. Now, this is not a committee that one envisages would have to meet on a weekly or monthly basis really, you know.

**Sen. Hinds:** But it will meet.

**Sen. Ramlogan SC:** But, it would meet, agreed. Now, I do not know that in the rules that are going to be made, which would obviously deal with the question of a quorum, do you all really want to put that in the law itself?

**Sen. Hinds:** Yes, Attorney General.

**Sen. Ramkhelawan:** Well, I would say it—

**Sen. Ramlogan SC:** How many did you have in mind?

**Sen. Ramkhelawan:** I would say it would very well defeat the purpose.

**Sen. Ramlogan SC:** How many did you have in mind, Sir?

**Sen. Ramkhelawan:** Well, if it is at least seven, the quorum should be four in my—and it should constitute at least two disciplines. Because, what you are doing is, you are pairing the disciplines that you have.

**Sen. Ramlogan SC:** You see, I would really prefer to leave that to the rules. You know why Senator? We have to be careful about legislating without regard to the reality and the permutation about the realities of this Bill.

Sen. Hinds mentioned it just now, things can happen. Now, suppose you require a quick emergency meeting of this committee.

**Sen. Ramkhelawan:** Yes.

**Sen. Ramlogan SC:** The Minister may then have to find persons; let us say it is a Carnival or an Easter, when there is a potential mass destruction. We have to allow for some flexibility in the law. The rules would deal with the quorum, but it

would also give the Minister some degree of flexibility to meet that kind of practical reality. Now, we are going from quorum to stipulating within the quorum, the disciplines that must comprise part of the quorum and you know—

**Sen. Ramkhelawan:** My concern is and it is a very significant concern as to property. It is that, okay, the Minister “shall” as in 6(1), he shall appoint a committee.” When he appoints a committee, the composition of the committee right, in the Minister under 9(2) giving directions, specify the manner and time which an agent must be disposed of and require the owner to produce biological agent test specifically to the person—

**Sen. Ramlogan SC:** I do not have fundamental objection with the quorum, but I am not prepared to go as far as saying what disciplines should be comprised in the quorum.

**Sen. Ramkhelawan:** I would yield to that. But, I would like to see that there is a quorum.

**Sen. Ramlogan SC:** I do not have a fundamental objection to the quorum.

**Sen. Ramkhelawan:** But, the problem is, that that quorum might end being the four fellas on the cricket side that was picked up and excluding the microbiologist, the geneticist, the medical doctor and so on of the 15.

**Sen. Ramlogan SC:** Well, if they are involved in a cricket match when the country requires them and they cannot be found, well so be it. But, you cannot—the converse is equally true. You cannot legislate in a vacuum without regard to what the realities are.

**Sen. Ramkhelawan:** Attorney General, I hope that you are not wilfully missing the point. The point is that we set out what are the requirements, but by dint of not having a quorum or not having a composition of a quorum, the Minister on the recommendations of a committee, and the constitution of the committee with that quorum, may then be questionable, goes to the question and heart of property.

**Sen. Ramlogan SC:** That argument is predicated on the fundamental assumption that everyone else who is a Member of this committee would ignore their social, civic, and statutory responsibility; ignore the call for a meeting, not show up and allow that to happen. Also, the Minister would act with good intent.

**Sen. Ramkhelawan:** My friend wants to join me in this argument.

**Sen. Al-Rawi:** Hon. Attorney General, a very useful bit of guidance can be found in the Basel Convention (Regional Centre for Training and Technology Transfer) No 2 of 2008. That Act deals with similar subject matter and the Act in Part III establishes a Steering Committee. The structure of it—just to give you an idea of the architecture for consideration: Steering Committee shall be established, Steering Committee shall develop and endorse—

“9. (1) Steering Committee shall consist of not less than eight members and shall include...” (a), (b), (c) and (d) et cetera.

“(2)The members of the Steering Committee shall be experts of recognized standing and experience in the sound management of hazardous wastes and other wastes.

(3) For the purpose of this section—” and then it goes on.

Then it goes on to describe appointment of Chairman, appointment of Vice-Chairman and six members of the Steering Committee shall constitute a quorum.

It is actually in two sections only dealing with a similar subject matter, referencing the type of persons that you want to establish the degree of sophistication you want in dealing with a committee. But, it is a very good example of how we could legislate—this is our own legislation for this type of material.

**Sen. Ramlogan SC:** The Government is prepared to yield to the requirement for a quorum, not the relevant inclusion of the disciplines in that quorum. We would ask that it be put to the Senate. So, we would ask that a subclause (4) be inserted. Sen. Dr. Balgobin, sorry.

**Sen. Dr. Balgobin:** I think you had answered this for me before. But, in looking at this, “the Minister shall” constitute a committee, and so on, it occurs to me again on re-reading the Bill, that we are dealing with weaponry here, and while the Minister of Foreign Affairs is the person who affixes his signature to the treaty, should that committee be—

**Sen. Ramlogan SC:** No, but the Minister who has to constitute the committee there, is the Minister of National Security?

**Sen. Dr. Balgobin:**—should that fall on the Minister of National Security. Is that said somewhere?

**Sen. Ramlogan SC:** Yes, it is in the definition section. “‘Minister’ means Minister to whom responsibility for national security is assigned;” so you are right, I did answer it before.

Yes, so we are asking that we insert a subclause (4) to deal with the quorum point. And, it shall read, “a quorum of the Members of the committee shall comprise at least—”

**Sen. Al-Rawi:** Or just simply four members shall constitute—

**Sen. Ramlogan SC:** Yes, “four members of the committee shall constitute a quorum.”

**Sen. Al-Rawi:** Yes, that is it.

**Sen. Hinds:** Right, but wait. Hon. Attorney General and Madam Chair, let me ask a question. As it now stands, based on the discussions we had earlier, we have agreed now on four core competencies, have we? The toxicologist;—

**Hon. Senator:** The microbiologist.

**Sen. Hinds:** —the medical doctor; the attorney-at-law and which other? And, the microbiologist, that is four.

**Sen. Ramlogan SC:** Yes.

**Sen. Hinds:** The committee can comprise altogether 15 persons. Am I correct?

**Sen. Ramlogan SC:** Theoretically, yes.

**Sen. Hinds:** Right. And therefore, the point that is being made, is that you can with a quorum of four, have four persons appointed by the Minister not possessed of any of those core competencies or skills. And, they would be called upon to make a major decision on these matters that can have regional and international implications, because it is an international convention we are dealing with.

**2.30 p.m.**

Your response, hon. Attorney General was, as I understood it, that the position taken presupposes or assumes that it would be four ordinary unthinking persons who would not apply their minds properly to it, and the others may just not show up and form a full committee of 15. More than that, you went further to say or that the Minister pulling together the committee may be possessed of malintent. You said that!

These things are very possible, very possible and, therefore, hon. Attorney General, what is being suggested, and I concur enthusiastically with it, is that when you are having the meeting to make these major decisions on the same argument of the need for the lawyer, given the constitutional application—then if you are having a quorum, it should at the very least consist of the persons with the core competences. That is the point that is being made and I concur with that and insist on that as a recommendation.

**Sen. Dr. Balgobin:** Can the mischief be abated somewhat if we did not go up to 15 members?

**Sen. Beckles:** And why 15?

**Sen. Dr. Balgobin:** Why not seven to nine members and a simple majority for the quorum?

**Sen. Ramlogan SC:** The reason we had gone up to 15 is because when we came with the original Bill, if you may recall, it was silent, and then during the course of the debate it was felt that if we restricted all of these competencies that were introduced to too small a number, then you may not be able to accommodate all of the competencies that you want on the committee.

**Sen. Dr. Balgobin:** But—*[Interruption]*

**Sen. Ramlogan SC:** Hold on! If it is that you all are now saying 15 is too large, we can deal with that.

**Sen. Hinds:** No, that is not what we are saying. We are simply saying—*[Interruption]*

**Sen. Ramlogan SC:** Can I finish, please?

**Sen. Hinds:** Sure!

**Sen. Ramlogan SC:** I understand what you have said—*[Interruption]*

**Sen. Hinds:** Good!

**Sen. Ramlogan SC:**—it is just that I do not agree with it. We do not agree as a policy position the quorum must include any of the competencies, because we feel that as a practical matter, that should be a matter that the committee should be left to deal with. In a time of emergency, if the Minister has to convene an emergency meeting of this committee because there is the fear of some nerve gas being released at City Gate on Carnival Monday, we do not think it is right if people are out of the country or cannot be found and the committee has to be quorate. Let it be done.

**Sen. Al-Rawi:** That is a good point, which means that we should put in rules relative to emergency meetings.

**Madam Chairman:** Okay, but can we get Sen. Drayton before you make your point?

**Sen. Drayton:** I want to support what the hon. Attorney General has said and simply recommend that the quorum be a simple majority.

**Sen. Ramlogan SC:** A simple majority.

**Sen. Drayton:** The regulations can take care of any guidelines in the context of—*[Interruption]*

**Sen. Ramlogan SC:** Yes, that is all. That is all. Thank you very much.

**Sen. Ramkhelawan:** Madam Chairman, if I may make one last comment and if possible, an appeal, as far as this matter is concerned. At the heart of this Bill is the committee, the composition of the committee, and the capabilities and credentials of the committee. This is the committee that makes a recommendation to the Minister as to what he can do and what he cannot do and, therefore, it will be very difficult. Because of the composition of the committee, you could have a decision and a recommendation of the committee with a quorum which does not include any of these four persons if you run the arithmetic in a 15-member committee.

It will be very difficult to support this because this is in a way a sort of circumvention of the credentials and qualifications of the persons who have to make the recommendation. This is at the heart of this Bill, and it would be very difficult for me to support this Bill *[Desk thumping]* if that matter of the quorum and the qualifications of those persons forming the quorum are not there. I am just saying that, and I appeal to the Attorney General to relook it and let us think the thing through very rationally and carefully. If that is the final position of the Attorney General, then it really comes down to a vote—a special majority vote.

**Sen. Dr. Balgobin:** Attorney General, it just occurred to me that we have identified six sets of competencies in our new list.

**Sen. Ramlogan SC:** Sure.

**Hon. Senator:** Four.

**Sen. Dr. Balgobin:** Well no, four, but you have two persons from—*[Interruption]*

**Sen. Ramlogan SC:** Well four, but you have two others, the epidemiologist and the head of the Surveillance Unit at the Ministry of Health.

**Sen. Dr. Balgobin:** So that is six?

**Sen. Ramlogan SC:** Yes!

**Sen. Dr. Balgobin:** Four plus two still make six.

**Sen. Ramlogan SC:** Yes, I agree.

**Sen. Al-Rawi:** That is five. It is two plus the others—*[Interruption]*

**Sen. Baptiste-McKnight:** No, no, no, it is four. It is four plus two.

**Sen. Dr. Balgobin:** Four plus two is six. So, would some of this mischief not be avoided if we restricted the upper band of the committee to say nine? The reason I am asking that is because if there are additional competencies that need to be availed of by the committee, they can so do, they can request appropriate advice. *[Interruption]*

**Sen. Ramlogan SC:** Well, it is up to a maximum of 15, but it does not mean that you are going to put 15.

**Sen. Dr. Balgobin:** But if you put nine as the maximum—what I am saying is that if you have a simple majority you would have those competencies.

**Sen. Drayton:** I have just reflected on the functions of this committee, and I think that while I understand the need for all the various disciplines as we have agreed, on the committee, when you read the functions: primarily advising the Minister on matters relevant to making regulations for the Act, advise and monitor the implementation of regulations, coordinating activities of all agencies—those are the primary ones—and the fourth one, such other functions as are from time to time. So that you have a committee where in law we have stated certain critical disciplines and we are saying now, okay, a quorum of a simple majority. The functions here, for instance, are not related to crisis and things like that, so I am not too sure—*[Crosstalk]*

**Hon. Senators:** Clause 9(1).

**Sen. Drayton:** Okay. Clause 9(1). So, by and large, when you look at the core functions and the disciplines that we have already agreed upon on the committee, I feel that a simple majority and stating okay which must include the—*[Interruption]*

**Sen. Dr. Balgobin:** Attorney General, if you restrict the upper end of the size of the committee, it will ensure—since we have listed out four plus two—that you have some technical representation on the committee for a quorum. *[Interruption]*

**Sen. Ramlogan SC:** Yes, I see your point. I see your point.

**Sen. Al-Rawi:** Hon. Attorney General, just to put on the record, one, I do not agree with what Sen. Drayton has said because the powers are much wider by way of their implication in clauses 7 and 9.

**Sen. Ramlogan SC:** Sure!



**Sen. Al-Rawi:** Just for the record. Secondly, I can see the logic to Sen. Dr. Balgobin's approach, however, it does not address the issue of necessity which you are addressing, and the problem of how do you fix now something which may turn out to be ineffective. That is really to be balanced by the hole in the ship that we have in subclause (5)—what is old (3) to (5)—because the mischief there is the fact that you may have rules that you have not seen yet when you factor it against the powers.

So, rules which define how the committee is to work in emergency cases, on necessity basis, et cetera, what the minimum aspect should be, are quite properly done in one of two ways; one, in a very skeletal sort of way in the Bill to allow for the flexibility for certain things or, secondly, in regulations. I think that it is more appropriate in regulations, however, that is entirely subject to the fact of the type of powers to be wielded.

So if the specifics of the regulations came in for debate into the Parliament at least on an affirmative point on its first inception and then otherwise maybe on negative basis, then maybe you would have the ability to inspect it. The problem, is allowing something to happen which you have not had a sight of, because breach of fundamental rights on the basis of a decision made by the committee can come into open challenge that way.

**Sen. Ramlogan SC:** Okay! Madam Chairman, we have had a lot of discussion on the matter. Sen. Ramkhelawan, I think the point with respect to the inclusion of the competencies is one that can be addressed in the rules, but I am not prepared to legislate the inclusion of the competencies as part of the quorum for the very reason I mentioned, that this is a matter that could in an emergency situation, if you cannot find them, then what? I certainly think that it is a matter to which regard can be had in the rules. I certainly think that with a committee of this kind, one would expect that they would discharge their professional duties in a responsible manner—*[Interruption]*

**Sen. Al-Rawi:** Cannot rely on that.

**Sen. Ramlogan SC:**—and we have to give something to that. Because we have heard what the other side has had to say, Madam Chairman, the position of the Government is to yield on the quorum, institute the quorum and ask that one further clause which the draftsman has passed to my attention here, a further subclause to say: “the committee shall meet as often as may be required for the performance of the functions of the committee”.

**2.40 p.m.**

**Sen. Al-Rawi:** So you could usually put anything in this.

**Sen. Ramlogan SC:** To deal with the point that Sen. Balgobin raised which is related to the point that Sen. Ramkhelawan has raised, about the inclusion of the competencies. What I think we can do is reduce from 15 to 11 so that—I think that will give us some—just by the sheer arithmetic of it—degree of comfort in terms of the quorum and the inclusion, one way or the other. And that brings us a little closer to home, Sen. Ramkhelawan. The quorum is four but we have already specified at least six competencies. Sorry, a simple majority.

**Sen. Al-Rawi:** Did we want to go as far as what is usually included which is “meetings of the committee shall be properly convened when a quorum is present”?

**Sen. Ramlogan SC:** No, you do not, because you cannot have a meeting without a quorum.

**Sen. Al-Rawi:** Well, it is actually in other legislation that we have here as well.

**Sen. Ramlogan SC:** I do not think we need to.

**Sen. Al-Rawi:** The reason is to take care of the exception point.

**Sen. Ramlogan SC:** I do not think you need to, no.

**Sen. Deyalsingh:** Hon. AG, with regard to frequency of meetings, is it not normal to stipulate a minimum number of meetings per year?

**Sen. Ramlogan SC:** I think that I would prefer leave that to ministerial discretion and the rules will deal with those things, but we do not need to put all that in the legislation, then there will be need for rules to govern the procedure and so on.

**Sen. Hinds:** Just for clarification, the quorum, the simple majority that you have just outlined, that will be placed in this legislation, in the Act?

**Sen. Ramlogan SC:** Yes, if you follow what we are saying, the answer is yes.

**Sen. Hinds:** Yes, I am asking.

**Sen. Ramlogan SC:** Yes.

**Sen. Al-Rawi:** Madam Chairman, we are putting, in some senses, the cart before the horse necessarily because we are going sequentially through the Bill. The problem with a lack of a minimum number of meetings may be tied into, insofar as this Bill allows for destruction of material, personal property, in the legislation

in Trinidad and Tobago, whenever you have material to be destroyed or fundamental rights to be infringed; usually a report is submitted to Parliament on an annual basis. If there is no minimum requirement relative to meetings, we may lose sight of that fact, even if it is a report that says nothing has been destroyed. When we come down to property destruction issues as powers in the Bill, I would want to propose, and I am giving you notice, that notification be provided to the Parliament as to the activities of the committee, or the Minister, or steps taken to destroy property, et cetera.

**Sen. Ramlogan SC:** Madam Chairman, we just need to deal with the inclusion of the quorum point, and where we dealt with the quorum where we said it was four before, we really want to say “a quorum for the meeting of the committee shall be a simple majority of the Members.” All right.

**Madam Chairman:** “A simple majority of the Members shall constitute a quorum” because we had that before.

**Sen. Ramlogan SC:** You can put it that way as well. That is fine.

**Madam Chairman:** Thank you.

**Sen. Ramkhelawan:** That will be four or six, at least seven.

**Sen. Ramlogan SC:** It will be six if the maximum is now 11.

**Sen. Ramkhelawan:** The committee is at least seven up to a maximum of 11, rather than a maximum of 15.

**Sen. Ramlogan SC:** Yes, that is correct.

**Sen. Ramkhelawan:** So the quorum, just for clarification, could be four, or it could be six, based on what the composition is.

**Sen. Ramlogan SC:** The number, yes, that is correct. It is a moving target; a downward slide. All right, so maybe we can put it now.

**Madam Chairman:** The amendment is as follows for clause 6 reads:

“A. (1) The Minister shall, for the purposes of this Act, establish a Committee to be known as the Bacteriological and Toxin Weapons Committee (hereafter referred to as “the Committee”) consisting of at least seven and on more than eleven members as the Minister may from time to time appoint in writing.

B. By inserting after subclause (1), the following subclauses:

- (2) The members appointed under subsection (1) shall comprise—
- (a) a medical doctor;
  - (b) a toxicologist;
  - (c) an attorney-at-law;
  - (d) a microbiologist;
  - (e) two representatives from the Ministry of Health; and
  - (f) such other persons who by virtue of their skill and experience can contribute meaningfully to the work of the Committee.
- (3) The Minister shall appointment the Chairman and Deputy Chairman from the members of the Committee.
- (4) A simple majority of the members of the Committee shall constitute a quorum; and
- (5) The Committee shall meet as often as may be required for the performance of the functions of the committee.

