

*Leave of Absence*

*Tuesday, February 19, 2013*

**SENATE**

*Tuesday, February 19, 2013*

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 as President of the Republic of Trinidad and Tobago.

**SENATOR'S 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: ARCHBISHOP BARBARA BURKE

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 44 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 immediate effect 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 15<sup>th</sup> day of February, 2013.”

**OATH OF ALLEGIANCE**

*Sen. Archbishop Barbara Burke took and subscribed the Oath of Allegiance as required by law.*

**MR. ANTHONY CARMONA  
(CONGRATULATIONS)**

**Madam Vice-President:** Hon. Senators, this being the first occasion on which the Senate is sitting following the meeting of the Electoral College last Friday, I wish to extend congratulations to Mr. Anthony Carmona on his ascensions as President-Elect and soon to be the fifth President of the Republic of Trinidad and Tobago.

Chapter 3, sections 22 to 38, of our Constitution deals specifically with the office and the election of the President. Chap. 4, section 39 provides that the Parliament shall consist of the President, the Senate and the House of Representatives and, as such, a change of the holder of this office is indeed a significant one to each and every one of us here as well as in the national landscape.

Our Constitution further identifies the powers, privileges and procedures of the Parliament, especially the power to make laws for the peace, order and good governance of Trinidad and Tobago.

Mr. Carmona has spent his life thus far in exemplary service to his country, and I am certain, as we all are, that he will continue to excel in his new office as Head of State.

I also take the opportunity on your behalf to thank His Excellency Prof. George Maxwell Richards for the dedicated service he has given and wish him and his family the very best as he prepares for another phase of his life.

**PAPERS LAID**

1. Report of the Auditor General of the Republic of Trinidad and Tobago on the Financial Statements of the Children's Authority of Trinidad and Tobago, Children Authority Fund for the year ended September 30, 2010 [*The Minister of Finance and the Economy (Sen. The Hon. Larry Howai)*]
2. Report of the Auditor General of the Republic of Trinidad and Tobago on the Financial Statements of the Children's Authority of Trinidad and Tobago, Children Authority Fund for the year ended September 30, 2011 [*Sen. The Hon. L. Howai*]

3. Report of the Auditor General of the Republic of Trinidad and Tobago on the Financial Statements of the Agricultural Society of Trinidad and Tobago for the year ended December 31, 2001 [*Sen. The Hon. L. Howai*]
4. Annual Administrative Report of the National Insurance Appeals Tribunal for the financial year October 01, 2010 to September 30, 2011 [*Sen. The Hon. L. Howai*]
5. Annual Administrative Report of the Boiler Examiners Board for the period October 01, 2010 to September 30, 2011 [*The Minister of the Environment and Water Resources (Sen. The Hon. Ganga Singh)*]
6. Annual Administrative Report of the Minimum Wages Board for the fiscal period October 01, 2010 to September 30, 2011 [*Sen. The Hon. G. Singh*]
7. Annual Administrative Report of the Occupational Safety and Health Agency for the period October 2010 to September 2011 [*Sen. The Hon. G. Singh*]
8. Annual Administrative Report of the Advisory Friendly Societies Council for the period October 2010 to September 2011 [*Sen. The Hon. G. Singh*]
9. Ministerial Response to the Fifth Report of the Joint Select Committee on Ministries, Statutory Authorities and State Enterprises (Group 2) on the Tobago Regional Health Authority (TRHA) [*Sen. The Hon. G. Singh*]

#### SELECT COMMITTEE REPORT

#### **Municipal Corporations and Service Commissions (Presentation)**

**Sen. Elton Prescott SC:** Thank you, Madam Vice-President. I have the honour to present the following report as listed on the Supplemental Order Paper in my name:

Seventh report of the Joint Select Committee established to enquire into and report to Parliament on Municipal Corporations and Service Commissions with the exception of the Judicial and Legal Service Commission on an evaluation of the efficiency and effectiveness of the Chaguanas Borough Corporation.

#### ORAL ANSWERS TO QUESTIONS

**The Minister of the Environment and Water Resources (Sen. The Hon. Ganga Singh):** Whilst question No. 32 is prepared, the hon. Minister is not here, but we expect there will be supplementals so we will defer that for one week. We are in a position to answer question 36 and we ask for a deferral of question 33 for one week.

**Sen. Penelope Beckles:** Just an enquiry as it relates to the written questions because there have been some on the Order Paper since October.

**Sen. The Hon. G. Singh:** Yes. We are in a position to ask for a deferral for one week.

*The following questions stood on the Order Paper:*

**Tobago Regional Health Authority  
(Details of Board of Directors)**

**32.** With regard to the board of directors of the Tobago Regional Health Authority, could the Minister of Tobago Development please state:

- (a) The date that the Board of Directors first received their instruments of appointment;
- (b) Whether there have been any changes to the members of the Board of Directors of the Tobago Regional Health Authority since that date; and
- (c) The names of the current members of the Board of Directors? [*Sen. Dr. V. Wheeler*]

**“Colour Me Orange” Programme  
(Details of)**

**33.** With respect to the “Colour Me Orange” programme, would the Minister of Housing, Land and Marine Affairs please indicate:

- (a) whether the programme has come to an end;
- (b) whether there is any plan or intention to extend the programme;
- (c) precisely how much was expended on this programme;
- (d) the number of jobs created by the programme;
- (e) what was the Government’s rationale for its activation; and
- (f) did the programme achieve its objective? [*Sen. F. Hinds*]

*Questions, by leave, deferred.*

**LAN Chile/Dry Lease  
(Details of)**

**36. Sen. Terrence Deyalsingh** asked the hon. Minister of Finance and the Economy:

With regard to the decision to dry lease an aircraft from LAN Chile, could the Minister of Finance and the Economy state:

- (a) who was the line minister at that time;
- (b) who was the chairman of the Board of Caribbean Airlines at that time;
- (c) the date of submission of the evaluation report on the suitability of any aircraft so leased to fly a transatlantic route as opposed to an overland route; and
- (d) who were the members of the team who submitted the evaluation report and state their relevant qualifications?