**Sen. Al-Rawi:** Madam Chairman, I am asking for consideration relative to the rules being subject solely to the Minister's discretion. I am asking that those instead be made by way of regulation subject at the very least to negative resolution of the Parliament, so that whatever rules that govern this committee be public in that sense.

**Sen. Ramlogan SC:** Madam Chairman, the Government is not prepared to exceed to that request. We ask that the matter be put to the vote to the Senate.

**Madam Chairman:** Those in favour to including the amendment as indicated, to now stand part of the Bill?

**Sen. Al-Rawi:** Sorry, Madam Chairman. The problem with the way that the question is being posed is—are you going to put the second amendment that I have just referred to, to a vote? Well, then the question would not have been asked; that would have been answered only by the AG and the last time I checked, he is not the whole Senate.

**Madam Chairman:** I will ask for advice from the Clerk. I am advised that there are no further amendments for the wording and that is not required to be put to the vote so we will proceed.

**Sen. Al-Rawi:** Madam Chairman, then, I ask that an amendment be put after. I will let you put the first one forward and then I will propose an amendment to it myself?

**Madam Chairman:** Well, would that fall under clause 6 as well?

**Sen. Ramlogan SC:** I think what the Senator wishes to propose is an amendment to clause 6(5) so we can perhaps put clause 6(1) to (4) or with the renumbering and leave out the clause 6(5); that is the clause 6(5) in the present draft. “The Committee with the approval of the Minister may make such rules governing...”

**Sen. Al-Rawi:** That is spot on.

**Sen. Ramlogan SC:** That is the one that he wants to propose an amendment to. So you can do all the rest, put it to the Senate, and let us get that out of the way and then we will deal with that.

**Madam Chairman:** You have a (C) after as well, on the next page.

**Sen. Ramlogan SC:** Yes, so we can put all of that.

**Madam Chairman:** Okay, well, the Clerk is advising that we cannot do that. He has to suggest the amendment so that we can adopt the whole clause.

**Sen. Ramlogan SC:** Fair enough.

**Sen. Al-Rawi:** In that case, Madam Chairman, I am proposing on the current clause 3 because the amendment is to renumber it as 5 on the current subclause (3) of clause 6, that:

“The Committee shall make such rules governing its proceedings by way of Regulations which shall be subject to negative resolution of Parliament.”

**Sen. Ramlogan SC:** That makes no sense.

**Sen. Baptiste-McKnight:** Check 13.

**Sen. Al-Rawi:** Or, at clause 13:

“The Minister may make Regulations prescribing...”

Or, Madam Chairman—

**Madam Chairman:** Senator, is that something that the committee itself can determine?

**Sen. Al-Rawi:** Well, you see, Madam Chairman, we are prescribing a committee to operate in a particular manner. We are going to come up with the need for description of how this committee is to work in exceptional circumstances, what matters are to come to its attention, when meetings are

adjourned, when they are properly constituted, all that is going to happen. But, right now, in the Bill as casted, it says that those rules are to be made subject to the approval of the Minister, and that will govern the committee simply.

When we look at clause 13 of the Bill under regulations:

“The Minister may make regulations prescribing—”

But what we are seeking to do here is to say provide the public with at least notice of how this committee governs itself so that the rules of natural justice, in part, may be satisfied. So the question is, the mischief on the table is: how do you make public the rules that govern the committee? So that people that come before this committee can have some understanding of what they are going to be judged by, when things are going to be done, et cetera.

So what I am asking the Senate to consider is an appropriate formulation of words to capture dealing with this mischief of the rules not being public, per se, in regulations. Now, it is common by way of example, the Legal Profession Act. The Legal Profession Act sets out in its subsidiary legislation in its regulations exactly how the Law Association is to be governed, how it is to be constituted, et cetera.

**Madam Chairman:** I am just getting advice from the legal—

**Sen. Ramlogan SC:** I do not know whether in the interest of time, whether or not you can reserve that and deal with it when you are dealing with clause 13?

**Sen. Al-Rawi:** Thank you, hon. Attorney General. The question is whether clause 5 as it stands would then offend that? I am wondering if your draftsman can assist—I am just identifying the mischief of seeing how we can make it transparent.

**Sen. Ramlogan SC:** Well, he has to propose an amendment.

**Madam Chairman:** Do you have some words or an amendment that you can propose and—

**Sen. Al-Rawi:** I would have to think of that. Do you want then, Madam Chairman, to defer it subject only to that? Well, if you are not supporting it openly, then, that is fine; let us not waste the Senate’s time. So if you are not supporting it openly, then it would have to go, either the Senate is comfortable with no transparency, or it requires some degree of transparency, and surely the vote will take care of that.

**Sen. Ramlogan SC:** Sure.

**Sen. Dr. Tewarie:** But that is not a good way to present what you are suggesting.

**Sen. Ramlogan SC:** That is a very emotional way to present what is your view but, you know, we will leave it as that.

**Sen. Al-Rawi:** Well, I do not think it is an emotional way. You just said, hon. Attorney General, that whatever I propose, the Government is not accepting; you just said that.

**Sen. Ramlogan SC:** Well, yes and we are entitled so to do, Sir.

**Sen. Al-Rawi:** Yes. So what is the point in indulging the Senate's time if I have stated what the policy is, you have a team of draftsmen available to you, right, sitting to your left; we have adjourned this for quite some time. I cannot see that I can adopt a flippant attitude to the creation of laws when we have a section 4 and 5 exception to the Constitution. I cannot see that, with the greatest of respect.

**Sen. Ramlogan SC:** And I can say with the greatest of respect the Government's rejection of your recommendation which is within its power and purview, as a misinterpretation and misrepresentation of some degree of flippancy in treating with the legislation.

**Sen. Al-Rawi:** Well, I am addressing your exact words that "the Government is not accepting whatever you put"; you said it. It is either you are resiling from that or not? So I do not want to indulge the Senate's time if your position, the Government's position is, "I am not accepting whatever you put", well then so be it.

**Madam Chairman:** Members, I think the committee has been advancing amendments and we have been going back and forth, and I think there has been a great deal of compromise so far, and I would like to put the question of clause 6 to the Chamber.

*Question put.*

**Sen. Al-Rawi:** Madam Chairman, could you call for a division please?

**Madam Chairman:** Sure. Could you call the others in?

**2.55 p.m.**

**Sen. Al-Rawi:** I do not think we have time to call Senators. Let us vote.

*The committee divided:*                      Ayes    22                      Noes    5

AYES

Ramlogan SC, A.

**Madam Chairman:** Call the other Members. See where they are.

**Sen. Al-Rawi:** I am sorry, Madam Chairman, I never understood that our position on a vote when called for, is to wait for the Government to arrive, with the greatest of respect.

**Sen. Dr. Tewarie:** But this is a committee, Madam Chairman.

**Sen. Al-Rawi:** No, man! Madam Chairman, I have never understood the rules of this Parliament to be—

**Madam Chairman:** I am getting some advice from the clerk.

**Sen. Al-Rawi:** Madam Chairman, I just heard you say: “Call the other Members. See where they are.”

**Madam Chairman:** I am speaking to the clerk.

**Sen. Al-Rawi:** Madam Chairman, regrettably, this is like being at—*[Interruption]*

**Madam Chairman:** I am speaking to the clerk.

**Sen. Al-Rawi:** Madam Chairman, I am making a point relative to what—*[Interruption]*

**Sen. Ramlogan SC:** Have some respect for the Chair and stop being rude to the Chair in the Senate, please.

**Sen. Al-Rawi:** Listen, you cannot tell me what to do hon. Attorney General.

**Madam Chairman:** Could you allow the clerk—

**Sen. Al-Rawi:** I am making a point.

**Madam Chairman:**—please to call her members?

**Sen. Al-Rawi:** I am sorry—

**Madam Chairman:** She has to call the members.

**Sen. Al-Rawi:** I would just like to state for the record for Parliament, for all measure of time, I have never understood the position when you call for a division under chairmanship of the honourable Senate Vice-President or President, to say: “Call for the Members of the Government on a vote.” That cannot be correct.  
*[Desk thumping]*



**Madam Chairman:** It is noted.

*Division continued:*

Sandy, Brig. J.

Bharath, V.

St. Rose-Greaves, V.

Tewarie, Dr. B.

Karim, F.

Ramnarine, K.

Maharaj, D.

Moheni, E.

Abdulah, D.

Maharaj, D.

Baynes, T.

Ram, A.

Burke, Archbishop B.

George, Hon. E.

Ramkhelawan, S.

Drayton, Mrs. H.

Balgobin, Dr. R.

Ramkissoon, Prof. H.

Wheeler, Dr. V.

Sydney, A.

Bernard, Dr. L.

NOES

Beckles, Ms. P.

Hinds, F.

Cudjoe, Miss S.

Al-Rawi, F.

Deyalsingh, T.

*Mrs. C. Baptiste-Mc Knight abstained.*

**Sen. Al-Rawi:** You cannot have a Chairman hesitating calling people like that. It is not right.

**Sen. Hinds:** It is not right at all. You ought to do what is proper.

**Madam Chairman:** For those who are present and we do reflect that there are some Senators present in the Chamber, those voting for, 22; those against, five; and one abstention. The division is passed.

*Question agreed to.*

*Clause 6, as amended, ordered to stand part of the Bill.*

*Clause 7.*

*Question proposed:* That clause 7 stand part of the Bill.

**Dr. Rambachan:** Madam Chairman, I beg to move that clause 7 be amended as circulated.

In subclause (1)—

(a) by inserting after paragraph (b), the following paragraphs:

“(c) to advise the Minister on policies, procedures and systems to improve the administration and operation of the Act;

(d) to prepare and implement public awareness programmes;” and

(b) by renumbering paragraphs (c) and (d) as paragraphs (e) and (f) respectively.

**Sen. Al-Rawi:** May I enquire, relative to the functions of the committee stated at subclause (c):

“to coordinate the activities of all agencies involved in the implementation and enforcement...”

If I could just, for the purposes of statement on the record as to how it is envisaged this will work, ask the hon. Attorney General: Is that that it is intended, this committee, to be a managerial committee in essence?

**Sen. Ramlogan SC:** Well, we have dealt with this during the course of the debate. It has many different functions. It is advisory, it is coordinating. One may use different terms. One may say it even has a supervisory element in coordinating, but coordinating was the best word and “advisory” and “coordinating” were the words that we preferred.

**Sen. Al-Rawi:** If that is the case then, is it envisaged that this committee will have staff at its disposal?

**Sen. Ramlogan SC:** I do not think those are matters that we can delve into at the committee stage. We have had a full debate on this matter, Madam Chairman and—*[Interruption]*

**Sen. Al-Rawi:** Regrettably, Madam Chairman—*[Interruption]*

**Sen. Ramlogan SC:** Can I complete my contribution, Sir, if you do not mind?

**Sen. Al-Rawi:** Sure.

**Sen. Ramlogan SC:** Thank you very much. The position is that we acceded to a suggestion which was made during the course of the debate by the Independent Bench that, perhaps, the functions of the committee ought to include two additional functions and I, in fact, had a meeting with Independent Senator Prescott, SC. During the course of that meeting, Sen. Prescott SC pointed out, quite helpfully, that there were two functions which he felt could be included which had come from the Articles which were incorporated into the Bill. We acceded to that request and as a result of that suggestion from the Independent Bench, we have now included (c) and (d) and those are the circulated amendments. We feel that adequately covers the points made during his contribution and he was quite happy for that inclusion. So, that is our position.

**Sen. Al-Rawi:** Thank you, Madam Chairman, the reason I am asking—I do not know when the Attorney General has ever understood that in the course of a debate, you can ask questions. I have always understood that is to be done in committee stage. I cannot understand how pointing to a debate helps us on that. He is on his own there. The reason I am asking is relative to the substructure as to whether the persons who comprise staff to assist this institution, how are they going to be covered in this Bill? That is the question. I am trying to envisage how that is happening, where the resources come from and what terms and conditions apply. Because the committee's terms and conditions under this Bill are drawn from the Minister's decision itself.

Is he bound by the public service rules? Are they going to be on contract subject to dismissal, as we are seeing going on now? Because a dismissal point forms serious concern for consideration if you think that people may be fettered in the performance of the independence of their function by threat of a dismissal or being on contract from month to month. That is the reason.

**Sen. Ramlogan SC:** I found that it was self-evident and adequately clear that this is an advisory committee. To the extent that they require any assistance, they may call upon expertise on an ad hoc basis, but the committee, as its role and functions show in the Bill, would not require a staff and a unit of its own. That is not what is envisaged. But to the extent that anything of that kind may arise, if at all, that may be a matter for the rules or the Minister to deal with. [*Interruption*]

**Sen. Al-Rawi:** I am happy with the answer.

**Sen. Ramlogan SC:** That is evident—[*Interruption*]

**Sen. Al-Rawi:** Madam Chairman—[*Interruption*]

**Sen. Ramlogan SC:** Can I please complete my contribution, Sir?

**Sen. Al-Rawi:** I would help you save some time by telling you I am happy with your answer this far. Could you please explain the word “coordination” in subclause (c) then? How does coordination relate to advice?

**Sen. Ramlogan SC:** I really do not see that is a matter that requires any great explanation. It says:

“to coordinate the activities of all agencies involved in the implementation and enforcement of the requirements under the Act...”

**Sen. Al-Rawi:** So, should we replace it with the word “advise” then, commensurate with your statement that it is advice only?

**Sen. Ramlogan SC:** No, no, we are happy with “coordinate”, because “coordinate” does not in any way mean that they are doing anything on a day-to-day executive authority management. It does not mean that they are usurping the control of the thing.

**Sen. Al-Rawi:** So “coordinate” does not spark in your mind anything to do with hands-on management?

**Sen. Ramlogan SC:** Not when the section is read in its entirety, no.

**Sen. Dr. Balgobin:** Attorney General, I have one other issue. The amendments as proposed, are we sure that we—I do not think that I agree that this committee should have anything to do with preparing and implementing public awareness programmes. I think that those are really functions that more properly reside somewhere else in either a Ministry of Information, or charged with communication, or from the Ministry of National Security.

**Sen. Ramlogan SC:** That was why we did not include it in the initial draft of the Bill. Sen. Prescott SC however, was very adamant that he wanted that to be a function of the committee.

**Sen. Dr. Balgobin:** I would disagree with him, because what that would require then is a staffing of the committee and it gives it a life that is really not central to the—

**Sen. Ramlogan SC:** I agree and that was the Government's position. I see Sen. Al-Rawi agreeing.

**Sen. Dr. Balgobin:** I would take that one out.

**Sen. Ramlogan SC:** If we have your support in that, we would take off (d). That is fine. I am happy. That was the Government's original position and we are happy to abide by that. So, that is fine.

**Sen. Al-Rawi:** I agree.

**Sen. Ramlogan SC:** So, we take out (d). My learned friend, Sen. Al-Rawi, agrees with me on this course, so I am very happy to take it off.

**Sen. Al-Rawi:** Sometimes you behave well.

**Sen. Deyalsingh:** But you only agree after Independents. You would never agree when we say.

**Sen. Ramlogan SC:** On the circulated amendment, we take off (d) and it will affect the renumbering as well.

*Question put and agreed to.*

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

**Sen. Baptiste-McKnight:** The amendment is now without paragraph (d)?

**Madam Chairman:** Yes.

**Sen. Baptiste-McKnight:** Very well.

*Clause 8.*

*Question proposed:* That clause 8 stand part of the Bill.

**Dr. Rambachan:** Madam Chairman, I beg to move that clause 8 be amended as circulated.

A. In subclause (1)—

- (i) by deleting the words “for purposes that are in contravention to this Act or regulation made thereunder” and substituting the words “in contravention of this Act”; and
  - (ii) in paragraphs (b) and (c), by deleting the words “agents or toxins” and substituting the words “agent or toxin”.
- B. In subclause (4)(c), by deleting the words “agents or toxins” and substituting the words “agent or toxin”.

**Sen. Al-Rawi:** Madam Chairman, I have a lot to say about clause 8. Perhaps other Senators—I am just giving notice that I have a lot to say about clause 8—may wish to go first.

**Sen. Ramlogan SC:** I would like to ask and suggest that Sen. Al-Rawi speak first.

**Sen. Dr. Balgobin:** I will defer.

**Sen. Al-Rawi:** The medicine is usually sweeter coming from the Independents’ hand, so I would defer for them.

**Madam Chairman:** Sen. Al-Rawi, they have all deferred to you, can you lead off on the amendments, please?

**Sen. Ramlogan SC:** Let us move on with some expedition.

**Sen. Al-Rawi:** The first point I would like to raise, I would make a statement first, I am dissatisfied with the low threshold of approach of using just a magistrate, satisfied upon oath, to deal with certain things.

The second point which I have relates to the architecture in which this thing is set up. Relative to the magisterial satisfaction, I do note that other legislation, the English legislation in particular, has the use of a magistrate satisfied upon oath. In fact, several persons may approach a magistrate in that instance in England. In England, there is customs, Inland Revenue and police upon oath, so it is broader. But the balance of protection offered in the English Act has several layers, some of which are expressed in the Act and others which are implied in the structure of other legislation which works in conjunction with this. In the English Act itself, the validity of a warrant was amended to subsist only for three months, so it could not be a warrant taken out at any time and, therefore, valid continuously.

**3.10 p.m.**

Secondly, in England there is a balance provided to this magisterial satisfaction by the Criminal Justice and Police Act. These amendments were taken into effect in 2001, in particular, in England. The other position that I would like to put forward for consideration, is the fact that the Anti-Terrorism legislation in this country is built upon an entirely different architecture.

Now, the hon. Attorney General in his closing, in the absence of the Minister of Foreign Affairs and Communications, sought to dissuade the Parliament as to the applicability of the Anti-Terrorism Act, pointing out in summary, recast in my own words, that it was his or the Government's view, that that Act related to a different kind of regime. He pointed to civil aviation, threats on platforms, et cetera, but he did not take note of the fact that the Anti-Terrorism Act itself deals with conventions that include the very subject matter that we are dealing with. That point is also supplemented by the fact that a weapon, as defined in that Act, includes biological weapons, it also included, Madam Chairman, insofar as that legislation deals with a phased approach in dealing with the infringement of the personal rights there.

So under the Anti-Terrorism Act, there was deprivation of liberty, because there is detention permitted under section 24; there is forfeiture of property; and there is access to information. If I could point out that the current clause 8, as drafted, without any obvious balance to it, includes in subclause (c), the ability to examine any book, document or other records, and then to take away that information; it includes the ability to take samples; it includes the ability to reproduce any record or computer system and it includes the ability to seize and retain. All of those powers included there are subject only to a magistrate being satisfied upon reasonable suspicion. The Anti-Terrorism Act which we have gives it a whole different approach by providing a balance which says yes, a police officer may approach a judicial officer, but it must be done on an ex parte basis to a judge, and then there are specific requirements as to what the judge ought to consider.

Now, when you bear in mind, Madam Chairman, that the Anti-Terrorism Act is dealing with something as sinister as a nuclear weapon which could be launched at any moment in time; nuclear material which could cause serious hazard to human life, the mischief that that Act is dealing with is no greater, or not so much different than the mischief of producing or stockpiling biological toxins and weapons.

That being the case, recognizing that the 1974 English legislation which deals with this area—the Biological Act in England—came about long before there were amendments in the law in relation to terrorism. Bearing in mind Trinidad and Tobago implemented in 2005 an Anti-Terrorism Act, which sets out in careful detail, after a Joint Select Committee comprising of the Members of the UNC, the PNM and specialist advisors coming to the Committee, after all of that was done, why are we adopting a lesser hurdle in this scenario? I think we need to look at this very, very carefully. When you look at subclause (c) alone, that is to provide an entire escape to the established law of Anton Piller Orders or search orders.

There is a similar feature in the copyright legislation where a magistrate may approve certain things in the Copyright Act, however that has been circumscribed again by the High Court approach. So I have a serious problem with the low threshold that we are putting here, and my specific recommendation is that we consider this in the context of the type of structure recommended by the Anti-Terrorism Act, because the subject matter is very much the same, and we have no safeguards right now equivalent to what the English has in their Justice Act, or safeguards of the independence of a committee appointed by the President, or safeguards including others that do not quite hold muster. I did hear the hon. Attorney General say people have the right of judicial review, but that does not hack it for me insofar as this Act, if it becomes law, allows you the privilege of destroying property, and that causes me some problems; that is the general statement of policy.

**Sen. Ramlogan SC:** Madam Chairman, these are points which were raised and canvassed during the course of the debate. I remember that during the course of the debate I had turned to Sen. Prescott during the course of his contribution and I discussed the matter with him, and I think the *Hansard* record will show that he indicated that he had no difficulty with clause 8. In fact, he made no proposals in respect of clause 8. The reason is because he understood and accepted the submission I proffered during my contribution that this is, in fact, pervasive throughout our legislation and all the laws of Trinidad and Tobago, and that the Anti-Terrorism Act is somewhat of a peculiar creature.

A, it is the subject of a constitutional challenge which is before the courts at the moment, so I do not wish to say too much about it. But insofar as my learned friend wishes to champion the cause of a piece of legislation that is in itself the subject of a constitutional challenge before our court, I do not wish to recommend that this Government adopt such a piece of legislation. For my own part, I think



what we have here is quite satisfactory. The architecture of the Anti-Terrorism legislation is not something I think we should follow. If we do follow it, we run the risk of doing so at our own peril in the event that the judicial pronouncement comes down on a different side. Therefore, the Government prefers to play it safe on this one and stick with what is tried, tested and proven in our laws, and that is the simple search warrant that the law knows, and that has served us well in this country.

**Sen. Al-Rawi:** Madam Chairman, I want to state for the record that I too spoke with Sen. Prescott, because he told me he would not be present today and he would be out of the jurisdiction. He reviewed his position when I articulated my concerns to him. So I would not hold him out as a champion of any one cause or not, particularly because he is absent. And secondly, I think we as a Senate, involved in the making of laws, ought to have some degree of explanation—not running afoul of the sub judice principle—as to what the nature of the challenge against the Anti-Terrorism Act that could affect this legislation would be, particularly because the hon. Prime Minister participated in the development of the Anti-Terrorism Act when she sat in Opposition.

So I would love to know what is so sinister and so wrong in the Anti-Terrorism Act, because much effort went in by the UNC position, and I cannot understand why we cannot be told at least what the principle—you know you may challenge the constitutionality of a piece of legislation on technical grounds, Madam Chairman, but that is not to say that every act, every specific clause in there is unconstitutional, it may be that the Act as a whole is unconstitutional for a particular reason.

So, does the hon. Attorney General then suggest to us that because we are making serious law, and because we are following precedents which are nearly 40 years old, if we follow what the hon. Attorney General is telling us, in an area of law that has hardly been tested, because I searched diligently across Westlaw and LexisNexis for cases involving challenges to the UK 1974 Act, and there is precious little available. So why are we then embarking in haste to decide upon something which affects constitutional rights, if we cannot be told by the titular head of the Bar in this Senate today, what could be possibly wrong with the Anti-Terrorism Act? It is not good enough to speak in a nebulous fashion as to what could be wrong with the policy, nor is it good enough to tell the honourable Senate that that is just the Government's policy.

**Sen. Ramlogan SC:** The one thing I agree with my learned friend on, is that in the UK legislation which he cites as something that is good for us—*[Interruption]*

**Sen. Al-Rawi:** No, I do not. I said by way of example.

**Sen. Ramlogan SC:** Yes, and what I will say, Madam Chairman, is in the UK legislation, it is on par with what we are proposing. The absence of anything from LexisNexis, Lawtell and all of the search engines that my learned friend quite usefully referred to, the absence of case law challenging that legislation is evidence of the fact that it has served the United Kingdom well, and that is precisely what we have done in our legislation. What we are proposing in this Bill is, in fact, on par with section 4 of the Biological Weapons Act, 1974 of the United Kingdom. We are quite happy to leave it as is, because we feel that—I do not want to get into a debate about why the Anti-Terrorism Act may or may not be unconstitutional, I think that is a matter before the court. Suffice it to say that the Government’s policy position in respect of this particular matter, is that the provision for a search warrant which we have in clause 8, before a Magistrate is sufficient for the purposes of this Bill.

**Sen. Al-Rawi:** Madam Chairman, I would probably be willing to change my name if the hon. Attorney General could say to us, that the very careful threshold levels thought out in sections 24, 25, 33, 34 and 35 of the Anti-Terrorism Act, which allow for a judge of the High Court to be satisfied as to the bona fides of moving in to seize, destroy and reproduce information, I could hardly believe that those could be the sections which were deemed unconstitutional or subject to constitutional challenge, I just cannot not accept it.

The second point is that the English Act is subject to, as I said before, wider articulation with other legislation in England which we do not have. The other point is that in Trinidad and Tobago, we have the recent history, as unpalatable as it might be for this Government to hear, of abuses of systems, where we have had people—*[Interruption]*—well, you see Madam Chairman, I do not have a recommendation for wording, because it is so fundamental a change. What we could do—sorry to interrupt, hon. Attorney General—if I am on a frolic of my own, or the Opposition Bench is on a frolic of its own, we are prepared to let the rest of the Senate say that it is happy, but we would not be supporting it, so I do not want to indulge the time unnecessarily. My point is I think it is an extremely dangerous thing to embark upon; it is subject to massive amounts of abuse; it does not rest easy in my conscience as a maker of laws as I sit here today, but if the rest of the Senate is persuaded and the Government has its majority, then, so be it.

**Sen. Hinds:** Madam Chairman, you know, I take the point as expressed as passionately by Sen. Al-Rawi, and to hear the Attorney General, the spokesperson for the Government say, the reason he would reject the submission made by Sen. Al-Rawi is because the Anti-Terrorism legislation is under challenge in the court,

it really took me aback. Because it is still the law of Trinidad and Tobago, notwithstanding the fact that it is subject to a challenge. As we speak, the police can still go out there and arrest someone and they can act under it. The fact that it is before the court on a challenge does not stop it from being the law of Trinidad and Tobago; that is one.

Secondly, that legislation if I recall, was moved without a specified majority [*Interruption*] and this one requires a constitutional majority. This one is, of course, more serious, it can infringe—and certified so. I recall when we dealt with the Anti-Terrorism Act, because of the intervention of the then Opposition, we had to water down certain things and remove the need for the specified majority, this one is more draconian if I may use that word. Therefore, hon. Attorney General, I am saying that while you may wish to reject the submission made by the hon. Senator, the reason you have given for so doing is not persuasive as far as I am concerned. Simply because the Anti-Terrorism legislation is before the court, is that a good enough reason to disregard the levels of protection that is now being recommended? Because in the Anti-Terrorism legislation we have recourse to the DPP before prosecution in some cases, we have recourse to a High Court judge—this is a very low threshold in a situation where we are requiring a specified majority, because it is certified to be an infringement of the rights of the citizen. And again, I just want to repeat in closing, the mere fact that it is under constitutional challenge in the court is not a good enough reason. So I want to hear a good reason.

**3.25 p.m.**

**Sen. Ramlogan SC:** Now Madam Chairman, this issue occupied a lot of time and center stage during the course of the debate, and I thought I dealt with it adequately during the course of my contribution. I did not want to go into the details to regurgitate my contribution and I am not going to be lured into doing that. Suffice it to say, the Anti-Terrorism Act and the reason it went, and the reason it was proposed in sections 23 and 24, an *ex parte* procedure before the judge of a high court in chambers was that it dealt with a situation where you are about infringe the man's liberty.

**Sen. Al-Rawi:** That is not true.

**Sen. Ramlogan SC:** And insofar as you are dealing with the man's liberty and pre-charged detention, and pre-charged inquisitorial procedures, this Bill has no such structure to have any kind of pre-charge issues occurring. So that apart from that, the High Court is already overburdened and we are trying to clear up a backlog that exists in the High Court.

We have passed before, in the Parliament, the abolition of preliminary inquiries. When you abolish preliminary inquiries it is expected that there would be some excess capacity in the Magistrates' Court, so that to put this in the Magistracy rather than the High Court where we have a backlog of murders, robberies and serious criminal offences that need to be tried, it is about a policy position of the Government to leave this with the Magistrates' Court which will be expected to deal with this. It is also about police officers who are the ones to administer this law, utilizing a procedure with which they are already familiar, so that they themselves can actually implement and execute the legislation in a practical and expeditious manner.

So, for those reasons the Government, during the course of the debate, indicated that it could not and was not prepared to accede to the points made with respect to the anti-terrorism legislation and the need to follow it, and as well, the need to elevate it from a magistrate to a high court judge. And that position has not changed, and there is nothing that has been said to convince us to move from that position.

**Sen. Al-Rawi:** Just on the point, Madam Chairman, the submission by the Hon. Attorney General that you are dealing with a pre-charge detention simply is a gross simplification of the fact of the legislation. Section 23 of the Anti-Terrorism Act says, "for the purposes of any offence under that legislation which includes biological weapons, specifically that you may detain someone;" that is 23. Section 24 says that you have power to gather information for any offence. Sections 33, 34 deal with the power to seize property for any offence. It is not only the issue of the pre-charge detention.

Mind you, Madam Chairman, a pre-charge detention going through the courts is not a bad idea if the Parliament deems it fit, because you are dealing with matters of serious public safety. But the position that we must accept the argument of the Attorney General, that over burdening a judge of the High Court is a problem, is not one that I could respectfully promote. And the reason is, the assizes are in fact not as heavily burdened as the civil court is, the Magistracy or the Judiciary is not the reason, the question is whether you are filtering the information in a proper manner. It is known in this country that you could obtain a warrant on a very easy approach to a magistrate. I do not want to be derogatory of the Magistracy.

Madam Chairman, sitting in this Parliament, there are members of the media, one of whom had a search warrant executed on his home, things were done there; it is easy to obtain these things, but we are talking about going into somebody's

property, vessel, conveyance and being able to seize, detain, destroy and reproduce information which may be subject to confidence. Some of the provisions here go further than the usual terms permitted.

Now, Madam Chairman, I have set out the policy objection that I have. There are architectural problems in the clause as drafted as well, and I cannot respectfully—I will go down those later—think that anybody spent a lot of time dealing with this in light of some of the architectural difficulties. [*Crosstalk*]

**Madam Chairman:** Sen. Ramkhelawan was waiting for a while.

**Sen. Ramkhelawan:** Madam Chairman, I have listened respectfully to the arguments by my learned friend Sen. Al-Rawi and the Attorney General, and if I could sift through it, the discussion is really about high-bar, low-bar procedures. The argument of Sen. Al-Rawi: this is low-bar to have a magistrate, a search warrant, and any police officer below the rank of inspector.

If I recall, the other case it was the high court judge, then going to a police officer, I believe, above the rank of sergeant. So I think we can be here for a very long time arguing whether what should be the policy construct of the administration. But what is clear is that there is a process of insulation in terms of what needs to be done, how it can be done, that you have a judicial officer standing in between, and that a police officer, not just on suspicion, can enter into the premises and so on, but he must say what is the nature of the suspicion, and so on.

I hear the arguments, but I believe that, with due respect to Sen. Al-Rawi, there is sufficient in the process to give a level of insulation and comfort. I cannot say that I am very much aware of all the legal technicalities, but in terms of the process of getting there, I would have to say that they may have to disagree as to high-bar, low-bar; and that is on a policy basis. Beyond that, I have some sense of comfort that there is sufficient insulation. Whether it should be higher or not, it is a question of degree, but I have that comfort that there is the insulation.

**Sen. Hinds:** Madam Chairman, just to assist, if I may, with great humility, the Attorney General on clarifying his thoughts on this issue further. The Hon. Attorney General suggested that in the Anti-Terrorism legislation and the fundamental difference between that and what is now before us, is the fact that in the Anti-Terrorism legislation the entrenched right of one's liberty was under threat. Is that correct?

**Sen. Ramlogan SC:** [*Inaudible*]

**Sen. Hinds:** All right, let us deal with that point alone. In this case, it is not liberty, that is what you said, but it is property.

**Sen. Ramlogan SC:** No, that is not what I said.

**Sen. Hinds:** What did you say?

**Sen. Ramlogan SC:** What I said during the course of the debate and I repeat here again, is that insofar as the application was to go to a high court judge ex parte, in the Anti-Terrorism Act, that was a situation that was exceptional and historic in nature because the law was going to authorize for the first time pre-charge detention for up to 14 days. That is why they had that special procedure to go to the judge on an ex parte procedure. Nowhere does this Bill authorize pre-charge detention of someone for up to 14 days.

**Sen. Hinds:** But what this Bill authorizes is that person's property—a man might have six containers that he imported from somewhere, on the port or in his warehouse, and this Bill authorizes seizure of that. This could shut down a man's business, his life's work and therefore—*[Interruption]*

**Sen. Al-Rawi:** What about if he is a terrorist and you want to detain him.

**Sen. Hinds:** All of that—I am just saying for the benefit of the Attorney General's clarification; is the Attorney General placing one constitutionally entrenched right above another conceptually?

**Sen. Ramlogan SC:** In the course of the debate I said that in the pecking order amongst fundamental rights, the fundamental right to liberty has always been treated differently, and that was a point made by the administration which was then in power when they piloted the Anti-Terrorism Bill, and they said that liberty was different, and that liberty is so fundamental to the person and human dignity, that is why it is treated differently.

Madam Chairman, may I say, on this matter, this is a policy difference and the Government remains unmoved in its policy with respect to clause 8; and that is the Government's position. Thank you very much.

**Sen. Ramkhelawan:** Madam Chairman, may I ask—*[Interruption]*

**Madam Chairman:** Sen. Deyalsingh?

**Sen. Deyalsingh:** I will let—

**Madam Chairman:** Sure.

**Sen. Ramkhelawan:** Madam Chairman, may I ask for purposes of clarification, if someone were suspected of having biological agents and so on, could an inspector not go to a high court judge and say that he has suspicions that some terrorist act may be undertaken because of these biological factors? I am asking the question whether this act could be invoked, and if that is the case—  
[*Interruption*]

**Sen. Ramlogan SC:** No. I think that is why during the course of my contribution, in dealing with the point as to whether or not this could not have been done by way of an amendment to the Anti-Terrorism Act I had pointed out why we compartmentalized it and dealt with it differently, because the Anti-Terrorism Act dealt with “a different kettle of fish”. And the remedies that they proposed in that law were very draconian but quite different.

No. I think what will happen if there is a terrorist threat they will go under the Anti-Terrorism Act, if there is a threat that falls under this Act, they will be forced to come and utilize this Act.

**Madam Chairman:** Sen. Deyalsingh, you had a point?

**Sen. Deyalsingh:** Yes, Madam Chairman, just to the Hon. Attorney General, under the Anti-Terrorism Act, No. 2 of 2010, section 22(7), under the offence of financing of terrorism, if I may read it.

Upon an application made under subsection (6),

“the judge shall—

- (a) hear any evidence or other information that may be presented by the Attorney General and may, at the request of the Attorney General...”

Et cetera, et cetera, et cetera. The Government may say, not surprisingly, I do agree with Sen. Al-Rawi, but I do in all conscience agree that the bar should be higher. Could the Hon. Attorney General tell me whether what I have just read under this amendment could be transposed into this biological Bill to raise the bar, because I do believe the bar should be higher than a magistrate?

**Sen. Ramlogan SC:** Just to reiterate, the Government’s policy position is as stated in clause 8, Madam Chairman, and we remain unmoved in that position; subject to the amendment circulated.

**Sen. Al-Rawi:** Sorry, Madam Chairman, we may truncate a lot of this process because it seems to be one policy point versus another by simply moving to the vote position on the clause itself. Because if the numbers prevail, then so be it.

**Sen. Deyalsingh:** Yes, we are wasting time.

**Sen. Ramlogan SC:** Sure.

**Madam Chairman:** Are you moving for a division, Sir?

**Sen. Ramlogan SC:** No, no no, put it to the Senate, clause 8 as amended.

**Sen. Al-Rawi:** Madam Chairman, before you go there, in case this clause survives, as much as I do not want it to, and as much as I wish that everybody had experience in court to understand what trammelled rights look like, it is regrettable that they would cry later when it happens to them or their families, but so be it. This is way that we deal with laws. It is a genuine perspective which we must take on board that people have different perspectives.

Madam Chairman, in the Bill itself, I was just wondering whether we also want to keep in clause 8 as currently recommended to be amended in subclause (e):

“reproduce or cause to be reproduced any record from data contained in or available to any computer system used in the form of a printout or other intelligible output...”

I was just wondering if that captured your ability—were you going to confine yourself to intelligible output? Because the current law in relation to information technology and intellectual property is that it does not necessarily need to be intelligible output. That is one. At subclause (g):

“seize and retain for such time as may be necessary...”

Mind you, in England there is a provision that says that you must return it in a particular position, so that is subject to specific legislation in England where there is a balance as to how long you can keep it and how soon you must return it; so that is absent here. If the Senate is satisfied with that absence, then so be it. But in subclause (g) you have the inclusion here in the second to last line (i) “or Regulations” position.

I wondered whether you wanted the right to:

“seize and retain for such time as may be necessary any—equipment that is being used or is intended to be used for any purpose that would contravene any requirement of the Act or Regulations....”

That is a very dangerous inclusion for unspecified material.



**3.40 p.m.**

You then have the issue in subclause (4) on page 7:

“A person who—

- (b) knowingly makes any false or misleading statement, either verbally or in writing...” again “...under this Act or Regulations...”