**The Minister of Finance and the Economy (Sen. The Hon. Larry Howai):**  
 Mr. President—Madam Vice-President, my apologies. The B767 aircraft, MSN 26327 and MSN 27597, were not leased by Caribbean Airlines Limited from LAN Chile but from the International Lease Finance Corporation. LAN Chile was the last operator.

With respect to part (a) of the question, Madam Vice-President, Sen. The Hon. Devant Maharaj was the line Minister at the time when the B767 aircraft were leased from the International Lease Finance Corporation.

Part (b): Mr. George Nicholas III was the chairman of the Board of Caribbean Airlines Limited at the time of the lease.

Part (c): an evaluation of an overland route was not necessary as the shortest and most cost-effective route from Port of Spain to London would take the flight over the Atlantic Ocean.

If Caribbean Airlines decided to fly overland the total distance for the route would have increased by 100 per cent thereby making it twice as costly.

Madam Vice-President, in respect of the evaluation of the suitability of the aircraft type to operate the route, Caribbean Airlines engaged the services of an international aviation data and statistics expert company, Ascend, to provide Caribbean Airlines with an evaluation of wide-body aircraft, and in particular Boeing and Airbus aircraft's potential uses on long haul routes.

Ascend advised Caribbean Airlines, inter alia, as follows, and I quote:

Having taken everything into account, it is Ascend's view that the 767-300ER with winglets is the best aircraft for the immediate term with which CAL could enter the market on the Port of Spain to London Gatwick route for several reasons:

- (1) It has the lowest overall trip cost.
- (2) It has a competitive second or third best seat-mile cost.
- (3) It was identified as the best aircraft to use as a low-risk route opener.
- (4) There is an abundance of spares on the market, keeping maintenance costs down.
- (5) There are plenty of used aircraft available on the market with more lease expiries to come in the next few years.
- (6) Very attractive lease rates are available on the market.
- (7) The aircraft can be leased for short terms of three years or less limiting the commitment.

Based on the advice provided by Ascend, Caribbean Airlines fleet team committee recommended the selection of the B767 aircraft for the route.

Madam Vice-President, since part (c) was in the negative, part (d) is not applicable.

**Sen. Deyalsingh:** Madam Vice-President, just a matter for clarification, hon. Minister: part (c) did not ask about the suitability to fly an overland route, which was what you indicated; it was the suitability to fly a transatlantic route, and that is what part (c) was asking and, unfortunately, that part was not answered. So are you in a position to—

**Sen. The Hon. L. Howai:** Okay. I would need to get some further clarification on that before I answer.

**Sen. Deyalsingh:** Further supplemental, Madam Vice-President. Could the hon. Minister indicate whether these are the same aircraft which were leased which did not have a GPS system?

**Sen. Ramlogan SC:** That is a new question altogether, man.

**Sen. The Hon. L. Howai:** “Yeah”. Well, yes, it is true that they did not have the GPS and that has been mandated by the Civil Aviation Authority to upgrade that system using the Pegasus Flight Management System which uses the GPS and multi-mode receivers. That upgrade would be done in the fourth quarter of this year.

**1.45 p.m.**

**Sen. Deyalsingh:** Further supplemental, am I to understand, hon. Senator, that those planes are currently flying a transatlantic route without a GPS system?

**Sen. The Hon. L. Howai:** Yes.

**Sen. Hinds:** What? What?

**Sen. The Hon. L. Howai:** They have alternative—arrangements have been made to ensure that they remain in contact with the air traffic controllers over the period of time.

**Sen. Hinds:** What! What!

**Sen. Deyalsingh:** Further supplemental, is this approved by the Civil Aviation Authority and the British Civil Aviation Authority?

**Sen. Ramlogan SC:** That is a next question.

**Sen. The Hon. L. Howai:** Yes, I will need to get, Madam Vice-President, further clarification on that.

**Sen. Ramlogan SC:** “They flying with international approval man, wha happen to yuh?”

**Sen. Karim:** They are not at risk, they are flying with ETOPS. Do you know who ETOPS is? [*Crosstalk*]

**Hon. Senator:** Yes.

**Sen. Deyalsingh:** Would the hon. Minister be contemplating legal action against anybody who has been involved in the decision to lease these unsuitable aircraft as you are doing against Wendy Fitzwilliam and others? [*Desk thumping*]

**Madam Vice-President:** Minister, before you answer that question—hon. Senators, I would ask that Standing Order 18(2) be adhered to as it refers to introducing a new matter not related to the question. Thank you. Next.

**Sen. Al-Rawi:** Further supplemental, Madam—

**Sen. The Hon. L. Howai:** Just for the record, Madam Vice-President, just to say that the aircraft—it is not true that the aircraft is unsuitable for the route, and they are safe.

**Sen. Al-Rawi:** Further supplemental, insofar as the hon. Minister has indicated that he is not in a position to answer material aspect of the question, part (c), and insofar as—

**Sen. Singh:** He answered it.

**Sen. Al-Rawi:**—he has admitted that he is not in a position to answer part (c)—[*Interruption*]*—*Madam Vice-President, the question is, what is the date for deferral for the answer of this? Can we expect it on the next occasion, through you, Madam Vice-President?

**Madam Vice-President:** Fair enough, Minister can you answer the question?

**Sen. The Hon. L. Howai:** We would seek to have the answers in time for the next sitting.

**Sen. Al-Rawi:** Thank you, Minister. Thank you, Madam Vice-President.

#### **MOTOR VEHICLE AND ROAD TRAFFIC (AMDT.) BILL, 2013**

Bill to amend the Motor Vehicles and Road Traffic Act, Chap. 48:50, [*The Minister of Transport*]; read the first time.