And if you go to the end of the clause:

“commits an offence and shall on conviction on indictment, be...”

Madam Chairman, even in what we call in court a simple “cuss case”, you have to have some form of evidence. I know that there are police rules and judge’s rules in relation to statements and how they ought to be taken, but that is a moving target to say the least. The issue of this vague reference of something being verbally said, is to potentially put somebody into serious jeopardy on a “say so” basis: I say that Sen. Hinds told me X, charge him, and then we have to go into a whole interrogation of facts there. These are some of the architectural points that I had observed that I wanted to raise as well.

We then have at clause 4(c), a very vague subclause.

“A person who—

- (c) removes, alters or interferes in any way with any biological agents or toxins seized or detained under this Act or Regulations made thereunder without the authority of a police officer...”

I do not know if the property right, the seizure of property, can be delegated to the subsidiary legislation of regulations which this clause implies. So I have a huge question mark on that one. I can accept that you may have an offence for breaching regulations which are procedural in themselves, but I do not know that the right to property can be described to be infringed in the regulations. I would want some comfort from the Hon. Attorney General that that is so.

Then you look at subclause (5):

“Any biological agent or toxin seized by a police officer...”

Where we have moved away from the concept of “seized” or “detained”, so we are going only with seized:

“by a police officer or any other authorized person under this section may be kept or stored in the building...”

Madam Chairman, elsewhere in the Bill we have used conveyance, vessel, mechanism, box, so we are confining ourselves to building alone; the question is, why? Why are we adopting different versions of it?

We then have to consider: has this thing really been properly thought out? If you do not want to accept my policy point of view of a high bar superintendent, if you do not want to accept my argument that the English legislation has protections that say how long the warrant is supposed to be for in terms of validity, how long you can keep property and it must be returned; all of that exists in England, it is not here, but if this Senate is satisfied that they are being responsible today, in the discharge of creating law, then so be it. But the point is that this language needs to be looked at.

**Madam Chairman:** Sen. Tewarie?

**Sen. Dr. Tewarie:** I just want to ask a question, Chair. Are we having another debate on the Bill, clause by clause?

**Sen. Hinds:** What sort of question is that?

**Sen. Al-Rawi:** Yes!

**Sen. Hinds:** What sort of Nazi kind of communist—

**Sen. Dr. Tewarie:** Chair, I am asking a genuine question. Are we having a debate—*[Interruption]*

**Sen. Hinds:** What sort of question is that?

**Sen. Dr. Tewarie:**—again on the Bill, clause by clause?

**Hon. Senator:** The answer is yes.

**Sen. Ramlogan SC:** It is a revisitation.

**Sen. Ramkhelawan:** Chair, since we are going into many of the elements in clause 8—*[Interruption]*—If I may, Sen. Hinds?

**Madam Chairman:** Sen. Ramkhelawan, yes.

**Sen. Ramkhelawan:** Under clause 8(1)(g)—

**Sen. Ramlogan SC:** Sorry, what?

**Sen. Ramkhelawan:** Clause 8(1)(g).

**Sen. Ramlogan SC:** Clause 8(1)(g), yes.

**Sen. Ramkhelawan:** Clause 8(1)(g)(i), under the first line.

“seize and retain for such time as may be necessary any—

(i) equipment that is being used”—and I wonder if this is proper legal language—“or is intended to be used...”

Or, should it be, “equipment that is being used or which he reasonably believes is intended to be used...” I think that something is missing there; I do not know what is the legal connotation of it.

**Sen. Ramlogan SC:** The concept of the “reasonably intended to be used”, that would be implied in any event, because you would have to have the concept of reasonableness in prosecuting the offence, so you do not need to put that in every single clause that there is that. Permit me, Madam Chair, to just go through the points that have been raised thus far.

**Sen. Ramkhelawan:** I have one more.

**Sen. Ramlogan SC:** Sorry, beg your pardon.

**Sen. Ramkhelawan:** I have one more point, and this is clause 8(3). During the debate we spoke to the question under (3), of the penalty for non-compliance, and I am not sure that I saw those penalties. I believe the Hon. Attorney General said that he would look at the whole question of penalties in respect of non-compliance and in particular, clause 8(3), as we are in clause 8.

**Sen. Ramlogan SC:** Clause 8(3)?

**Madam Chairman:** Yes.

**Sen. Ramkhelawan:** You dealt with the penalty in clause 8(4), but there are no penalties in—

**Sen. Ramlogan SC:** For clause 8(3)?

**Sen. Ramkhelawan:** Yes.

**Sen. Ramlogan SC:** Okay, just one second. I think subclause (4)(a) refers to subclause (3).

**Madam Chairman:** Subclause (3).

**Sen. Ramkhelawan:** Right.

**Sen. Ramlogan SC:** You see?

**Sen. Ramkhelawan:** Okay.

**Sen. Ramlogan SC:** It is dealt with there.

“(4) A person who—

(a) fails to comply with subsection (3);...commits an offence and shall on conviction...”—[*Interruption*]

**Sen. Ramkhelawan:** I see it now.

**Sen. Ramlogan SC:** Yes, so it is there.

**Madam Chairman:** You wanted to go through some of the—[*Interruption*]

**Sen. Ramlogan SC:** Yes, Chair—[*Interruption*]

**Sen. Beckles:** Hon. Attorney General—[*Interruption*]

**Sen. Ramlogan SC:** Sorry, beg your pardon. Yes.

**Sen. Beckles:** I think the reason why Sen. Ramkhelawan raised the concern about reasonableness, if you look at clause 8(1), (g)(i) and (g)(ii), you would notice that—[*Interruption*]

**Sen. Ramlogan SC:** The “reasonable” in (ii), and not there.

**Sen. Beckles:** Yes.

**Sen. Ramlogan SC:** I picked up on that, yes.

**Sen. Beckles:** I do not know if it might have been because in clause 8(1), (g)(ii), you are referring to “is being manufactured” as distinct from (g)(i) which says, “or is intended to be used”.

**Sen. Ramlogan SC:** Yes, I think that is why.

**Sen. Beckles:** I think it is just that clause 8(1), (g)(ii) takes a different approach—[*Interruption*]

**Sen. Ramlogan SC:** Because of the manufacturing?

**Sen. Beckles:**—the manufacturer has to consider from (g)(i).

**Sen. Ramlogan SC:** You are correct and I am grateful to you for that assistance. She is correct. Chair, this matter was the subject of a compromise, because during the course of the debate, you would recall when we dealt with clause 8, which we just completed, we had deleted the words “for the purposes that are in contravention to this Act or Regulations made thereunder”, and we just left it as “in contravention to the Act”. And what we had done is to delete the possibility of the offences being created by the regulations, per se, in a direct manner, and we had sought to introduce the offences in the legislation itself.

The reason we have some reference to contravention of the regulations, which I think is the point Sen. Al-Rawi made, is that when one looks at clause 9(2) or 9(1), the Minister has to give directions—[*Interruption*]

**Madam Chairman:** In writing.

**Sen. Ramlogan SC:**—as to how to keep, you know, where to retain the manner of disposal, retention and disposal as it were. Then, obviously, in the regulations you may have something to deal with those things from the experts and as a result of that, one has to have some reference to the regulations in these sections or else we may very well find ourselves whittling it down. The point made about clause 8(1)(e), about “intelligible output”, I am no expert, I am prepared to be guided on that. Sen. Balgobin, if you can look at clause 8(1)(e), I think the point made about “or other intelligible output”—[*Interruption*]

**Sen. Deyalsingh:** It has to do encryption and so on.

**Sen. Ramlogan SC:** Yes, that is what I am saying. I am no expert so I am prepared to be guided on that, but, certainly, the technical draftsmen—that is what they came up with, and the expertise we had at our disposal.

The point made by Sen. Al-Rawi with respect to the definition of “building” in subclause (5); I think we are prepared to say that that should mirror what is in subclause (3) above, so that instead of having “building”—. Is it the same as in subclause (3) above? [*Crosstalk with CPC staff*] It could be the same thing, yes. So if we can just marry it; instead of saying in subclause (3):

“The owner or person in charge of any building, place, vessel, aircraft, carriage, box, motor vehicle or any other conveyance...”

We can copy that and insert it after “building”. Senator, I am grateful to you for that observation. That can easily rectify that matter.

With respect to subclause (4)(c), I think the point that was made is that “without the authority of a police officer or suitably qualified person” on the regulations point, again, if the police for example, that takes into account a myriad of possibilities. If the police seizes something, you can only remove it from the police compound with the permission of the police and that is why that is probably there, additionally.

The “verbally” point: police prosecute cases everyday on the basis of something said verbally. I mean, someone goes into the police station and they say, “It is rape”, the other one says, “It is by consent”; it is verbal. Police says,

“The man told me he confessed to the murder”, the accused said, “I did not”. Cases are constructed on the basis of verbal evidence throughout the course of our legal history. But I certainly think that if we took out “verbally”, it would remain understood in the law that you can make a false or misleading statement, either in a written form or orally, but I do not think having regard to the subject matter—*[Interruption]*

**Sen. Al-Rawi:** Well, you need all in words, either verbal or in writing?

**Sen. Ramlogan SC:** Yes, but you see, I think, in this case the draftsmen wanted to be careful to say verbally, because the matter we are dealing with, if one is looking for something and a workman lies about it to the police officer when they came to execute the search warrant, for example—because, bear in mind, these things could be stored in underground tanks that are not visible to the naked eye and so on, and if the police officer has to rely upon some form of guidance from the employees at the compound or whatever, you want to make sure that the law provides a sufficient deterrent so that there will be full cooperation on the pain of criminal prosecution and I think that is why it is there. So, from a policy standpoint, I think the Government is comfortable with leaving it as it is. We will accede to the one change in subclause (5), to expand on “building” and we are grateful for that. I am grateful to Sen. Beckles for providing the explanation to learned Sen. Ramkhelawan with respect to the use of the word “reasonableness”. So that is the Government’s position—*[Interruption]*

**Sen. Hinds:** You will make the change on the basis of it?

**Sen. Ramlogan SC:** No!

**Sen. Hinds:** But you are grateful?

**Sen. Ramlogan SC:** I am grateful.

**Sen. Dr. Balgobin:** Under clause 8(1)(e).

**Sen. Ramlogan SC:** Sorry. Yes, I had asked for your assistance on that.

**Sen. Dr. Balgobin:** I would suggest that you delete “intelligible”.

**Sen. Ramlogan SC:** Okay, so we delete the word “intelligible” from clause 8(1)(e).

**Sen. Dr. Balgobin:** I think the rest of it can stand.

**Sen. Ramlogan SC:** Yes, thank you very much and we leave it at “other output”, and I thank Sen. Al-Rawi for that intelligible output. *[Laughter]*

**Sen. Hinds:** One question, Hon. Attorney General. Why then, since you appreciated the points made by Sen. Beckles and Sen. Ramkhelawan, why you do not just make the necessary change?

**Sen. Ramlogan SC:** I think it was an explanatory point.

**Sen. Hinds:** No, she was saying—*[Interruption]*

**Sen. Beckles:** No, I was asking you, when you look at the second one—*[Interruption]*

**Sen. Ramlogan SC:** Sorry, I thought you were explaining. I see one is “manufacture” and the other is “to be used”.

**Sen. Beckles:** Yes, I was saying that may be the reason. I was asking you.

**Sen. Ramlogan SC:** Yes, that was the reason. I think that is the reason.

**Sen. Beckles:** Whether or not that is the reason why they use “reasonable” there and use “intended”. If you are accept that, well fine—*[Interruption]*

**Sen. Ramlogan SC:** I accept that.

**Sen. Beckles:**—if it is otherwise then—*[Interruption]*

**Sen. Ramlogan SC:** No, and I accepted that.

**Sen. Beckles:** —then I should have been reasonable—*[Interruption]*

**Sen. Ramlogan SC:** No, I accepted that.

**Madam Chairman:** Okay. *[Crosstalk]*

**Sen. Ramlogan SC:** There is one typo at (g)(ii), it should be “reasonably” not “reasonable”.

**Madam Chairman:** Okay.

**Sen. Al-Rawi:** Madam Chair, before you move to a vote on the palatability of this thing or acceptability, if I could just make one last observation. The architecture of the Anti-Terrorism Act, because it includes offences and references to certain conventions, it proceeds to have specific sections built into it that deal with certain conventions. It is open, I genuinely believe if we gave it some thought, it is open to amend the Anti-Terrorism Act to include the convention and to have specific terms that apply to it in the same way that the Anti-Terrorism Act defines out the civil aviation aspect, the platform aspect, the diplomat threat aspect; you could easily fit it in to the biological aspect of it. It is the perfect architecture to park it.

**Sen. Ramlogan SC:** Madam Chair, without wanting to descend to a level, I rhetorically observe that I would like to press the delete button on that output, but suffice it to say we do not agree with that. That is a policy decision that we thrashed out in the course of the debate and we have come with a separate Bill. We believe this is a separate matter deserving a separate consideration.

**Madam Chairman:** Sure. I would like to read some of the points raised under clause (8)(1)(e), we are removing the word “intelligible” and leaving “printout or other output”. Under (g)(ii) “reasonable” becomes “reasonably”; it is “reasonably believes”. Under subclause (5), after the words “made be kept or stored in the building”, we are adding after that “in any building place, vessel, aircraft, carriage, box, motor vehicle or any other conveyance in which they were seized or subject to the approval of the Minister, be removed to any place or location.”

**3.55 p.m.**

**Sen. Al-Rawi:** Madam Chair, if I could just assist you, even though I am not going to support the amendment. I think that what you wish to say is strike the word “the”. I think the proper way to say it in draftsman language would be:

“Delete the words ‘the building’ and insert the words ‘any building, place, vessel, aircraft, carriage, box, motor vehicle or other conveyance’.”

**Sen. Ramlogan SC:** Yes, that is fine.

**Madam Chairman:** Thank you very much.

*Question put.*

**Sen. Al-Rawi:** Madam Chair, I call for a division, please.

*The Committee divided: Ayes 24 Noes 5*

AYES

Ramlogan SC, A.

Sandy, Brig. J.

Bharath, V.

Tewarie, Dr. B.

Karim, F.

Ramnarine, K.

Maharaj, D.



Moheni, E.  
Abdulah, D.  
Maharaj, D.  
Baynes, T.  
Ram, A.  
Burke, Archbishop B.  
George, E.  
Ramkhelawan, S.  
Baptiste-McKnight, Mrs. C.  
Drayton, Mrs. H.  
Balgobin, Dr. R.  
Ramkissoon, Prof. H.  
Wheeler, Dr. V.  
Armstrong, Dr. J.  
Sydney, A.  
Bernard, Dr. L.  
St. Rose-Greaves, Mrs. V.  
NOES  
Beckles, Miss P.  
Hinds, F.  
Cudjoe, Miss S.  
Al Rawi, F.  
Deyalsingh, T.

*Question agreed to.*

*Clause 8, as amended, ordered to stand part of the Bill. [Desk thumping]*

*Clause 9.*

*Question proposed: That clause 9 stand part of the Bill.*

**Sen. Dr. Rambachan:** Madam Chairman, I beg to move that clause 9 be amended as follows:

- A. In subclause (1)(b), by deleting after the words “in which biological agent or toxin”, the word “are” and substituting the word “is”.
- B. By inserting after subclause (2), the following subclauses:
  - “(3) Notwithstanding subsection (1)(b), the Minister may in appropriate circumstances, give directions to an owner or occupier of any building, place, vessel, aircraft, carriage, box, motor vehicle, or any other conveyance in which any bacteriological agent or toxin is being kept to ensure the safe storage of the bacteriological agent or toxin.
  - (4) A person who fails to comply with subsections (1), (2) and (3), commits an offence and shall on conviction on indictment, be liable to a fine of one hundred thousand dollars and imprisonment for ten years.”

**Sen. Al-Rawi:** Madam Chair, relative to clause 9, if I could just ask for clarification in the current construct of the clause. It says, if you follow me at page 8:

“The Minister may, upon the recommendation of the Committee, give directions in writing...”

And then (a) and (b) says two specific things: you may give directions in writing to do something and then something else.

Then it goes on at the end to say:

“to ensure the safety and security of such biological agent or toxin.”

If we go back up to it again it says:

“The Minister may, upon recommendation of the Committee, give directions in writing...”

clause (a) says you can seize and dispose of the thing; (b) says you can direct the owner to do something. So you can seize in part (a) and destroy:

“to ensure the safety and security of such biological agent or toxin.”

So how do we destroy something and ensure its safety is my question.

**Madam Chairman:** So the question is: How does the Minister give direction in writing?

**Sen. Dr. Balgobin:** It does not say “or” at the end of 9(1)(a).

**Sen. Al-Rawi:** 9(1)(a), just follow me here:

“The Minister may, upon recommendation of the Committee, give directions in writing—

(a) for the immediate seizure and disposal...”—of X.

Let us assume you satisfy that, so I can immediately seize and dispose of that. At the end now—forget “or” because “or” is to somebody else. It is to the owner, to protect it otherwise. So let us assume you just say, “Go and seize the thing and destroy it.” Then at the end of the clause it says that you are destroying it “to ensure the safety and security of such biological agent or toxin”.

**Madam Chairman:** If I could read Sen. Al-Rawi, he is asking how does the first line, “The Minister may...give directions in writing”, and doing those two, tie in with the ensuring of safety and security of the biological agents or toxins.

**Sen. Al-Rawi:** I could understand if we wanted to say to ensure safety or public or something else, but not that.

**Sen. Ramlogan SC:** Yes. We can say, “safety and security of the public”. We can say that: “to ensure the safety and security of the public”. Would that be okay, Sen. Al-Rawi? “Public health and safety”, that should do it.

**Sen. Deyalsingh:** What is the objective of clause 9?

**Sen. Ramlogan SC:** To destroy. It may not be destroyed; it may be seizure, it may be disposal. I think “the health and safety” would be sufficient. “To ensure the health, safety and security of the public.” [*Crosstalk*]

**Sen. Bharath:** Madam Chair, I think that relates to the actual disposal of the toxin in terms of it being disposed—no, not necessarily health and safety with regard to the public, but the actual safe disposal of the item.

**Sen. Al-Rawi:** It does not say that.

**Sen. Bharath:** No, it does not say that, I agree with you. I think we need to word it in such a way that we get the appropriate meaning.

**Sen. Ramlogan SC:** The key to that is in the marginal note which says, “Disposal of biological agent or toxin”.

**Sen. Dr. Balgobin:** Can you not just say in the last sentence of that section, Attorney General, “to ensure the safe disposal of such biological agent or toxin.”?

**Sen. Ramlogan SC:** Yes, that would be fine.

**Sen. Al-Rawi:** That would not take care of a seized, “I determined it was for prophylactic uses and I gave it back.” I am looking Madam Chairman, at page 12 of the Bill itself, at the Articles of the Convention. I notice in Article II, trying to find a solution to the wording that No. 2:

“In implementing the provisions...all necessary safety precautions shall be observed to protect populations and the environment.”