#### **EXCHEQUER AND AUDIT (AMDT.) BILL, 2012**

*Order for second reading read.*

**The Minister of Trade, Industry and Investment (Sen. The Hon. Vasant Bharath):** Thank you, Madam Vice-President, I beg to move that:

A Bill to amend the Exchequer and Audit Act, Chap. 69:01 to provide for payments into and issues out of the Exchequer Account and for payments of other public moneys, howsoever held, by means of electronic funds transfer and for related matters, be read a second time.

Madam Vice-President, let me first of all take the opportunity to thank you for allowing me to lead off on this most important debate, one, for which the Bill only includes six clauses, but one that is not just groundbreaking, but certainly transformational in its intent and its nature, [*Desk thumping*] and clearly will take Trinidad and Tobago—as far as the Government and government moneys are concerned—into the 21st Century as far as payments are concerned.

Madam Vice-President, this Bill fulfils yet another commitment of the People's Partnership manifesto [*Desk thumping*] under the development pillar, information and communications technology is connecting Trinidad and Tobago and building the new economy, and re-enforces Government's commitment to bringing services closer to the people of Trinidad and Tobago.

Madam Vice-President, you will recall my own commitment when I spoke in the budget debate in October of 2012 of creating an enabling environment for, not just local business people, but for foreign direct investment to grow and to thrive



in Trinidad and Tobago by creating an environment whereby it is easy to do business, whereby the frustrations and anger that have been long held by many people—which cause many an investor to leave Trinidad and Tobago empty-handed—would not be a practice that we would want to continue in Trinidad and Tobago.

Recall, Madam Vice-President, at that point in time I set out a train of activities that this Government would be involved in over the next three years that would create that environment for doing business in Trinidad and Tobago. In fact, recall, Madam Vice-President, I spoke extensively about the bureaucracy involved in doing business in Trinidad and Tobago—a bureaucracy that essentially shackled us to the past, which ensured that in the globalized environment in which we currently operate it made it very difficult for us to engender the confidence, not just of local investors but foreign direct investment to Trinidad and Tobago.

In fact, the bureaucracy stifled innovation, creativity and economic activity, and our rankings on almost every indice showed—whether it was the global competitive index, whether it was the ease of doing business, whether it was the global ranking as far as innovation was concerned—we did not fare well in any of those.

As a result, we embarked on a process to try to detonate essentially the bureaucracy that confronted us in some of the major areas, and we tackled, initially, the rationalization of some of the agencies that fell under the portfolio of the Ministry of Trade—investTT being one of them—whereby up until nine months ago investTT was one of 13 agencies spanning three Ministries that were involved in trade facilitation and investment promotion in Trinidad and Tobago. We have now rationalized that so there is just one organization involved in that activity. ExportTT is another organization that has been rationalized and so has been the creative industry, positioning all of these sectors to be customer facing—positioning all to be competitive on international markets.

The second area that we tackled or which we have been tackling in the last six months is the ease of doing business. It is no secret that we rank number 68 in the world as far as ease of doing business in Trinidad is concerned, and when one looks into the details one sees that there are many indicators that cause us to be ranked at number 68.

The very first one that the World Bank looks at is incorporation of a business and how long it takes. I have stated at length on many occasions that it takes, according to the World Bank, 43 days to set up a business in Trinidad and Tobago. Madam Vice-President, I am happy, as this honourable Senate would know, that when the

Minister of Finance and the Economy piloted the Finance Bill only about three weeks ago, there were certain measures in there that for the first time in the history of this country imposed and enshrined into law service-delivery periods for public bodies. In fact, we went as far as to actually change legislation—the VAT legislation and the NIB legislation—to ensure that those organizations would be in a position to give certification for the relevant approvals within one working day. We have reduced essentially the time frame that it takes to incorporate a business in Trinidad and Tobago from 43 days to less than three days in Trinidad and Tobago.

In about two to three weeks, Madam Vice-President, we would be bringing the Customs (Amdt.) Act that would again allow us to further create the enabling environment that we are seeking, by allowing [*Desk thumping*] the ASYCUDA system to be merged with a single electronic window, thereby allowing information, once it is input into the ASYCUDA system, to be shared across several different Ministries' platforms, including the Ministry of Trade, the Chemistry Food and Drug, the Trinidad and Tobago Bureau of Standards, the Animal Quarantine and the Plant Quarantine. This would normally mean, under normal circumstances and as it stands today, a customs broker would have to go to each of these agencies to have those documents stamped.

When the Minister pilots the amendment Bill in a couple weeks' time that will no longer be the case because information will now be shared across several different Government departments and Ministries. In addition to this, that amendment will allow or ensure that there will be advance manifests provided to customs authorities to ensure that before the vessel arrives, the manifest is presented so that they can start processing documentation, both from an efficiency standpoint as well as from a security standpoint.

Madam Vice-President, essentially what we have been doing over the last eight or nine months is ensuring that we create the enabling environment that would then subsequently allow those investors who are interested in coming to Trinidad and Tobago—to “hand hold” them, essentially, so that they are aware that we are interested in keeping them in Trinidad and Tobago. Also, to give you an indication, Madam Vice-President, about some of the other work that we have been doing to create that environment—and I put all of this and I locate all of this in context because what we are talking about today, which is the electronic transfer of funds, is another arrow in that quiver, another string in that bow that would allow the facilitation of business to be conducted in Trinidad and Tobago.