I do not know if you want to consider words along that line.

**Sen. Ramlogan SC:** That was what I was hinting at earlier, when I said “health, safety, security and the environment”.

**Sen. Al-Rawi:** Or “populations and the environment”.

**Sen. Dr. Balgobin:** I have a question for Sen. Al-Rawi.

**Sen. Ramlogan SC:** I know where you are coming from.

**Sen. Dr. Balgobin:** I hear you on 9(1)(e) when you talk about seize, but you said seize and return. Is that right? But it does not contemplate return because—

**Sen. Al-Rawi:** Part (b) does. In part (b), I may give directions to the owner of a building and whatever conveyance, this is 9(1)(b), where the toxins—for the immediate disposal of such biological agent or toxin where adequate measures are not being taken and unlikely to be taken.

**Sen. Dr. Balgobin:** So neither (a) nor (b) really treats with the issue of return.

**Sen. Al-Rawi:** I accept that; I think that is a good observation. So if you have (a) and (b) both dealing with seizure and disposal—sorry, (a), seizure and disposal, (b) I will direct the owner to dispose of it, then you could say, “to ensure the safe disposal of such biological agent or toxin”. That could probably achieve what you are looking for.

**Sen. Dr. Balgobin:** Yes, I concur with that fully. [*Crosstalk*]

**Sen. Deyalsingh:** Madam Chair, just from a bush lawyer perspective, [*Laughter*] if this clause gives the Minister the authority to give directions for the immediate seizure and disposal of any biological agent, or to force the owner to dispose of it, what happens if you want to prosecute this person in a court of law and the evidence has been destroyed? Just from a bush lawyer perspective. We are destroying the evidence; we are giving the Minister the authority, and the owner the legal authority to destroy something which we may need later as evidence to prosecute.

**Sen. Al-Rawi:** That is why the Anti-Terrorism Act, which allows you to do those things, is appropriate.

**Madam Chairman:** As far as I understand it, it is, “The Minister may, upon the recommendation of the Committee”, so this is certainly the purview of the committee to make such a recommendation to the Minister, and then he would give direction, as it is written here.

**Sen. Al-Rawi:** Madam Chair, I think that the mischief Sen. Deyalsingh is trying to paint, is the fact that—and albeit that a prosecutor would have some difficulties insofar as he would have destroyed the offence and there may not have been an independent assessment of it, et cetera, albeit that might be the case, it goes back to the position that in the anti-terrorism legislation there are mechanisms for production to an independent person in the form of the judge sitting *ex parte*, and reports back, which provides you with at least that safeguard. So we will just note that on the record again. If Senators other than the Opposition are comfortable, then so be it.

**Sen. Deyalsingh:** Madam Chair, the mischief again that I raised, and that Sen. Al-Rawi tried to explain, is that in the Anti-Terrorism Act, the judge is the one with the legal learning to say destroy. In this Bill, it is the Minister who may or may not have such judicial learning, and that is the problem that we are being faced with.

**Sen. Hinds:** When a narcotic matter is finished, it is the court that makes the order for its destruction, and the police would then arrange to have it destroyed. What is being argued here is that on this occasion, unlike the narcotic and the anti-terrorism, it is the judge or the court rather who says, “Dispose of the thing.” In this case, the Minister can. What happens if the Minister does it prematurely?

**Sen. Ramlogan SC:** The answer to that is if the Minister destroys it—

**Sen. Hinds:** Or if he, as happens in some countries, is at the behest of some criminal outfit, and succumbs to their pressure and orders its destruction. That has happened in this world.

**Sen. Ramlogan SC:** If the Minister destroys a bacteriological, biological or toxic weapon, or something suspected of being such, then what would happen is what happens every day in this country, which is, you quantify and compensate in accordance with law. The person will then be able to sue in the court and get their compensation.

**4.10 p.m.**

**Sen. Hinds:** You are missing the point.

**Sen. Ramlogan SC:** At the moment, one second please, if the police wrongfully seizes someone's motor vehicle, suspecting it to be stolen, and the vehicle is destroyed, because somebody "tief" it from the police compound, or the vehicle is allowed to rot, and basically it is no longer usable, what happens is that the court awards compensation and that is what you get, and this is going to be no different.

**Sen. Hinds:** No, no. That is the point, but AG, that is correct, however, that is a separate scenario to the one that was being raised. [*Interruption*]

**Sen. Ramlogan SC:** Sorry.

**Sen. Hinds:** That is a separate scenario to the one that way being raised. You are quite correct, but you were answering the wrong question.

**Sen. Ramlogan SC:** Well, there are two questions. I have answered the one that I thought was more important. The other one which was raised about the policy decision of the Government, which I have outlined before, which is, in a matter of this kind, the Minister, acting upon recommendation of the committee, must have the flexibility, given the subject nature of what we are dealing with.

**Sen. Hinds:** You are answering the wrong question again.

**Sen. Ramlogan SC:** Must.

**Sen. Hinds:** You are answering the wrong question again.

**Sen. Ramlogan SC:** Probably because you are asking the wrong question, but let us hear you. [*Laughter*] [*Crosstalk*]

**Sen. Hinds:** Let me re-present it to the Attorney General, apparently he has just gotten up. The issue that was being raised is where the agent or the weapon for dispersal of that agent, is in the process of the court in other words, as evidence in a matter—[*Interruption*]

**Sen. Ramlogan SC:** The court orders the destruction or disposal.

**Sen. Hinds:** It is the court that usually in the case of narcotics, or in the Anti-Terrorism Act, would order its destruction.

**Sen. Ramlogan SC:** Sure.

**Sen. Hinds:** In this case, the proposal is that the Minister so does, and if it is required for evidential purposes, and wittingly or unwittingly, it is destroyed or ordered destroyed by the Minister, what happens to the evidence in the matter?

**Sen. Ramlogan SC:** One would expect that that is why we had inserted before “the presence of an attorney-at-law on the committee”, so that attorney would no doubt, give the committee the benefit of the guidance to give the Minister the advice upon whose recommendation he would act. But the theoretical possibility of the destruction of evidence that may be used in a court of law, is one that exists on an everyday basis across the board.

**Sen. Hinds:** No, in the case of narcotics, I just told you, at the end of the day, it is the court that orders its destruction the when the matter is disposed of in the court.

**Sen. Ramlogan SC:** Yes.

**Sen. Hinds:** I just told you that.

**Sen. Ramlogan SC:** Yes, I know. What I am saying in response to that, we are not dealing with narcotics here, we are dealing with biological and toxic weapons.

**Sen. Hinds:** That is the point I made.

**Sen. Ramlogan SC:** And the Minister, acting on the advice and the recommendation of the committee, will order its destruction, taking into account no doubt—*[Interruption]*

**Sen. Hinds:** Before you all order to send me St. Ann’s, I give up.

**Sen. Deyalsingh:** Madam Chairman, it should not be difficult for the senior counsel to convince a “bush” lawyer.

**Sen. Ramlogan SC:** Sir, I wish to point out, you are not yet qualified as a lawyer.

**Sen. Deyalsingh:** “Bush” lawyer, “bush”.

**Sen. Ramlogan SC:** Not even a good “bush”, that is what I am trying to tell you.

**Sen. Deyalsingh:** Whatever.

**Sen. Al-Rawi:** “Doh” worry with him, you know.

**Sen. Deyalsingh:** The point I am making, your argument was that if the material is prematurely destroyed, you quantify it and compensate the man, damages—*[Interruption]*

**Sen. Ramlogan SC:** Yes.

**Sen. Deyalsingh:** I am not going down that road.

**Sen. Hinds:** Sure.

**Sen. Deyalsingh:** If it is that we are dealing with biological weapons, which can destroy 1.3 million people, I am not interested in quantifying, reimbursing and making restitution to the person. I want to hold that person, and put him in jail for the rest of his life. So your argument about quantification and restitution does not sway me at all. My concern is that clause 9 gives a Minister—and your argument about the committee with a lawyer, again, does not fly, because when I asked to have a de minimis number of meetings, you said no. So, you have a committee with an attorney-at-law that may or may not meet ever, for a year, so that argument goes out the window. Hold on. My argument is, this Minister may or may not be relying on a committee which may or may not be meeting—*[Interruption]*

**Sen. Ramlogan SC:** But he has to, it says, “on recommendation of the Committee”. If they do not meet, how are you going to get the recommendation?

**Sen. Deyalsingh:** Where is the learning of the committee if they are not meeting on a regular basis? But that is not the point, the point is—*[Interruption]*

**Sen. Ramlogan SC:** How will the recommendation come if they do not meet?

**Sen. Deyalsingh:** You are giving a Minister who does not have the learning, the authority to destroy material; that is the only point I am making.

**Sen. Al-Rawi:** Hon. AG, before you answer, translated, the simple point is, you may be presenting an unwitting opportunity for a defendant before the court to get off on a technicality because he may not have access—*[Interruption]*

**Sen. Ramlogan SC:** All right.

**Sen. Al-Rawi:**—just one moment, there are two points I want to make. So the question is, not to beat you or the policy of the Government, but to make sure that those who ought to be convicted are convicted. I think that is the point that Senator was driving at. The other position is, when you reflect upon the absence in this Bill of any reporting to Parliament of the fact that the Director of Public Prosecutions is not present for all offences which are indictable under this Bill, to recommend prosecution—which is something that I would invite you at the appropriate moment to consider—the question out here is that when the current law, again by way of reference to the Anti-Terrorism Act, if you look at section 36, which deals with “Orders for seizures and restraint of property”, a judge may order that property in respect of which an application is made by the DPP, should be destroyed if he is satisfied that the property has certain conditions attached to it.



The question is, bearing in mind that sections 4, 5 and 13 caveat that we are giving here, the exception to the fundamental rights is specifically in this case here to deal with the right to property. Are we comfortable as a Senate, in the absence of no report by the Minister to Parliament, in the absence of the DPP's involvement, in the Minister being advised by a committee appointed by himself, to destroy property? That is the question.

**Sen. Drayton:** If I may, through you, Madam Chairman, am I not correct in saying that we can deal with that issue under clause 13 where the regulations made under this section, it cannot be dealt with there, being subject to affirmative? [*Crosstalk*]

**Sen. Dr. Balgobin:** Madam Chairman, I—[*Interruption*]

**Sen. Ramlogan SC:** Senator, just before you go. Madam Chairman, I understand the concerns, but I think you see what is happening is that we are viewing the clause in the vacuum. If the Minister finds someone, if the police upon executing a search warrant finds someone with material they believe to be illegal under this Act, biological toxic weapons, the first thing is that, obviously, the police will charge that person, once they have reasonable grounds to believe that that person has in his/her possession or is using something that is illegal, biological toxic weapons and so on. In a situation like that, once the person is charged, that matter to the extent that the person is before the court, the Judiciary will take over that matter, there is no question about that. The prosecution and the DPP is triggered, and that whole regime is a different thing all together.

I think what this clause, which cannot be viewed in isolation, it is not that the Minister will order disposal of something in a vacuum. What this section is attempting to deal with here, is perhaps—I can conceive of two situations; one, if you find something on open land, containers, and nobody claims ownership of it, so there is no possibility of a criminal prosecution, but it is a hazardous thing, the Minister will have to order its destruction; that is one.

Secondly, you may have a situation where the nature of what is found, given the imminence of the potential mass destruction that could be caused, is such that you need to act quickly, and the Minister may need to order its destruction. Now mind you, none of that is to say, that the person who is found in possession of that and so on, is not going to be prosecuted. Proper records will obviously be taken as to this is what is found, you could film it, you could do whatever it is, but obviously, on the one hand, one has to balance public safety, the imminent threat posed to public law, order, human safety, and the need to actually have a criminal prosecution, but the need to have disposal, and the right of the Minister, upon recommendation of the committee.

And I want to stress, Sen. Deyalsingh, it is not that the Minister is acting without the committee; you said that they may not have to meet and all of that. Well if they do not have to meet and they are not meeting, how is he going to get the recommendation of the committee? That recommendation of the committee can only come if the committee meets and gives the Minister a recommendation upon which he acts.

**Sen. Deyalsingh:** Remember the whole debate about the quorum was supposed to be on it.

**Sen. Ramlogan SC:** Yes, but there still will be a recommendation of the committee. But anyway, Sen. Dr. Balgobin?

**Sen. Dr. Balgobin:** Yes, Attorney General, through you, Madam Chairman, the thing that causes me some difficulty with clause 9 is, whether it would be inimical to the interest of the Minister or this Bill, to have some level of judicial involvement, and I will tell you why I am asking this question.

**Sen. Ramlogan SC:** Yes, sure.

**Sen. Dr. Balgobin:** In 9(a), the clause ends by saying, "...for any reason other than prophylactic..." and so on. So the assumption is this is weaponized—  
[*Interruption*]

**Sen. Ramlogan SC:** Yes.

**Sen. Dr. Balgobin:** —or it can be weaponized.

**Sen. Ramlogan SC:** Yes.

**Sen. Dr. Balgobin:** In 9(b), it says, "where adequate measures" for protection or safeguarding of the material is "not being taken" or "unlikely to be taken".

**Sen. Ramlogan SC:** Yes.

**Sen. Dr. Balgobin:** These are things that require a significant degree of judgment, and a requirement for fairness is paramount. While expert judgment can be delivered by the committee—

**Sen. Ramlogan SC:** Yes.

**Sen. Dr. Balgobin:** —we are taking someone's property and destroying it, and we are requiring a warrant from the judicial system in clause 8 to go look for it. Should we not require in clause 9 some judicial support for its seizure and destruction. I understand that a Minister is sworn to be fair.

**Sen. Ramlogan SC:** No, no, no. That is not the point. I hear you and understand the concern, it is one that has exercised my own mind; the difficulty is this. We all know that the judicial process, once it is triggered, it is open to a delay. If you have come into contact—you know, there is a report made to the police that somebody is storing some kind of nerve gas which they intend to use on Carnival Tuesday, or just after Dimanche Gras or something, and they go down, convene an emergency meeting of the committee, they give advice that it should be immediately disposed of because it has been tested by somebody from CARIRI, and they test, yes, this is dangerous or whatever the case is. In a case like that, to ask that you go through the judicial process, that man hires a Queen's Counsel coming down, and he gets a delay on the matter, having regard to the subject nature of this matter, as you rightly point out, the exception is there for protective and prophylactic purposes, you have exempted that. Now, I agree it does require a judgment call, but a judgment call is required to be made in legislation throughout this country, whether you are dealing with pharmaceuticals, anything.

The question is this: if that guillotine falls wrongly, and a gas is disposed of, which was in fact being stored and kept for a lawful purpose, that gas, once it was being kept for a lawful purpose, then it would have been acquired lawfully. Once it was acquired lawfully and being kept for a lawful purpose, then you can be compensated for it, and you can reacquire it. So that is the compensation and the protection of the right of citizen. On the other hand, if you run the risk of anything, a delay, and the Minister not being able to act as a matter of national security to protect the population, and to say, well look, we need to act now, the destruction could be quite devastating. So, that in weighing it up on the scales, I thought that look, the compensation for something that is acquired for a lawful purpose, which is misjudged, is a more than adequate remedy, which the law provides in any event, whether it is the police with the car or anything else.

Even if we did not pass this law, the police could go in a pharmaceutical company, and they could say, well you know, whatever the case is, you intend to cause mass destruction, we have whatever plot is afoot, and it could be destroyed. They can take—something happens to that. But the remedy the law gives you is adequate compensation. That compensation could include your loss of profits. The aim of the compensation is what is called *restitutio in integrum*. It is to restore you to the position you would have been in, had the thing not been unlawfully taken away from you and destroyed.

So that when one weighs it up in the balance, the need for some measure of flexibility, given the subject nature and the character of what we are dealing with here, I erred on the side of allowing for some expedition, bearing in mind that this comes in the scheme of an entire Act whereby once someone is charged—  
[*Interruption*]

**4.25 p.m.**

If the police finds someone in possession of this—the police “cyar” go to the Minister and the committee “doh” come in to destroy this thing you know—the police will then charge that person. Once they are charged, that biological weapon and so on becomes evidence that is in the custody of the DPP and the police, and they take over.

Now, there is provision in the Summary Courts Act so that the magistrate can order its disposal, and once someone is charged and the criminal process is triggered, the committee and the Minister have nothing to do with that. It becomes material evidence in the commission of a crime for a man who has been charged and the prosecution is in train. This power is a residual thing that applies only where someone is not being charged—like I say, you find it on open land and you need to destroy it quickly. [*Interruption*] It really does not apply in a situation where you find someone in possession of it. If you find someone in possession of it and you make a judgment call, Sen. Dr. Balgobin, to say it is wrong, then the judicial process will deal with that. The defence lawyer will raise the point and the judge will make a determination.

**Sen. Al-Rawi:** Sen. Dr. Balgobin, if I could just say, I thank the hon. Attorney General for that logical demonstration of how the process works. It is true. However, in Trinidad and Tobago and in the common law jurisdictions that are our brothers and sisters, you have the ability to call a judge on the telephone under a *quia timet* injunction and obtained an ex parte order forthwith.

Secondly, from the Privy Council come down, the case law is replete with examples of how hackneyed an expression “national security interests” can be.

Thirdly, restitutio in integrum as a measure of relief for damages being an adequate remedy is to belie the whole law that relates to injunctions where damages are determined not to be an appropriate remedy which the law recognizes. I will give you an example, Madam Chairman: Trinidad and Tobago may very well say, “Listen, hypothetical case, we have an assassination plot. People, we have credible evidence from responsible people that a, b and c are involved. Let’s deal with them.” Matters then run into the system. Question: is a

man's name restored bearing in mind that an offence under this Act ties in to an offence under the Anti-Terrorism Act, and ties in to our obligations by way of reciprocity to other international conventions? Are we now to say that people in Trinidad and Tobago must rely on damages as an appropriate remedy when they are blacklisted globally, when they may find themselves unable to travel out of Trinidad and Tobago?

**Hon. Senator:** No.

**Sen. Al-Rawi:** Now, let us apply the subject matter. Madam Chairman, chickenpox or shingles as a disease is treated by way of an application of an attenuated virus. They take a virus, they change its properties and they inject you with the virus. It is a biological agent. The research and development that may go into a mechanism like that could probably never be achieved in some circumstances.

The simple position is this: if we want the law to stand, is it proportional and is it reasonable to allow for the destruction of property as quickly as is proposed there? Now, nowhere in clause 9 does it say in the event that you have unclaimed biological material being manufactured somewhere, that the Minister shall the right to destroy this thing because it is unclaimed. In fact, it says exactly the opposite. It says, in any circumstances the Minister has the right to destroy this position upon recommendation of the committee. So, it is not as narrow as the hon. Attorney General makes it out to be. If he wishes it to be as narrow as it is, then he ought to recast the ambit for destruction for unclaimed property. But, in a country like this where you can obtain judicial assistance instantly on an *ex parte* basis, where you have an Act that has no recourse to the DPP, where you have an Act that has no report to the Parliament, how can you allow this to pass in that circumstance? You cannot.