I just want to highlight some of the other areas that may not be known that we have been involved in as far as the TTBizLink or the single electronic window is concerned. Company registrations through the Ministry of Legal Affairs—and let me just say although this is implemented by the Ministry of Trade, of course it impacts on several different Ministries across the Government. Company registration: we have managed to reduce processing time down from seven days to three days; [*Desk thumping*] work permits, through the Minister of National Security, work permits from six weeks to two and a half weeks; [*Desk thumping*] the granting of import and export permits and licences down from four weeks to one day; [*Desk thumping*] certificates of origin, which are required for all goods entering into the country, processing time is reduced down from 24 hours to 30 minutes; [*Desk thumping*] and fiscal incentives through the Ministry of Trade, Industry and Investment, the processing time has been reduced from six weeks to 11 days.

**Sen. Ramlogan SC:** Repeat that. [*Laughter*]

**Sen. The Hon. V. Bharath:** Six weeks to 11 days, and import duty concessions, Madam Vice-President, which of course all manufacturers in Trinidad require—and let me just say the manufacturers of this country have long suffered under the hands of previous regimes.

**Sen. Ramlogan SC:** Yes.

**Sen. The Hon. V. Bharath:** And the import duty concessions that are being granted to them have now been reduced from a waiting time of six weeks to 12 days. [*Desk thumping*]

Madam Vice-President, we have already started working on two other modules; one module is the Maritime Module which will electronically link the Coast Guard, the Immigration Division, the Ministry of Health and the ports of Trinidad and Tobago so that the shipping agents and harbour masters can interact seamlessly through the TTBizLink with Government. Additionally, we are building another module for the Central Tenders Board of the Ministry of Finance and the Economy for the purposes of contractor registration because right now we do not have that information available on a database where we can access them—where people can pre-qualify as contractors for tendering processes. All of that is being built by the Ministry of Trade, Industry and Investment to create an enabling environment that will allow business to be done smoothly.

So, Madam Vice-President, as I said, this Exchequer and Audit Act, 2013 provides us with another opportunity to show Government's commitment to eliminating all of the delays—

**Sen. Ramlogan SC:** Red tape.

**Sen. The Hon. V. Bharath:**—the red tape and the bureaucracy involved in doing business in Trinidad and Tobago. And what this specific measure would allow us to do is to ensure that there are no delays in the payment system relating to moneys controlled by Government under the Exchequer and Audit Act, either between intergovernmental departments, Government to Government or between Government and suppliers of goods and services or for those who need to fulfil statutory obligations, for example, filing your returns online.

**2.00 p.m.**

Of course, this is all in keeping with what is happening internationally in many countries, as many Governments across the world see the wisdom in using the technology available to them to be able to make business easier.

Let me give you an example: this is a report dated only two days ago and it says on Social Security in the United States:

“Beginning March 1, with few exceptions, all federal benefits, including Social Security and Supplemental Social Income benefits, will be paid electronically. That’s according to a rule from the US Department of the Treasury...

Electronic payments...are not only the best way to receive federal benefit payments”—for most people—“but starting in March, they will be the only way”.

It goes on to say:

“—Electronic payments are safer: There’s no risk of checks being lost or stolen:—Electronic payments are easy and reliable: There’s no need to wait for the mail”—of course—“or go to the bank to cash a check”.

They are ecological, in that they save paper and eliminate transportation costs—and very importantly, it is estimated that electronic payments will save the taxpayers of the United States \$120 million a year because there are no costs for postage, for paper and for printing. Finally, they save money on cheque cashing and bank fees that the consumer would have to normally pay.

A similar article, Madam Vice-President, indicates that a study done of 56 countries across the world that essentially accounts for 93 per cent of global GDP indicates that as a direct result of debit and credit card usage, the economies of these countries have been boosted by \$983 billion between 2008 and 2012. So,

Madam Vice-President, the fact is the rest of the world is on a path using technology and there is absolutely no reason why in Trinidad and Tobago we ought not to have done this possibly 10, 15, possibly 20 years ago because the technology did exist at the time.

Madam Vice-President, we are currently operating with an Exchequer and Audit Act that dates back essentially to 1959, and this is the principal piece of legislation that deals with the control and management of public finances and the collection and receipt of public moneys. Although it has served the country well for the last 50-odd years, it does require amendments as is contemplated today, as the current legislation only recognizes two forms of payment: cash and cheques.

If I am to paint a picture so that we can clearly understand the effect of this Bill, if I can give you an indication, Madam Vice-President, and this honourable Senate as to the current payment systems that we have existing in Trinidad and Tobago, they are essentially cheque payments which are obviously paper based, but the Government of Trinidad and Tobago on average issues about 160,000 cheques per month and of course it receives several cheques per month as a direct result of people paying their taxes and so on. And the cheque system is governed by the Bills of Exchange Act. Government, of course, is the largest issuer as I have just mentioned.

The second area is the LINX system which essentially is the debit card system which provides a value immediately, and all of us would have used a debit card. The third is the Automated Clearing House. The Automated Clearing House essentially is owned by six banks and by the Central Bank. They operate using something called the Trinidad and Tobago inter-bank payment system which manages its operations. The ACH, the Automated Clearing House is actually used for large-volume, small-value transactions, generally below \$500,000. It is a batch system which means that you do not get benefit immediately. It is generally a 24-hour wait whilst the banks wait to batch them, batch the transactions and then credit 24 hours later to the relevant account. In 2012, there were about 3.4 per cent, by value, of electronic transactions using ACH and about 10.4 per cent, by volume, of all electronic transactions using this method.

The fourth method is the Real Time Gross Settlement (RTGS) System, which is owned by the Central Bank and which covers transactions generally above \$500,000. It is a payment that is immediate in effect, it is not batched, it is value almost immediately and in 2012, 94 per cent of electronic transactions took place this way—94 per cent by value and about half per cent by volume. So it is high-value, low-volume transactions. If we were to look again also at the evolution of

payments in Trinidad and Tobago, one would find that prior to 1990 almost every payment was made by cheque or crossed by cash. As we moved in between 1990 and 2000, by 2000, 61 per cent was still cash based but 39 per cent was now electronically used with cards and so on.

Interestingly enough, it was about that time in the mid-1990s that I was employed by a company called Thomas Cook then, the second largest issuer of travellers cheques in the world, second to American Express, and my role, my job, my function was to transition Thomas Cook away from travellers cheques to credit cards, because the credit card market was actually digging very deeply into the travellers' cheques markets. Many of us who would have travelled in those days and many of us would have done, would know that in those days you had to go to the bank, you had to get the travellers' cheques issued to you, you had to sign it in front the bank manager and so on, and all of a sudden that method of exchange for value was no longer relevant and it was replaced completely and today I do not think anyone uses or very few people, very few countries use travellers' cheques.

I will never forget walking into my first day of work at Thomas Cook and there were 50 people in a call centre and their entire job was to assist people who had lost travellers cheques on holiday. That was their entire job, 24-hours-a-day call centre just assisting people because of the security issues relating to travellers cheques.

Look at where the world has moved today. Today, certainly none of my children, who are in their 20s, have ever even heard of travellers cheques. So, therefore, the world is moving away. In 2012, today, we have a situation where 25 per cent of payment in Trinidad and Tobago is still made by cheque but 75 per cent is actually made electronically.

Additionally, Madam Vice-President, we have other channels, other electronic channels that have mushroomed over the last decade. When one looks at ATMs—you know and we take these things for granted, generations that come behind us take them for granted. ATMs, we have 422 across Trinidad and Tobago today. Point of sale, we have over 11,000 point of sale points in Trinidad and Tobago, up about 20 per cent in the last three or four years.

Telephone banking has increased by 7 per cent in the last two or three years. In Trinidad and Tobago, last year alone, in 2012, over 93,000 transactions taking place are telephone payments. The Internet of course, now the major area of growth, increased by 23 per cent in 2012: 793,000 transactions taking place in

2012 over the Internet as far as payments are concerned. So, we can see that the people of Trinidad and Tobago are ready to embrace electronic transactions and electronic forms of payment. But when we look at how the Government of Trinidad and Tobago proceeds with its payment structure, when we look at how people are paid either by Government or how people pay the Government, you will see that the system really does reflect the fact that it has been in operation since 1959.

Let me give you a snapshot—and this honourable Senate—Madam Vice-President, a snapshot of what takes place as far as government internal payment system is concerned. When I say government internal payment system, I am talking about payments out of the Exchequer Account as well as receipts into the Exchequer Account. The Exchequer Account is basically the sum of all government accounts that are under the purview of the Treasury Division that, of course falls under the Ministry of Finance and the Economy.

With regard to government employees, Madam Vice-President: how is an employee of the Government paid? Well, essentially what happens is a salary listing is generated from the Integrated Global Payroll System and the Integrated Human Resource Information System and that is sent to the relevant commercial bank together with a diskette that contains the listing of the employees and all of the cheques. Then what happens is that the cheques are matched to the listing, verified and only then are those moneys paid into the employee's account.

With regard to payment for procurement of goods and services, what happens is that a voucher is raised by the relevant department in the relevant Ministry, together with the substantiating documentation. It is then sent to the sub-accounting officer or the accounting officer, the information is verified, a cheque is cut, certified and distributed according to the payment instructions and then that goes out to the relevant supplier of goods or services with the payment instructions.

On the collection side, the Government has basically what is known as, through the Ministry of Finance and the Economy, receivers of revenue. Sometimes the receivers of revenue have to appoint collectors of revenue because they would not always receive the moneys and they have got to appoint people to go out there and collect those revenues on behalf of the Government. When those moneys come in, they go into a government bank account at a specified commercial bank for onward transmission to the Government' bank, the Central Bank of course, or alternatively you could go and directly pay it into the Central Bank for the account of the Government.

An even more complicated one is foreign payment. If a foreign payment has to be made by a Ministry or a Division of Government, what happens is a request is made of the Treasury Division; the Treasury Division then sends an instruction to the Central Bank, with all of the substantiating documentation of course, the Central Bank then debits what is called the Treasury Suspense Account and then the debit note is sent back to the Treasury Division who then sends it backwards to the Ministry or the division that requested it, who then raises a cheque to send to the Central Bank to offset the balance that is being paid by the Central Bank to offset the Treasury Suspense Account to credit the account to offset the debit on the Treasury Suspense Account.

So, Madam Vice-President, as you can see, it is a relatively complex—of course, although those who have been in the system for many years would not find it so. For someone looking on and looking to change the system, it is a relatively complex and confusing and possibly convoluted system that can easily be changed.

So, what I have just described to you, Madam Vice-President, is Government's payment system which as I said has been in operation since 1959, but what is very interesting and what is critical—and what I have just described—is that the public sector recognizes only a trail of paper. Everything is on paper and the public service because of its system, only recognizes a trail of paper. And so, although the Exchequer and Audit Act does not expressly prohibit electronic transactions or payments through cards, the records of Government in respect of such cards and transfers are required to be reflected on paper, thereby embodying Government's approval to make or to receive a payment.

**2.15 p.m.**

So, in effect, what we have is a duplication of electronic payment transactions in Government's physical records and books, a duplication which I am sure is demotivating to those who have to do it and, certainly, a waste of time and effort when one considers that there is a better way to ensure that this happens.

Let me say, therefore, that the proposed legislation will allow government departments the flexibility of employing several means of exchanging value without having to also operate a parallel system at the same time. But it is also important to note that we are not doing away with the existing system because there will still be some people who wish to pay by cheque or by cash and, therefore, they can continue, for the time being, to pay by cheque or cash until the system changes completely over to one which will allow only electronic transactions at some time in the future.