**Sen. Dr. Balgobin:** Could I just make the observation that while I understand, Attorney General, what you are saying, it then occurs to me that the standard set in clause 8 may not be too low but may be too high. If we are dealing with an immediate threat, then you should not have to go for a warrant.

**Sen. Ramlogan SC:** No, but the warrant is necessary for you to know whether or not the man has anything at all.

**Sen. Dr. Balgobin:** So, by the same token, could we not say that you can apply for permission to seize and destroy. Would that necessarily be—the question I had for you was—

**Sen. Ramlogan SC:** Let me ask you this—

**Sen. Dr. Balgobin:**—would it be a lengthy process to do that?

**Sen. Ramlogan SC:** Let me take you through that: listen, if you call a judge and say, “we have seized something which we believe to be a highly destructive toxin and biological weapon, and we need your order to destroy it, wha yuh think the judge go tell yuh?” The judge is a lawyer you know. He is a lawyer who somebody appoints as a judge. “He go say: but, what! bacteriological and toxin”. *[Interruption]* Could I speak please! Wait! Hold on. Then, what you would have—that would require a hearing on its own, with experts and all of that. In other words, the committee, contrary and all of that.

Now, I just want to put that in the context of the legislation. Listen, once someone is found in possession of something that we are saying is illegal, either in possession or with the intention to make illegal use of it, that is a criminal offence. Once that happens, the police will charge that person and they will take possession of the material, it goes into the custody/possession of the police, because it is material evidence in the commission of an offence. That is what will happen. Once that person is charged and that evidence becomes the property of the police, the court and the DPP, then the Minister has no power. *[Interruption]* This arises in a situation where it is an exception. Now, if you all wish to clarify that exception, perhaps, fine, but the point is, as is, the Minister must have the power. He must have the power, upon being so satisfied that this thing is not for some public good, something that is not in the public good, to order its destruction on the recommendation of the committee.

**Sen. Al-Rawi:** Madam Chairman, I know this may not be appropriate, we have some serious discussions which could easily happen over the break, if we were to take one which would, perhaps, allow you us to reconsider some of our thoughts faster, I am just asking whether it is possible for us to consider taking the usual break at 4.30 p.m.?

**Sen. Ramlogan SC:** 4.30 p.m. gone, you know. *[Interruption]* We have two clauses left and we have another Bill to go on to, man.

**Sen. Hinds:** Attorney General, hear what 8(5) says.

**Madam Chairman:** In response to what Sen. Al-Rawi, I would like to say that we just have two more amendments and just a schedule so we can proceed and just complete it. *[Interruption]*

**Sen. Hinds:** Let me just remind us of 8(5). It says:

“Any biological agent or toxin seized by a police officer or any other authorized person under this section may be kept or stored”—well, we amended in the building.

**Sen. George:** Yes.

**Sen. Hinds:** Right, we made an amendment to that.

“...in which they were seized or subject to the approval of the Minister, be removed to any other place or location.”

In other words, even where the police seized it—Attorney General, if you have to be correct, we have to amend this legislation.

**Sen. Ramlogan SC:** No, I do not think so.

**Sen. Hinds:** So, if it is seized by the police—this does not exclude arresting somebody along with it, you know.

**Sen. Ramlogan SC:** No, but the point is—

**Sen. Hinds:** And you are saying, once the police have come into play and a criminal offence is invoked, then it cannot be ordered destroyed by the Minister.

**Sen. Ramlogan SC:** No, but this only deals with removal to a safe location. That is all it is.

**Sen. Hinds:** Yes, but it is in the custody and under the purview of the very Minister and you are trying to tell us that you cannot order its destruction once it becomes part of the evidence. It is under his purview.

**Sen. Ramlogan SC:** Okay. Madam Chairman, the change we are willing to make on this is to the original point which has spawned this discussion, towards the end where it says, “to ensure the safety and security of”, we will delete “such biological agent or toxin” and say, “of persons and the environment”, “to ensure the safety and security of persons and the environment.”

**Hon. Senator:** You need to revisit this, Attorney General.

**Sen. Al-Rawi:** Madam Chairman, let us just proceed to the vote on it, either it is Constitution or it is not.

**Sen. Dr. Balgobin:** So, to get an order of the court is a time consuming—I really do not know, I am asking.

**Sen. Ramlogan SC:** Yes.

**Sen. Dr. Balgobin:** It is a time consuming—

**Sen. Ramlogan SC:** Well, there two things. Let me walk through the practical side to this. We find a pharmaceutical company or some chemical company that has been reported to the Minister of National Security, it is suspected that they are involved in illegal activity and they have some biological weapons, toxins and so on, it is tested; and they get a search warrant; they go down there; it is found there and it is tested—or firstly, they would probably want to lock down the place and take a sample to get it tested. They would need to remove that hence the 8(5), to get the sample to CARIRI testing and so on.

Fine! It comes back, then the committee advises the Minister that, look—well, first thing, once they confirm that it is an illegal substance and the pharmaceutical owner or chemical owner will say, “Why are you in possession of all of this?” He said, “Well look, my explanation is x, y or z.” The police then either believes you or not and they would lay a charge if they do not believe you. If they lay a charge—all of that I must assume is taking place on the truck—the Executive arm of the State does not play a role.

Once they lay a charge, the most you could do is, the Minister may order its removal for safekeeping perhaps. But once you lay that charge, this is the evidence in support of that charge. What would happen there, is that the prosecutor, when the matter comes up for hearing, two things could happen: Either the defence lawyer will raise it on behalf of his client to say: “Look, dey ha meh thing and ah wa it back.” We are saying that it is lawful, it is for prophylactic purposes or it is not nerve gas, it is actually oxygen. The prosecution will say, “Look we have this thing and we want to dispose of it because we think it is nerve gas, that is the position that we are in and we ask you to so order. Come and have a sight inspection and leh we dispose of this or whatever the case is.”

The point I am making is that the judicial officer is involved in what is going to happen. Once you are charged, the court takes possession, the DPP, the Commissioner of Police and the court feature, they are the ones who deal with evidence, not the Executive arm of the State.

**Sen. Dr. Balgobin:** So, clause 9 assumes that there has been a charge laid.

**Sen. Ramlogan SC:** No. I think clause 9 is to deal with a situation where the court is not involved. As I say, you find this thing on open land or any other permutation that does not involve someone who has been charged and this thing finding itself in the legal system as it were, or triggers the legal button.



**Sen. Drayton:** Then, hon. Attorney General, how do we explain 9(b), where you are talking about “the owner or occupier of any building”, you are talking for “the immediate disposal of such biological agent”, that people are involved.

**Sen. Ramlogan SC:** Let me give you an example: the owner and occupier of the building are different concepts in law.

**Sen. Drayton:** I understand that.

**Sen. Ramlogan SC:** You may rent your building to someone and it is a pharmaceutical company and the company is registered and the company’s registry has two shareholders that nobody knows from Britain, France, whatever the case is, so you cannot actually arrest anyone. The owner is saying, “well, look, I just rent it out, this is the lease”, but you need to destroy the substance that is there. You cannot charge anyone.

**Sen. Drayton:** So, there would be no investigation to take place to see whether in fact somebody should be charged.

**Sen. Ramlogan SC:** “Oh” no. Of course the police will do that, but if upon investigating the man sees the man’s lease, the police immediately check the two names of the company’s registry and realize this was a bogus company, then what happens then? You cannot charge anybody but you have an illegal substance.

**Sen. Drayton:** So then, at what point in time would the committee come in to play a role to recommend to the Minister, disposal, if it is at that point.

**Sen. Ramlogan SC:** Well, at that point. Once they form the view that this is gas or something, they would send it for testing and the report would go to the committee as the case may be.

**Sen. Drayton:** This is the police report?

**Sen. Ramlogan SC:** Yes. The testing report will go to the committee and then they may give advice or recommendation.

**Sen. Al-Rawi:** Madam Chairman, I need to say this clearly. What the hon. Attorney General is saying is that, no Executive involved, yet in clause 9 we start off, “The Minister may”—on the advice—“of the committee”—committee appointed by Minister; last time I checked, Minister was part of the Executive, one.

Two, he is now saying to this Senate, take judicial authority, oust the court in terms of a destruction and let the committee, the Executive, destroy the thing in its own decision.

**4.40 p.m.**

So you are taking judicial authority, which is a classic separation of powers principle, no veil of protection whatsoever, you have identified by the very process that the hon. Attorney General has suggested is the process to be followed, that there is a process, a long one. You recognize there is material; you investigate it; you go through all of that process; you have it seized down; you found the thing in the empty lot and you cannot take the simple caution of going to knock on a judge's door and say: "Judge, we found a, b, c, d and e, we wish to destroy it", because there is a consequence, Madam Chair.

The hon. Attorney General is famous in the public domain for saying; he wishes to lock up certain people for perjury. How did perjury happen if not on affidavit or statement? There is a consequence to having somebody on record as saying a, b and c. Whether it is verbal, in the case of a *quia timet* injunction or whether it is in fact written, in the case of an inter partes or ex parte opposed, or ex parte simply injunction.

So the point is, there is no independent security. There is Executive involvement. The ability to approach a judge is not a complicated exercise. How could it be resisted?

**Sen. Ramlogan SC:** I am prepared to accept—you know Sen. Dr. Balgobin made a suggestion earlier on, and that is a suggestion that—now that I have explained it Senator, I do not know if you get the picture. But the point is, I have asked them to craft something that would say that this applies when someone has not been charged, outside of the legal process when someone has been charged. Because one would understand that once—[*Interruption*]

**Sen. Al-Rawi:** Fitzgerald.

**Sen. Ramlogan SC:**—and Sen. Hinds is agreeing.

**Sen. Al-Rawi:** How could you say yes to this? [*Interruption*]

**Sen. Ramlogan SC:**—well it is a disagreement between Sen. Al-Rawi and Sen. Hinds now. [*Laughter*] There is some unintelligible output.

**Sen. Ramkhelawan:** Chair, I am trying to get the connection now, based on the explanation that the hon. Attorney General has given, that a police officer went to a magistrate, he gets a warrant, he goes and finds something that is suspicious because he has an expert who has gone along with him according to the Act—[*Interruption*]

**Sen. Ramlogan SC:** He may or may not. Let us assume he does.

**Sen. Ramkhelawan:** So let us say, he considers that he does not have the expertise and he carries someone, and the expert says this is a dangerous substance. I am trying to find the connect as to how that police officer is going to make the link now to the Minister. What is that step?

**Sen. Ramlogan SC:** At that stage, the police officer could decide to charge. He would make a report to the Commissioner of Police. The Commissioner of Police would then go to the DPP and the DPP would say, well look, based on this, look at the expert report, I think we should charge. The Minister does not even come into play. He does not enter the equation.

**Sen. Ramkhelawan:** Yes, that part of it is somewhat clear. But, in the instance that you would have mentioned, hon. Attorney General, that he could not find someone to charge—

**Sen. Ramlogan SC:** Yes.

**Sen. Ramkhelawan:** In the case of a bogus company, in the case of he cannot find the owner. So he now has a substance that he is advised is very dangerous, there is nobody to charge—*[Interruption]*

**Sen. Ramlogan SC:** There is one little chink in the premise that is wrong. It may not be a police officer. Suppose the Pesticides and Toxic Chemicals Department in the Ministry of Health—which is in fact a department in the Ministry of Health—suppose a public officer discovers that there is something that would obviously, as I say, there is an open land, it is under a sugar estate even, somebody excavated to build a house. That is the kind of situation you are looking at.

**Sen. Ramkhelawan:** I do not want to go to that branch in the tree. I am staying with the branch in the tree where, the police officer according to your premise, finds something; cannot find someone to charge. What is the nexus now between the police officer and the Minister of National Security?

**Sen. Ramlogan SC:** I think what would happen there is that when the police officer makes his report, which would go to the Commissioner of Police, they could go to the DPP, they realize that there is nobody to charge, then that report, obviously the Commissioner of Police would then go to his line Minister which is the Minister of National Security—*[Interruption]*

**Sen. Ramkhelawan:** Yes.

**Sen. Ramlogan SC:** Yes, and I would think that somewhere in that conversation, the only body then that can deal with that matter, would be the committee and the Minister. Alternatively, there is, in fact, in the Summary Courts Act, a procedure where they could still go to the court if they so desire, and say well look—that really would not apply in a case like that to be quite frank.

**Madam Chairman:** Hon. Attorney General, I am just going to ask—I am hearing a lot of the Members ask about a link. If you look at clause 8 which starts with the search warrant and I think if we link from the magistrate—so we are linking where the magistrate and that clause were discussed. So it comes all the way down, how and why and the link is there. I would like to suggest possibly that clause 9 comes out of what came before in clause 8, including how and where a police officer may even be in a position to be searching a property, a building, a premise, a boat or whatever it is. So this part really deals with the disposal, once it is found by the police officer, the Magistrate of course giving the authority to say to take samples thereof in section a, b, c all of that, then it is the disposal. I am just asking if that is the link.

**Sen. Ramkhelawan:** Chair, I am reasonably clear on that. What I am not clear on is the connection that has to be made between the police officer and the Minister. The hon. Attorney General was attempting to explain how that would work. I just want to be sure that there is a clear path and nexus to get from the police officer to the Minister.

**Sen. Ramlogan SC:** Yes, and I attempted to explain how I think that would work in practice. Once that report comes to the Commissioner of Police and they form the view that there is no one to be charged, but there is the presence of some biological agent, once this law is passed, I think they would refer it to the committee and or the Minister.

**Sen. Ramkhelawan:** Is there a requirement from the police to so do, or is it your thinking that is how the process would work?

**Sen. Ramlogan SC:** Well, I think that is the only way it could work.

**Sen. Dr. Balgobin:** The thing is, if you find it, and to me the process of testing, identification, labelling and categorizing and so on, takes time. Why not have judicial involvement if you are going to destroy somebody's property or if you do not know whose property it is?

**Sen. Ramlogan SC:** Remember, we are saying if you know whose property it is you would want to charge. So this only applies in a case where you are not going to charge.

**Sen. Dr. Balgobin:** Clause 9(1)(b) is what is occasioning me difficulty then, because you are talking about owner or occupier and so on and you are giving them instructions.

**Sen. Ramlogan SC:** Well suppose for example—let me ask you this. Suppose for example you are storing it in a quantity that it is too large, the Minister accepts. Suppose the committee finds that you have a legitimate purpose, but the quantity is a cause for concern and they therefore wish to direct that you dispose of some of it. You see, we are not saying that you commit an offence, but we are saying that in keeping with things—*[Interruption]*

**Sen. Dr. Balgobin:** That is the thing for me. What would have persuaded me more is if you said that it poses a significant threat to public health and safety.

**Sen. Ramlogan SC:** Well you see that is why—*[Interruption]*

**Sen. Dr. Balgobin:** I thought the language that we had just put in there was a little soft. It just said well, you know, to prepare—*[Interruption]*

**Sen. Ramlogan SC:** I am prepared to treat with that language because that is where the spotlight is focused.

**Sen. Dr. Balgobin:** If it is that it is something that poses an immediate threat by its very existence or where it is stored or whatever, then that becomes a different matter.

**Sen. Ramlogan SC:** Well you see, once we had “for any reason other than prophylactic protective or other peaceful purposes”—*[Interruption]*

**Sen. Al-Rawi:** It would not have been seized if it was not a public threat in the first place.

**Sen. Ramlogan SC:** That is the point.

**Sen. Al-Rawi:** If you just bear in mind hon. Attorney General—*[Interruption]*

**Sen. Dr. Balgobin:** No, it is not seized yet.

**Sen. Al-Rawi:** This section is to seize and destroy. It cannot be seized unless it runs afoul of the Bill and therefore it must be a threat and prejudice. That is not my problem. My problem is, in the Attorney General’s instance of there being no owner or claimant in respect of the material, my position is that there is no obstacle in having a judicial destruction order because there is nobody to resist it. That is one point. It is simple.

**Sen. Ramlogan SC:** So then what is the point going?

**Sen. Al-Rawi:** So you would apply to the judge to destroy the position, there is nobody to say, nobody wants to touch it, no terrorist fills out a form and says I am a terrorist. The person comes up and says in the instance where it is vacant land or excavated, et cetera, there is nobody to resist you, so you have an uncontested destruction order, easy fix. Point number two.

The next position is this or rather the overarching position is this. The point is some degree of balance and proportionality in the legislation. You are dealing with the crux of this Bill, section 4 and section 5 exception, the destruction of property for which we are giving a section 13 relief. Are we comfortable with no judicial involvement on the tail end even? You have involvement by way of a—P-U-S-I-N-E—judicial officer in the form of a magistrate you have that, but you come now to the destruction of the thing and you have absolutely no involvement. You have only Executive authority, the Minister and the committee.

**Madam Chairman:** If you tie it with 8, is that not the same?

**Sen. Dr. Balgobin:** No, the thing is this, you are getting a warrant to go look for it—the problem for me is, this is one of the sections that really tramples on constitutional freedom. Is it not appropriate, if it takes time to analyze the material—presumably we have enough time to get judicial involvement—no?

**Madam Chairman:** Dr. Armstrong, you had a point to raise.

**Sen. Dr. Armstrong:** Madam Chair, I was wondering whether the Attorney General could clarify something for me. Is it that if something is dangerous to the public that it is easier to get to the committee for a recommendation, as opposed to a judicial officer? I am not very clear on that.

**Sen. Ramlogan SC:** It is not that. We are assuming that this thing would only arise in the circumstances of a police officer. I am saying it is much broader. A public officer from the Ministry of Health, a public officer from the Ministry of the Environment perhaps, could come across a situation where the retention and disposal of storage of something which they believe falls under this Act may be not what it should be. A matter like that would find itself before the committee which is responsible for coordinating the functions of these agencies; it is responsible for advising the Minister on a number of things and so on.

Now, in a situation like that, the committee may give general guidelines, the committee may refer the matter to the police if they feel it is something that is out of proportion and there is no legitimate objective or purpose for having it, and that is how I see it operating.

**Sen. Dr. Armstrong:** And the Minister may then be advised to seize and destroy immediately.

**Sen. Ramlogan SC:** Yes.

**Sen. Dr. Armstrong:** What I am asking is whether that process is easier or faster. Is it that you assume it that is faster than going to a judicial officer?

**Sen. Ramlogan SC:** The answer is yes, with one important caveat. This does not apply in a situation where the police lays a charge. Once the police charges someone, I do not really see that the Minister has a role. I am prepared to insert this provision if that would help.