Madam Vice-President, the Government immediately, as a direct result of piloting this Bill, has identified two financial management systems that will benefit from the passage of this Bill. The first is—and I have mentioned it before—the Integrated Global Payroll System (IGPS) and the Government Payment System. The IGPS, Madam Vice-President, recognizes the functionality of electronic payments and will allow salaries, therefore, and wages and pensions of over 85,000 public servants working today to be sent directly to their bank account.

In other words, Madam Vice-President, there is no longer the reconciliation required with cheques and listings on diskettes before public servants will be paid. So there will no longer be that two-day delay that there is currently, before moneys are credited to their account. So, essentially, what will happen is that salaries will be paid directly into these accounts of over 85,000 public servants. To ensure a smooth transaction, Madam Vice-President, the treasury division has already initiated discussions with the representative trade unions who have agreed to allow these salaries to go directly to the accounts of public servants.

In the case of the Government Payment System, Madam Vice-President, the cheque-writing facilities have already been upgraded to facilitate the additional formalities and functionalities of electronic funds transfer and also to ensure that there is automated reconciliation processes in place, and the implementation of the electronic funds transfer will take place either through the ACH—as I said before, the Automated Clearing House—for value of transactions less than \$500,000 or through the RTGS for payments above \$500,000.

What will happen here, Madam Vice-President, is that those payments will be made directly into the accounts, as specified, to the providers of goods and services in Trinidad and Tobago to the Government. So they will no longer have to wait five, seven, eight, or 10 days for those cheques to be cleared before they are in receipt of their money.

Madam Vice-President, I just want to take the opportunity to talk a little bit about the actual clauses in the Bill and to go through them, not in too much detail but certainly to give a flavour of some explanations on them.

Clause 1 of the Bill, of course, is self-explanatory and cites the name of the Bill. Clause 2 of the Bill states that the Act will come into operation upon proclamation which therefore facilitates the accomplishment of several steps prior to full implementation. The first is, of course, the hiring of consultants. I am talking about the interim between enactment and proclamation. The time frame

will give us the time to hire consultants, and provide guidance for readiness and implementation; very importantly, Madam Vice-President, the execution of collateral agreements with the banking sector or financial intermediaries—not necessarily banks but financial intermediaries—and that is defined in the Bill.

It is important that we enter into these agreements, Madam Vice-President, because it is with these financial intermediaries that certain terms and conditions will be discussed—will determine how the EFT operates properly in Trinidad and Tobago. The third will be to allow us time to develop the IT system that is required; the IT infrastructure that clearly will be required that we may not have at this point in time to accommodate government Ministries being able to offer the services of electronic financial transactions.

Clause 3 basically talks about the expression of the Act which is the Exchequer and Audit Act, and clause 4 goes into some of the definitions, Madam Vice-President, and I will just mention a few of them: “electronic funds”. It was noted that in Trinidad and Tobago and in some other countries, for example in India, the instructions received by the Central Bank or by a financial intermediary to debit or credit an account need not be by electronic means. In other words, it could be over the telephone; it could be in writing. The actual instruction does not need to be in electronic form, and as a direct result, a definition has been crafted to focus not on the manner of initiating the electronic payment transaction, but rather to focus on the transfer of funds itself through electronic means.

Therefore, the definition states that: “electronic funds transfer” is defined in clause 4 of the Bill to mean:

“...any transfer of funds through electronic means that is initiated by a Department or a client so as to instruct, authorise or order the Central Bank or a financial intermediary to debit or credit an account with the Central Bank or financial intermediary;”

So it does not necessarily have to be generated initially by an electronic instruction once the funds transfer takes place electronically.

The definition of a “Department” of Government will be all Ministries and also those departments not under governmental control, for example, the Legislature and the Judiciary. And “financial intermediary”, which I referred to earlier on, has been expanded to not just be the banking sector but, of course, those entities that fall under the cooperative societies. So cooperatives as well as the Unit Trust Corporation, because we understand, Madam Vice-President, that many people do not deal with banks alone, or they may not deal with banks at all, but they deal with credit unions and they deal with the Unit Trust.

“Public body”, apart from Government departments, would mean also the Tobago House of Assembly, municipal corporations and state enterprises.

A “public official”, certain examples are given in the Bill: The President; Ministers of Government; members of the Judiciary; accounting officers; receivers of revenue and public officers travelling abroad on government business.

Clause 5, where a new Part IVA entitled “Electronic Funds Transfer” and containing new sections 23A to 23G will be inserted, and it includes directions from the Treasury which, essentially, means that permission must be given for the type of system that would be utilized by the department or the Ministry with regard to the system used for the sending of funds through electronic means. That is 23A.

Section 23B really just follows on from that and it talks about where, essentially, payment information must be given where payment is to be made to a person for the procurement of goods or services. Information must be given with regard to the financial intermediary to which the funds will go.

Section 23B(2) will again—similar information must be given where there are dealings between a government department and the Central Bank. On the flip side, when the Government receives revenue, similarly, information will have to be given on the Government’s bank to the client or to the person who has provided the goods and services so that the funds could be credited to the appropriate account.

And use of bank cards, credit cards and electronic money by public officials—and we know that on either side there have been issues with this over the years, with sometimes the misuse of credit cards—section 23D(1), Madam Vice-President, would empower the Treasury to authorize the use of, and specify the credit limits of bank cards, credit cards or electronic money used by public officials, as I defined earlier on.

Under 23D(2), the Treasury will also stipulate the conditions with respect to these cards and electronic money; that will also stipulate that the exchanging of value utilizing this means can only be for expenditure authorized by the Appropriation Act or any other written law.

Then we come to section 23E, the regulations, which is inserted into the Exchequer and Audit Act that will empower the Minister to make regulations subject to negative resolution of Parliament. In keeping with the international

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focus of transparency and ensuring clarity of the regulations, Madam Vice-President, the provisions are intended, obviously, to protect not just the public but also the Government from unscrupulous actors and conditions.