“The Minister shall exercise his power under subsection (1) only in circumstances where—

- (a) an immediate danger is posed to the health, safety and security of persons or the environment; or
- (b) where the biological agent or toxin is unclaimed or no longer required in connection with the prosecution of any offence under this Act.”

I do not know, Sen. Dr. Armstrong, if that would suffice?

**Dr. Armstrong:** Yeah, that would give me some ease.

**Sen. Ramlogan SC:** That would give you some degree of comfort.

**Sen. Drayton:** That little exchange seems to have cleared it up substantially.

**Sen. Ramlogan SC:** I am grateful to hear that.

**Sen. Drayton:** So there is one question I have when we go back to the original question to do with 9(1):

“The Minister may, upon the recommendation of the Committee, give directions in writing”—

If you go down now:

“...to ensure the safety and security of such biological agent...”

We are dealing here specifically therefore with the disposal—*[Interruption]*

**Sen. Ramlogan SC:** No, that would change.

**Sen. Drayton:** Are we dealing with the safe disposal of the agent?

**Sen. Ramlogan SC:** That is correct.

**Sen. Drayton:** Safe disposal, by implication, you also mean public safety.

**Sen. Ramlogan SC:** Sure.

**Sen. Drayton:** Okay.

**Madam Chairman:** The proposed wording for that is of “persons and the environment”.

**4.55 p.m.**

**Sen. Baptiste-McKnight:** Madam Chair, I have a couple of problems. In the hypothetical case where an officer of the Ministry of Health comes across something which he or she thinks may be hazardous, dangerous, whatever, I assume that there is a protocol for dealing with this. Will this protocol involve interface with this committee at any point and, if so, how? That is my first question. The second question: Clause 9, as it is amended in the last sentence of clause 9(1), this can apply to (1)(a) but not to (1)(b), because (1)(a) says “...immediate seizure and disposal...to ensure safety and security of persons or the environment.” (b) says, give directions “to the owner”. Is that too for safety of persons and environment? It does not read so.

**Sen. Al-Rawi:** Sen. Baptiste-McKnight, read a bit further. It says, give directions to—

**Sen. Ramlogan SC:** “...for the immediate disposal of such...”

**Madam Chairman:** “...where adequate measures are—

(i) not being taken; and

(ii) unlikely to be taken,”

And then it follows after that.

**Sen. Baptiste-McKnight:** So that the instructions are for the owner also to ensure—

**Sen. Ramlogan SC:** Public safety.

**Sen. Baptiste-McKnight:** Public safety. Okay. So just address my first problem for me then.

**Sen. Ramlogan SC:** Yes. And the answer to that is that that would be something that would be dealt with in the rules and the regulations, as to what procedure should be followed to bring a matter to the attention of the committee; how they will treat with it. Those are matters that one would think would be dealt with in the rules and the regulations to be made. So it is a valid point.



**Sen. Baptiste-McKnight:** I hope those who are going to make the rules and regulations are listening to all of this debate, so that they do not miss these bits.

**Sen. Ramlogan SC:** He is two seats to my right—Sen. Brig. Sandy—and he has been here all this time taking note of everything that is being said.

**Sen. Baptiste-McKnight:** It is his final responsibility, but I hope there are other people to assist him.

**Sen. Ramlogan SC:** Yes.

**Sen. Deyalsingh:** Madam Chair, the exchange that took place between the hon. Attorney General and Sen. Dr. Armstrong revolved around the speed with which you can get these orders. I reject the argument of speed; I am not going there at all. My concern is—and the Attorney General who is a constitutional lawyer of some renown prior to his appointment—is it constitutional, is it proper, for a member of the Executive, in this case a Minister, to have the right to destroy property? If we are comfortable with that, fine.

**Sen. Ramlogan SC:** The answer is that the Government is very comfortable with that in the limited circumstances that we have outlined. Let us not be alarmist about this matter and spout glib political rhetoric. This is a Bill that deals with a very niche kind of substance. It is about bacteriological and toxic weapons, and we feel very comfortable that the Minister of National Security, acting on the advice of an expert committee, will be able to order the destruction of bacteriological agents and toxic weapons that are capable of causing mass destruction and harm to society, in the limited circumstances of where someone has not been charged for the offence and, therefore, it is unclaimed.

**Sen. Deyalsingh:** Therefore, Attorney General, if it is a limited circumstance; it is a niche market, for want of a better term, how does it offend the Bill if we seek judicial intervention? We are not overburdening the Judiciary to seek the destruction of people's property, as opposed to a Minister who is a political appointee, regardless of how well-intentioned and how sweet he is.

**Sen. Ramlogan SC:** Madam Chair, that is the policy position we take in this matter. That is our position. We have clarified the exception and this is the policy of the Government.

**Madam Chairman:** I would just like to ask the Attorney General, the only change in that is on the last line of that piece?

**Sen. Ramlogan SC:** No. We have inserted—

**Madam Chairman:** Yes. Can I get the—

**Sen. Ramlogan SC:** Yes.

“The Minister shall exercise his power under subsection (1) only in circumstances where—

- (a) an immediate danger is posed to the health, safety and security of persons or the environment; or
- (b) where the biological agent or toxin is unclaimed or no longer required in connection with the prosecution of any offence under this Act or Regulations.”

**Sen. Al-Rawi:** Madam Chair, relative to the wording just dictated—even though I do not agree with it—perhaps the hon. Attorney General may wish to consider “or any other written law”, because it may fall under the Anti-Terrorism Act. He may also wish to consider defining what the timeframe for that discretion ought to be, because the problem with that wording is, “where the biological agent or toxin”—

**Sen. Ramlogan SC:** One second, Senator. Shall we just say, Madam Chair:

“...with the prosecution under this Act or under any other written law.”

**Sen. Al-Rawi:** “...where the...toxin is unclaimed or no longer required in connection with the prosecution of any offence”; that, Madam Chair, is confining it only to the circumstances of prosecution as opposed to defence or counterclaim which exists in the civil law as well. So the problem is that we are opening another realm inside of there, which I think, Madam Chair, if I could humbly suggest, would be ably assisted by a short break of the Senators, because I am finding difficulty with the decompression that I suffer from, in continuing to sit without at least a small stretch for five minutes.

**Sen. Ramlogan SC:** We are happy with it as it is, and we had made a change at the bottom from before, and that is it. I want to relieve my friend’s discomfort, so I will move on a little quicker.

**Madam Chairman:** Clause 9 is amended as follows:

“Insert after clause 9(b)(ii) the words “the Minister shall exercise his power under subsection (1) only in circumstances where—

- (a) an immediate danger is posed to the health, safety and security of persons or the environment; or
- (b) where the biological agent or toxin is unclaimed and no longer required in connection with the prosecution of any offence under this Act or any other written law.”

**Sen. Al-Rawi:** That should probably be a new (2). It would be inelegant to have it as a subset of (1).

**Sen. Ramlogan SC:** No, it is a separate subsection. It would be a subsection (5).

*Question put.*

*The Committee divided:*                      Ayes 24                      Noes 5

AYES

Ramlogan SC, A.

Sandy, Brig. J.

Bharath, V.

Tewarie, Dr. B.

Karim, F.

Ramnarine, K.

Maharaj, D.

Moheni, E.

Abdulah, D.

Maharaj, D.

Baynes, T.

Ram, A.

Burke, Archbishop B.

George, E.

Ramkhelawan, S.

Baptiste-McKnight, Mrs. C.

Drayton, Mrs. H.

Balgobin, Dr. R.

Ramkissoon, Prof. H.

Wheeler, Dr. V.

Armstrong, Dr. J.

Sydney, A.

Bernard, Dr. L.

St. Rose-Greaves, Mrs. V.

NOES

Beckles, Miss P.

Hinds, F.

Deyalsingh, T.

Cudjoe, Miss S.

Al-Rawi, F.

*Question agreed to. [Desk thumping]*

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

**Madam Chairman:** Hon. Senators, this committee is now suspended for 30 minutes. We will resume at 5.38 p.m.

**5.08 p.m.:** *Committee suspended.*

**5.38 p.m.:** *Committee resumed.*

**Sen. Beckles:** AG, can I ask you a question?

**Sen. Ramlogan SC:** Sure.

**Sen. Beckles:** In relation to clause 9, this section that we have here, did we deal with it at all, inserting the new clause 3?

**Madam Chairman:** We voted on it.

**Sen. Beckles:** We voted on it?

**Madam Chairman:** Yes, we voted on it already.

**Sen. Beckles:** Well, I omitted to raise something, but all right.

**Madam Chair:** We voted on clause 9 and we had the division already.

*Clause 10.*

*Question proposed:* That clause 10 stand part of the Bill.

**Dr. Rambachan:** Madam Chairperson, I beg to move that clause 10 be amended as circulated. The amendment reads as follows:

- A. In paragraph (a), by deleting the words “or retains any biological agent or toxin in quantities that have” and substituting the words “conceals, imports, retains or possesses any biological agent or toxin that has”.
- B. In paragraph (b), by deleting the words “or retains” and substituting the words “conceals or retains”.
- C. In paragraph (d), by deleting the words “agents or toxins” and substituting the words “agent or toxin”.

**Madam Chairman:** The Attorney General is making one further amendment.

**Sen. Ramlogan SC:** Sorry Senator, 10(c), after the 5th line “peaceful purposes”—yes, it has to be broken. After “peaceful purposes”, you would put a comma and the rest comes to your left underneath. Let me locate it.

**Sen. Al-Rawi:** Hon. Attorney General, while you are considering that—I had the same observation. Did you want to keep the same format as in subclause (d)?

**Sen. Ramlogan SC:** Sorry, beg your pardon?

**Sen. Al Rawi:** I had the same observation, thanks for recognizing it, subclause (c). Did you want to keep the same format as in subclause (d) later on, “for peaceful purposes?” In subclause (d) you used (i) and (ii)? So “commits an offence and shall on conviction... be liable—(i) in the case of an individual to imprisonment for life; (ii) or in the case of ...” so and so. Just in terms of formatting because (d) have a different structure.

**Sen. Ramlogan SC:** They normally would sort out those things, you know—once it is not a substantive change.

**Sen. Al Rawi:** Hon. Attorney General, the position relative to offences there at clause 10. If you turn to the page before, which is page 8, you would notice that (a)—

**Sen. Ramlogan SC:** What clause are you on?

**Sen. Al Rawi:** Same, clause 10, but the page before it. If you start at, “(a) A person who” at the beginning of the clause, you would note, “A person who (a), (b) and (c). That offence should really apply to all: (a), (b) and (c). It should not only be a subset of (c), if you are looking to put an offence.

**Sen. Ramlogan SC:** No, it would apply to all. We are removing it and we are putting it below.

**Sen. Al-Rawi:** Good.

**Sen. Ramlogan SC:** So that is what we are doing. So, from “commits an offence” would come at the bottom.

**Sen. Al-Rawi:** Thank you, so that the catch of the offence would apply to (a), (b) and (c)?

**Sen. Ramlogan SC:** That is, correct.

**Sen. Al-Rawi:** Great.

**Sen. Drayton:** I am just querying here the disproportionality with respect to the actual—where you are saying, person “on conviction on indictment be liable—in the case of an individual, to imprisonment for life...” But, you are saying here, “in the case of a body corporate...” So, I am looking at life—a person is imprisoned for life—a body corporate is fined only \$1 million, and when you go down to clause 11, where you talk about the body corporate, if it was done with consent or connivance or acquiescence there is a fine of \$150,000 and imprisonment for 10 years. I am trying to understand, why would you send a person to life—which is justified if they are producing weapons of mass destruction to just kill people. But on the other hand, if a body corporate transfers material or is engaged in such heinous activity, they are fined just \$1 million.

**Sen. Ramlogan SC:** Yes, I see the point. Just one second. Well, Senator, I share your concern, and if it is, we are prepared to support an amendment to up the \$ 1 million—[*Crosstalk*] You mean to grab the persons behind the company.

**Sen. Drayton:** The persons behind the company and why are we not confiscating all the property and the assets of the company? Why are we not shutting down this company? So, it is not just a question of money. Any company that is engaged in such an activity with intent to harm people, their licence should be taken away; all their assets should be seized and confiscated.

**Sen. Ramlogan SC:** Yes. I agree. “...In the case of an individual, to imprisonment for life or in the case of a body corporate...”—

**Sen. Al-Rawi:** Hon. Attorney General, there may be interarticulation with the Proceeds of Crime Act as Sen. Hinds has reminded me. There is also some degree of interarticulation with the Anti-Terrorism Act. That Act has dedicated reference to seizure of property, et cetera. And, then there is also the aspect of financing of terrorism.

**Sen. Ramlogan SC:** Yes, we can say it is liable to seizure and forfeiture in accordance with the Proceeds of Crime Act.

**Sen. Drayton:** And the individuals concerned should also enjoy imprisonment for life.

**Sen. Ramlogan SC:** I agree. The directors—

**Sen. Drayton:** Should enjoy imprisonment for life.

**Sen. Ramlogan SC:** Yes, I agree. So, we would have to change that. [Crosstalk] We are on 10(c). So, on 10(c) we would say, “or in the case of an individual, to imprisonment for life or in the case of a body corporate, to life imprisonment for the directors.”

**Sen. Hinds:** You see the trouble is, you may have six directors of a company—

**Sen. Ramlogan SC:** And a 1,000 employees.

**Sen. Hinds:**—and not all are knowingly involved in this activity. So we got to watch that.

**Madam Chairman:** Okay, Sen. Al-Rawi, you had a point.

**Sen. Al-Rawi:** It is the same point. Madam Chair, the lifting of a corporate veil towards shareholders and also the application of difficulties towards directors under our company law, even though it is the civil law, I accept. But, under our company law, it is very delicate and it is an area filled with many mines. So the difficulty with going the route—I agree with the observation that there appears to be a better chance for someone in a company to get away cheaper than an individual. But, the problem with that is, we have to think it through very carefully, and that is where the veils of protection similar to an anti-terrorism may want to be some form of guide to this kind of protection against mischief.

**Sen. Ramlogan SC:** Sen. Drayton, what we are attempting to do is to treat with the company in clause 11. Perhaps, we can treat with the imprisonment for 10 years and increase it there. So that is what we can do.

**Sen. Drayton:** But, still under subclause (c) where it speaks to “in the case of a body corporate, to a fine of one million dillors...” I think in a case of a body corporate here, the language should be seizure and confiscation of assets.

**Madam Chairman:** Hon. Attorney General, if possible, if you are dealing with body corporate in clause 11, possibly in 10(c), where the words, “or in the case of a body corporate” can you simply remove that, and deal with the first part, which deals with “a person who?”

**Sen. Ramlogan SC:** You see, what happened is—what the draftsman is explaining is that in clause 10, what they attempted to do is to deal with the imposition of the fine on a company and in clause 11, the individuals. So, I think that is how they separated it. So, I think it is fine, as is, once we understand that distinction really, save and expect with respect to the penalty.

**Sen. Drayton:** Okay, so I agree with that. I do not mind if—

**Sen. Ramlogan SC:** So, what do you have in mind for the penalty?

**Sen. Drayton:** I am saying seizure and confiscation. If you want to talk about a fine, I would take that up to \$10 million.

**Sen. Baptiste-McKnight:** No, but if you are seizing their assets, you do not have to fine that large amount.

**Sen. Prof. Ramkissoo:** What I would suggest, you leave the upper limit open to a fine of not less than \$1 million.

**Sen. Ramlogan SC:** Okay, fine.

**Sen. Drayton:** Not less than \$5 million.

**Sen. Prof. Ramkissoo:** Whatever. Not less than \$5 million.

**Sen. Dr. Balgobin:** I am okay with not less than \$1 million.

**Sen. Ramlogan SC:** Shall we say, “To a fine of not less than \$1 million”? one million is too low? Up it? Not less than \$5 million?

**Sen. Drayton:** Are you saying you are going to deal with the individual—

**Sen. Ramlogan SC:** We are coming to that. We are just dealing with the fine here for now.

**Sen. Drayton:**—so we are dealing with it in clause 11 then. Okay, well, if we are going to address it in clause 11, I have no problem—

**Sen. Ramlogan SC:** To a fine of not less than \$5 million.

**Sen. Drayton:** Not less than \$5 million, I am happy with that.

**Sen. Dr. Balgobin:** Fine, \$5 million, not less than \$5 million.

**Sen. Ramlogan SC:** Wait one second—to a fine of not less than \$5 million with its assets liable to forfeiture in accordance with the Proceeds of Crime Act, right. Not less than \$5 million with its assets liable to forfeiture—Sen. Faris Al-Rawi—in accordance with the Proceeds of Crime Act.



**Sen. Al-Rawi:** Yes, the tag on to the Proceeds of Crime Act. I am just wondering—

**Sen. Ramlogan SC:** It has its own procedure.

**Sen. Al-Rawi:** Right. You see, just for the Independents behind us, the regime prescribed by the Proceeds of Crime Act has a whole process to it.

**5.50 p.m.**

**Sen. Ramlogan SC:** Yes, there is a judicial process for that.

**Sen. Al-Rawi:** Correct; a judicial process for it.

**Sen. Ramlogan SC:** So that is fine.

**Sen. Dr. Balgobin:** Hon. Attorney General, I had a different query. I support the amendments proposed, but the question I had was linking these punishments with the Anti-Terrorism Act. Most of the Anti-Terrorism Act punishments are harsher in terms of time. Do we not want to bring this in line with that?

**Sen. Ramlogan SC:** Well, we have life here and I suppose your point will come under the next clause, in clause 11, which is 10 years and I propose to revisit that in 10.

**Sen. Dr. Balgobin:** No, no—well, in (d).

**Sen. Ramlogan SC:** In clause 10(d)(i) you are talking about, sorry; so you have moved on.

**Sen. Dr. Balgobin:** Yes, it says—

**Sen. Ramlogan SC:** We have no fixed position on that. If you wish to—

**Sen. Dr. Balgobin:** But most of it here says 20.

**Sen. Ramlogan SC:** To 20 years?

**Sen. Dr. Balgobin:** Most of it in the Anti-Terrorism Act is 20.

**Sen. Ramlogan SC:** So 10(d)(i)—20 years?

**Sen. Dr. Balgobin:** Yes. And what is the fine?

**Sen. Ramlogan SC:** The fine—\$500,000?

**Sen. Dr. Balgobin:** Well, the Anti-Terrorism Act is mostly silent on fines.

**Sen. Ramlogan SC:** Okay, not less than \$500,000.

**Sen. Al-Rawi:** Hon. AG, when you have exhausted that point there—

**Sen. Ramlogan SC:** Yes, I believe we have.

**Sen. Al-Rawi:** —if you could consider, there is a section in the Anti-Terrorism Act that deals with forfeiture of property—section 37. In section 37 of the Anti-Terrorism Act, it proposes that:

“The Attorney General may make an application to a judge of the High Court for an order of forfeiture in respect of terrorist property.”