Section 23F, Madam Vice-President, talks about the validity of these electronic funds payments because, of course, if it is to be given any legal validity, it must have the same legal standing as any instructions that were paper-generated. Therefore, we want to ensure that information that is either held on computer or in computer readable form will have the same legal standing as paper-based and paper trail transactions.

Finally, we look at 23G of the Bill which has reproduced the salient provisions of the Electronic Transactions Act in relation to electronic signatures because we understand that we want to move more and more towards the use of electronic signatures and transactions as part of our day-to-day business, and electronic signatures will be required to meet the minimum standards, of course, of reliability and integrity, and to conform to standards which both parties would have agreed.

Madam Vice-President, that, in a nutshell, explains the six clauses that are before us that allow us to put in place a system that will allow electronic funds transactions as far as public moneys are concerned. But let me also say, Madam Vice-President, in moving towards this type of system—in terms of moving towards an electronic means of exchange—the Government realizes that we are by no means providing a definition of what electronic funds will be in the future. What we are essentially doing is laying out a framework, a basic framework, for the use of electronic payment methods. The Government is aware of the fact that EFT, like any other form of payment, is clearly not without its risks, and so special attention will need to be paid to the safeguards of protecting both the EFT system as well as consumers, and also for the misuse, the destruction, the modification and the disclosure of personal data that may occur as a direct result of improper use of the system.

I also want to make mention, Madam Vice-President, that the amendments that we are seeking here will still be impacted—or this Bill will still be impacted—by other pieces of written law, for example, the Electronic Transactions Act, 2011; the Electronic Transfer of Funds Crime Act, Chap. 79:15 and the Financial Intelligence Unit Act, 2009. We have still got to ensure that issues of privacy, confidentiality, system security and equity will be addressed by the collateral agreements that we will enter into with the financial intermediaries. These agreements, of course, would set out in detail the e-payment details and identify the responsibilities and the roles of both parties that are involved in the transaction.

Consumers who would not have been involved in a system like this before, in interaction with the Government, must also be assured that the system will be able to guarantee the reasonable safety of the assets that are placed and entrusted in it. The System must be able to give us certain safeguards to be able to protect both funds and data against theft, against loss, against misuse and against users that may be against the instructions of the client.

**2.30 p.m.**

So the adequacy of EFT system, the electronic funds transfer system itself, if not handled properly, could affect not just the financial institution that one is dealing with, but the financial system as a whole and, therefore, the time frame between enactment and proclamation is key to ensure that this critical aspect is handled sensitively and handled in a manner that will give all concerned the level of comfort that is required.

Madam Vice-President, as I conclude, I would like to suggest that most people associate electronic funds and transfer of funds electronically with the recent revolution in advance technologies that have taken place over the last maybe decade or so. But in the strict sense of the word, the use of telecommunications certainly with regard to cross-border telegraphic transfers have been taking place possibly for well over 100 years.

In fact, one of the earliest cases is one known as *Bank of North America v Cooper* in 1890, where the bank was actually sued for negligent performance of a transatlantic wire transfer that went bad. So, it has been happening for a long time. What is different, Madam Vice-President, is not that electronic transfers are new, what is different and what is new is the unprecedented scale of the electronic channels and how they have impacted in general use today. So that, for example, the Internet has created opportunities never seen before.

I spoke earlier on about point of sale, about ATMs and about telephone banking that have created new vistas for us here in Trinidad and Tobago, but unfortunately for others as well who are potential and likely competitors looking at the same investing spaces that we are looking at, constraints, Madam Vice-President, that would previously have related to size or to geography or to distance have been obliterated as a direct result of these channels. Transaction costs, information costs that may have been prohibitive five years ago, 10 years ago, 20 years ago certainly are no longer the case, and customers and consumers are now able to have better choice, better quality products, lower prices simply by utilizing these channels.

Madam Vice-President, electronic finance and electronic funds transfer and the transfer of funds through any of these channels represent an acceleration of the process referred to by a noted economist, Joseph Schumpeter, when he talked about

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something called creative destruction—I know my good friend, Sen. Deyalsingh, has spoken about this before—which really means the continuous shift in emerging technologies that pushes out the old.

So, as I conclude, I urge my hon. colleagues, I urge this honourable Senate, to do exactly as Joseph Schumpeter said, to embrace the new technology and to push out the old. On this basis, Madam Vice-President, I commend this Bill to the Senate and I beg to move.

Thank you very much. [*Desk thumping*]

*Question proposed.*

**Sen. Faris Al-Rawi:** Thank you, Madam Vice-President. I rise on this occasion—following in your lead, I wish to offer congratulations to Mr. Justice Anthony Carmona, as he still is, on his soon and expected ascension as the fifth President of this Republic.

Madam Vice-President, the business before us today is stated in the Bill as an amendment to the Exchequer and Audit Act. In fact, we are really amending two pieces of legislation and not just that Act. The Bill at clause 6 seeks to amend the Electronic Transactions Act as well.

The hon. Minister of Trade, Industry and Investment, Sen. Bharath, gave us a good introduction to Government's intention, the intention to facilitate ease of business, and he was able to speak to the last eight to nine months, and one would imagine particularly as he has assumed not only the responsibility as Minister in the Ministry of Finance and the Economy, but also as Minister of Trade, Industry and Investment. So I am sure that he is quite capable and competent to speak to his Ministries in that context. Regrettably, however, my learned colleague started his descent into the meat of this debate only at 2.14 p.m., in fact, when he sought to deal with the intent and purpose of this debate.

Now, before us is a Bill which is six clauses long. The first clause is the title; the second clause is the fact that it should come in by proclamation; two of the clauses deal with definitional insertions; one into the Exchequer and Audit Act; and the last one, clause 6, into the Electronic Transactions Act. So we are really dealing with one substantial clause and that is clause 5.