“Terrorist property” is defined in the Act as:

“proceeds from the commission of a terrorist act;

property which has been...or is likely to be used to commit a terrorist act; or

property which has been collected for the purpose of funding” terrorism.

And a “terrorist act” is defined as:

“An act whether committed in or outside of Trinidad and Tobago which causes or is likely to cause—loss of human life or serious bodily harm; damage to property”.

It is potentially applicable that that definition of terrorist act in that subclause (a) and then there is a further definition to intimidate the public and sections of the public, et cetera.

It may be that that falls to be “terrorist property” within the meaning of the Anti-Terrorism Act and there is a clean whole process of how you ought to apply to forfeit property. So I am wondering whether the Proceeds of Crime Act is the correct vehicle to park that in or the Anti-Terrorism Act?

**Sen. Dr. Balgobin:** I like the Anti-Terrorism Act.

**Sen. Deyalsingh:** “Or any other written law”.

**Sen. Ramlogan SC:** We can give the prosecution the option by saying “or under any other written law”, which is what Sen. Deyalsingh is suggesting and that is fine by me.

**Sen. Deyalsingh:** “Bush” law to the rescue.

**Sen. Dr. Balgobin:** Could I just reopen that which was closed on 20 years for a second, Attorney General?

**Sen. Ramlogan SC:** Could we just tie up this one point here? So what we are saying is that: “liable to forfeiture in accordance with the Proceeds of Crime Act or in accordance with any other written law.” So that way, the DPP will have the option of proceeding under whichever regime for confiscation but all the regimes involve the court so they will have to go to court. So whether it is POCA; whether it is the Anti-Terrorism, and there may be some summary cases under the Magistrates’ Court Acts as well. Sen. Dr. Balgobin, what were you saying?

**Sen. Dr. Balgobin:** Would the Government equate the possession of a bacteriological weapon or stuff that could be used to make a weapon—would you view that as similar in magnitude as possession of nuclear material?

**Sen. Ramlogan SC:** One would have to say it depends on the intention, I suppose.

**Sen. Dr. Balgobin:** If the intent is the same? To cause harm?

**Sen. Ramlogan SC:** Well, if the intent is the same, then the answer is yes.

**Sen. Dr. Balgobin:** Well, then section 20 of the Anti-Terrorism Act makes it an offence for someone who unlawfully intends “to acquire or possesses nuclear material”, to conviction of indictment to imprisonment for life, not 20 years.

**Sen. Ramlogan SC:** You see, the reason that we brought a separate Bill for this particular matter, it is because unlike the Anti-Terrorism Act, you could never have a lawful purpose for terrorism. But when you come to bacteriological toxins and weapons, the toxins and the bacteriological subject matter, there exist lawful purposes for which one can use it, which is why we have created and carved out the exception of the prophylactic measures that one can use, and that is why I prefer to stick with this.

**Sen. Dr. Balgobin:** Twenty years.

**Sen. Ramlogan SC:** All right. Thank you.

**Sen. Deyalsingh:** Hon. AG, just a point of clarification, you were saying that nuclear material can only be used for bad purposes as opposed to bad—could you just explain?

**Sen. Ramlogan SC:** No, no, no, I said there could never be—

**Sen. Dr. Balgobin:** Let me just save the discussion here. The intent of section 20 of the Anti-Terrorism Act intended to deal with people who had an intention or a motive to use it for harm.

**Sen. Al-Rawi:** What they did is, in 16 to 20, they broke down all the convention offences. We could have put in a 20(a) which says bacteriological offences—

**Sen. Dr. Balgobin:** And dealt with it there.

**Sen. Ramkhelawan:** Madam Chairman, before you close on clause 10, there is a matter that I would want to bring up for consideration of the Attorney General which was raised in the debate. What clause 10 does is that it speaks to persons who develop, produce and stockpile; persons who acquire, persons who transfer, and persons who fail to ensure that adequate measures are in place with regard to stockpiling and so on. But what it does not do, and I would like clarification from the Attorney General—it does not address the question of persons who aid and abet, and I believe during the debate the Attorney General mentioned that he would have a look at that. The question of somebody knowingly assisting, aiding or abetting any person to carry out an offence, the legislation is silent on that, or someone who assists in the concealment of the offence. I think concealment may have been dealt with somewhere.

**Sen. Ramlogan SC:** I have no difficulty putting in a provision to say someone who aids and abets the commission of an offence under this Act also creates—

**Sen. Dr. Balgobin:** No, you see, that is something I laboured on this—

**Sen. Ramlogan SC:** But, I want to say that I did not think it was necessary, Senator, because aiding and abetting, I think, is already covered by the Interpretation Act.

**Sen. Dr. Balgobin:** And this does not?

**Sen. Ramlogan SC:** That is an offence. To aid and abet to commit any criminal offence is also an offence.

**Sen. Dr. Balgobin:** And this does not deal with the commission of a biological attack?

**Sen. Ramlogan SC:** Yes.

**Sen. Dr. Balgobin:** It deals with the stockpiling of the thing. The attack is actually covered in the Anti-Terrorism Act.

**Sen. Ramlogan SC:** That is correct.

**Sen. Ramkhelawan:** So just to get it clear.

**Sen. Ramlogan SC:** To aid and abet will also be a criminal offence.

**Sen. Ramkhelawan:** You are saying that it is already covered.

**Sen. Ramlogan SC:** Yes, it is; in all law.

**Sen. Ramkhelawan:** Yes, but we had it in the Anti-Gang as a separate clause—aiding and abetting.

**Sen. Ramlogan SC:** Perhaps you did not make the point in that debate.

**Sen. Ramkhelawan:** Maybe I did, that is why it is there.

**Sen. Ramlogan SC:** Yes, probably, but no, it is covered.

**Madam Chairman:** The question is that clause 10 shall now read:

“10. A person who—

(c) transfers...”—shift the line—

“commits an offence and shall on conviction on indictment be liable—

(i) in the case of an individual, to imprisonment for life; or

(ii) in the case of a body corporate, to a fine of not less than five million dollars”

Deleting the words “one million dollars” and inserting

“not less than five million dollars with its assets liable to forfeiture in accordance with the Proceeds of Crime Act or any other written law”—brought forward? How do we call that?

**Sen. Ramlogan SC:** Margin indentation.

**Madam Chairman:** Clause 10(d)(i) to read:

“in the case of an individual, to a fine of one hundred thousand dollars and imprisonment for...”

Delete the word “ten” and replace it with

“twenty years”; or

(ii) Delete the words “two hundred and fifty thousand dollars” and replace with “in the case of a body corporate, to a fine of not less than five hundred thousand dollars”.

**Sen. Ramlogan SC:** We will deal with the “five million” in clause 11, but I just want to point out that in clause 10(d), I think what you are dealing with really is adequate measures of storage, safety and security.

**Sen. Dr. Balgobin:** Five hundred thousand.

**Sen. Ramlogan SC:** Five hundred thousand for the individual; that is right.

**Sen. Dr. Balgobin:** You are correct.

**Madam Chairman:** Hon. Senators, the question is that clause 10, as amended, stand part of the Bill.

*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.

**Dr. Rambachan:** Madam Chairman, I beg to move that clause 11 be amended as circulated:

By deleting the words “or Regulations made thereunder”.

**Sen. Ramlogan SC:** Here is where we have to treat with the fines. So I think the fine here—Sen. Drayton, what it is that you had in mind? Five million?

**Sen. Drayton:** Yes.

**Sen. Ramlogan SC:** To a fine of not less than five million dollars and imprisonment for?

**Sen. Drayton:** Twenty years.

**Sen. Ramlogan SC:** Twenty years. That is fine, pardon the pun.

**Madam Chairman:** Hon. Senators, the question is that clause 11, as amended, would read:

“...be liable to a fine of” delete “one hundred and fifty thousand dollars and imprisonment for ten years” to be replaced with “a fine of not less than five million dollars and imprisonment for twenty years.”

*Question put.*

**Sen. Ramkhelawan:** Madam Chairman, including the deletion which the hon. Minister was going to make.

**Sen. Ramlogan SC:** The circulated amendment is included.

*Question agreed to.*

*Clause 11, as amended, ordered to stand part of the Bill.*

*Clause 12, ordered to stand part of the Bill.*

*Clause 13.*

*Question proposed, That clause 13 stand part of the Bill.*

**Sen. Ramkhelawan:** Madam Chairman, if I may? Over the past year or two, we have been, with the concurrence of those on the Government Benches, particularly the Attorney General, where there are Bills with special majority, we have concurred, in I think all instances, to affirmative resolution as opposed to negative resolution where there are such significant issues, such significant fines, issues of forfeiture of property and so on. I think, if my recollection is correct, the Attorney General has concurred with this matter of affirmative resolution, and I strongly support the idea of affirmative resolution for a Bill of this nature that is a special majority in terms of the voting.

**Sen. Ramlogan SC:** Madam Chairman, my learned friend is correct in that when there are offences and penalties in the regulations, and the parent enabling Act requires a special majority, we have, in fact, agreed to change negative to positive.

**6.05 p.m.**

What we did, however, in this case is that, remember we have removed all the penalties and we have put in the substantive Bill. We have also removed all the references throughout the Bill to penalties being made under the regulations by subsidiary legislation. During the course of the debate I had made that concession in response to Sen. Prescott SC's contribution, that very point, so that this will remain. There is no penalty to be imposed through the regulations anymore because we have incorporated that into the Bill and that was the concession we made to take care of that point.

If you look at clause 9, we have in fact put it there and we have beefed up all of the other clauses. There is no penalty to be made or imposed by the regulations, and the offences that have been created are all in the Act itself. That is why we have broadened the definition for all of the offences.

**Sen. Ramkhelawan:** May I ask, Madam Chairman, for clarification again, if in the subsidiary legislation, there were matters that would be inconsistent with sections 4 and 5, how would we treat with that if it comes via negative resolution because we would need a special majority? Are there instances where something like that could fall through into the regulations?

**Sen. Ramlogan SC:** Hardly likely, because what the regulations here would be dealing with really would be procedural and administrative matters. Where the substantive law and the fundamental rights as enshrined in sections 4 and 5 were going to be affected, we have put that in the parent legislation, as is the norm. But the regulations, really, the only objection was we could have had the penalties being imposed, although it has been done in the past, in other legislation. I cited examples during my contribution. We acceded to that request from the Independent Bench and that is why we have put everything in the parent Act, so that concern, in this case, would not apply.

**Sen. Drayton:** Could I then seek clarification? Any of those regulations pertain to clauses 8 and 9?

**Sen. Ramlogan SC:** It may, but the Minister would not be able to make any penalties because the objection raised by Sen. Prescott SC, was the ability to impose penalties by subsidiary legislation and that has been taken care of. Because what we have done, if you look at clause 9(3), is to put:

“A person who fails to comply with subsections (1), (2) and (3), commits an offence and is liable to a fine...”

—and a term of imprisonment, which we have put in the parent Act.

**Sen. Drayton:** But then—[*Interruption*]

**Sen. Ramlogan SC:** But there is no possibility of the Minister making regulations to impose a penalty, no.

**Sen. Drayton:** But what about seizing property?

**Sen. Ramlogan SC:** That is provided for in the substantive law now.

**Sen. Ramkhelawan:** Is the quorum in the regulations or is it in the main Act?

**Sen. Ramlogan SC:** No, it is in the main Act.

*Question put and agreed to.*

*Clause 13 ordered to stand part of the Bill.*

*Clause 14.*

*Question proposed:* That clause 14 stand part of the Bill.

**Sen. Al-Rawi:** On clause 14, the law is that the convention will apply as at the date of our signature onto the convention and any amendments do not form part of it automatically, however, when amendments are signed on by Trinidad and



Tobago, that they do become effective. Did the Senate want to consider that, where the Schedule is amended pursuant to that clause, any reference in the Act or written law to the convention, shall be construed as a reference to the convention as amended? It is an express way of putting sometimes what you have to rely on in an implied basis. That is the whole argument of international law and which version applies. It is just a question of law for the hon. Attorney General to consider.

**Sen. Ramlogan SC:** Unfortunately, the technocrats from the Ministry of Foreign Affairs have indicated they are comfortable with the wording as is and we would rest it there.

*Question put and agreed to.*

*Clause 14 ordered to stand part of the Bill.*

*Clause 4 reintroduced.*

**Dr. Rambachan:** Madam Chairman, I beg to move that clause 4 be amended as circulated.

In the definition of “biological agent”, insert after the words “substance or virus” the words “whatever its origin or method of production”.

**Sen. Al-Rawi:** There is no commentary from me. The policy decisions dictated that.

*Question put and agreed to.*

*Clause 4, as amended, ordered to stand part of the Bill.*

**Sen. Al-Rawi:** Madam Chairman, I am wondering. This would be proposal for the insertion of a new clause in and of itself which has not been circulated. It is a matter for policy decision and it may be subject to an implied acceptance. The position I would like to put forward for the Senate to consider is:

No proceeding shall be instituted under this Act except by or with the consent of the DPP.

I do know that you may argue that prosecutions on behalf of the State, inevitably, have the DPP’s right to intervene, but there is in law the ability to have private indictables offered and, therefore, to have private prosecution. The question is to put it expressly in the legislation that no prosecution under the Act shall happen by or without the express concept of the DPP. It would at least provide some degree of separation, in terms of the ministerial input, which this Act contemplates, and the Executive and the Judiciary in its silent role.

**Sen. Ramlogan SC:** We have dealt with this during the course of the debate and the policy position of the Government is that we are happy with it as is, in light of the constitutional jurisdiction given to the DPP to discontinue at any point in time any criminal proceedings in our country.

*Preamble approved.*

*Question put:* That the Bill, as amended, be reported to the Senate.

**Sen. Al-Rawi:** Do you not have to accept the Schedule as part of the Bill?

**Madam Chairman:** It is part of the last clause.

**Sen. Al-Rawi:** I see. Is it?

**Madam Chairman:** It is not a standalone.

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

*Senate resumed.*

*Bill reported, with amendment.*

*Question put:* That the Bill be now read the third time.

**Madam Chairman:** This Bill requires a three-fifths special majority.

*The Senate divided:* Ayes 24      Noes 5

AYES

George, Hon. E.

Ramlogan SC, Hon. A.

Sandy, Hon. Brig. J.

Bharath, Hon. V.

St. Rose-Greaves, Hon. V.

Tewarie, Hon. Dr. B.

Karim, Hon. F.

Ramnarine, Hon. K.

Maharaj, Hon. D.

Moheni, Hon. E.

Abdulah, D.  
Maharaj, D.  
Baynes, T.  
Ram, A.  
Burke, Archbishop B.  
Ramkhelawan, S.  
Baptiste-McKnight, Mrs. C.  
Drayton, Mrs. H.  
Balgobin, Dr. R.  
Ramkissoon, Prof. H.  
Wheeler, Dr. V.  
Armstrong, Dr. J.  
Sydney, A.  
Bernard, Dr. L.  
NOES  
Beckles, Miss. P.  
Hinds, F.  
Cudjoe, Miss S.  
Al-Rawi, F.  
Deyalsingh, T.

*Question agreed to.*

*Bill accordingly read the third time and passed.*

**PROCEDURAL MOTION**

**The Minister of Public Utilities (Sen. The Hon. Emmanuel George):** Madam Vice-President, I beg to move that this Senate continue to sit until the conclusion of the debate on the next Bill which is before this Senate, a Bill to amend the Trinidad and Tobago Postal Corporations Act, Chap. 47:02.

**Sen. Hinds:** Not now, next week. [*Continuous interruption and crosstalk*] You cannot be serious.

**Sen. The Hon. E. George:** May I? [*Continuous interruption and crosstalk*] If you could just give me 10 seconds.

**Hon. Senators:** No.

**Sen. Beckles:** Ten!

**Sen. The Hon. E. George:** I was proposing, on request, that we not meet next week. That is the reason I felt we could do this Bill this week.

**Hon. Senators:** No.

**Sen. The Hon. E. George:** I do not want to call the people but I got some requests and they said let us debate.

**Hon. Senators:** No.

**Sen. The Hon. E. George:** So, I propose to continue this debate today. “Ah mean”, let us do it, please?

**Sen. Hinds:** “No, no, no, we going home now.”

**6.20 p.m.**

**Sen. Beckles:** Madam Vice-President, on the last occasion if you recall correctly, the hon. Leader of Government Business, subject to correction, specifically stated that we were only doing the completion of the committee stage of this Bill, [*Desk thumping*] and I am sure all my colleagues were here and could attest to that, and, therefore, it would be unfair for us to be taken like this at short notice.

**Sen. Hinds:** And it is reflected in the notes.

**Sen. The Hon. E. George:** May I? There was no way I could have said at the last sitting when I moved the adjournment [*Interruption*] I am speaking, please, just give me a chance.

**Sen. Beckles:** You can check the notes.

**Sen. The Hon. E. George:** Yes, check the notes. I did not say that we would not be debating this Bill. I said we would debate the Bacteriological (Biological) and Toxin Weapons Bill, 2011, and I always conclude by saying, if we finish, then we would do the TTPost Bill. [*Crosstalk*]

**Sen. Hinds:** But the Parliament notified us differently.

**Sen. The Hon. E. George:** The Parliament could not notify you differently, it is in today’s Order Paper.

**Madam Vice-President:** Leader of Government Business, you moved the Procedural Motion, so I do not know if you would like to amend your request until the end of the session? Or you want to move that we sit until a certain time?

**Sen. Beckles:** Everybody is saying the same thing.

**Sen. The Hon. E. George:** On the basis of the requests—[*Interruptions*]

**Sen. Ramlogan SC:** The appeals! The appeals!

**Sen. The Hon. E. George:** No, they are not appeals, they are requests from Members opposite, as well as Members on the Independent Bench, and more so Members on the Independent Bench. [*Crosstalk*] I wish to suggest that this Senate do sit until 8.00 o'clock—[*Interruption*] when we would continue the debate.

**Hon. Senators:** No! No! No!

**Sen. The Hon. E. George:** No, we have work to do.

**Sen. Ramlogan SC:** “All yuh go geh next week off.” [*Crosstalk*]

*Question put and negatived. [Desk thumping]*

**Sen. The Hon. E. George:** Division!

**Hon. Senator:** The noes have it!

**Sen. Hinds:** The Vice-President has ruled. [*Crosstalk*]

**Sen. George:** If you say that, we will take a holiday next week, but if things are going—I was trying to give us holidays next week.

#### ADJOURNMENT

**The Minister of Public Utilities (Sen. Emmanuel George):** Madam Vice-President, I beg to move that this Senate do now adjourn to Tuesday, April 10, at 1.30p.m., when we will continue debate on the Trinidad and Tobago Postal Corporations (Amdt.) Bill.

*Question put and agreed to.*

*Senate adjourned accordingly.*

*Adjourned at 6.24 p.m.*