Madam Vice-President, clause 5 seeks to introduce a new section 23 and a new Part IVA into the Exchequer and Audit Act, but before I get into the meat of that which I think the hon. Minister ought to have done, I would like to propose that it really is incumbent for the national community to understand the backbone which the Exchequer and Audit Act provides.

Now, Madam Vice-President, the concept of the Treasury of Trinidad and Tobago was created by the Exchequer and Audit Act. It is an Act in 1959, and prior to that, we would as an English colony have imported laws from England. It is well known that the concept of Her Majesty's Treasury began in 1316 in England and that there was an evolution of laws in England coming forward particularly in the 19th Century when the Concordat of Parliament engaged in the reforms and the scrutiny which Parliament had in relation to the Treasury and operation. So I would like to spend a short moment on putting the import of this debate to the national community through you.

This particular piece of legislation, Madam Vice-President, is the backbone upon which Trinidad and Tobago operates. This not often articulated piece of legislation is the piece of legislation which tells us, as a country, how the country's finances held in the Consolidated Fund, the Contingency Fund, the Exchequer Fund and other funds established by the Constitution of Trinidad and Tobago—in sections 112 to 119 of the Constitution—operate. It fleshes out that system. It deals with fleshing out the responsibilities of the Auditor General. That post, of course, being confirmed in our 1962 Constitution and then in our Republican Constitution and, in fact, standing in sections 117 and 118 of the Constitution of the Republic of Trinidad and Tobago.

This Act is the Act which empowers the Auditor General to do the job of auditing the public moneys of Trinidad and Tobago. So when we seek to amend this particular piece of legislation, we are really amending the backbone of financial regularity in Trinidad and Tobago, something which is often talked about, but not well understood until you read this very piece of legislation, something which I am sure the vast majority of citizens in this country have not done joined only, in fact, by Members of the Government present.

I made that unfortunate remark for a very particular reason as I will demonstrate later on, but it is the parent Act, the Exchequer and Audit Act, and the Financial Regulations to this Act which stand as statutory instruments or subsidiary legislation or rules and regulations—made under the provisions of the Act—which really tell us what we ought to be cautious about. The hon. Senator was quite correct. This piece of legislation interacts and interarticulates with many other pieces of legislation. There are in fact 10 bits of legislation referred to in the Bill itself, the Central Bank Act, the Financial Institutions Act. Many pieces of legislation are involved here and other pieces of legislation not specified—those 10 specified—include the Proceeds of Crime Act, the Computer Misuse Act, the Financial Intelligence Unit Act, et cetera. So this is a piece of legislation which bites onto a much larger chunk of Trinidad and Tobago. One could look at it, in fact, as the cog wheel or the axle upon which Trinidad and Tobago turns.

Now, Madam Vice-President, with that said, the two substantive or one substantive clause before us really has very, very, very significant import because inside of there are meant to also be factored and included the checks and balances as they relate to accountability for public moneys. The Exchequer and Audit Act is replete in its regulations, in particular, and in certain substantive sections with what we must pay attention to and with the concept of value for money. That is why the paper trail exists.

In fact, the Act as we now seek to amend it stands in a vacuum. Most respectfully, there has been absolutely no form of explanation, whatsoever, from the Government as to why we need to amend this Act. In fact, that is all the much more so if you were to accept the preamble of my learned colleague, Sen. Bharath, because he is right. We do need to improve ease of business, but that is not the reason why you amend laws. You amend laws to tackle a mischief, if I use it in the strict legal sense. The question here is: what is the mischief that requires us to convene as a Parliament to pass this law?

You are quite well aware, Madam Vice-President, that in this session of Parliament, we have in fact dealt with only a very few Bills. By my tally and on the Parliament website we have dealt with 15 Bills laid. We have actually only had six debates in the Parliament since we convened as a Parliament in this session. Three of those debates dealt with a budget and three otherwise. So we met here six times and this is one of the occasions, but you must ask yourself why are we here? What causes us to be here, particularly when the hon. Minister said to us at 2.14 p.m., precisely, although the Act does not expressly prohibit electronic transfers, we will be in essence—and I am paraphrasing—avoiding a duplication of paper and a waste of time.

So there is an acknowledgment standing by my learned colleague, Sen. Bharath, that the Act does not prohibit electronic transfers. So why are we here? Let me extrapolate that point for my learned colleague. The Interpretation Act, Chap. 3:03, of the Laws of the Republic of Trinidad and Tobago provides rules for interpretation, and specifically includes in those rules the literal meaning of any bit of legislation. It incorporates statutory aids to interpretation as well, standing in the common law and case law, and the parent Act, Chap. 69:01, the Exchequer and Audit Act is, in my humble opinion pellucidly clear that electronic transfer of funds is already permitted in the legislation. It is specifically so in the very wording of the parent Act and, in my opinion, most humbly, it is otiose and superfluous and, in fact, dangerous to introduce these amendments unless we have a very clear understanding as to why we must do it. Let me explain that first.



I propose to traverse first, Madam Vice-President, the fact that the law as it stands right now, unamended, authorizes and permits electronic funds transfers of the type contemplated by this Bill. Secondly, I propose to traverse the dangers which we will come across in accepting this amendment unless it is explained by my learned colleagues opposite.

**2.45 p.m.**

Thirdly, Madam Vice-President, I propose to traverse very important issues which arise in the Bill and which stand without any form of explanation and which are further dangers to operationalizing the type of Bill which we have without explanation.

On the first point, I wish to point my learned colleagues opposite firstly to the title of the Exchequer and Audit Act, Chap. 69:01 as it stands. That title says the Exchequer and Audit Act is:

“An Act to provide for the control and management of public finances of Trinidad and Tobago; for the duties and powers of the Auditor General; for the collection, and issue and payment of public moneys; for the audit of public accounts and the protection and recovery of public property; for the control of the powers of statutory bodies; and for matters connected therewith.”

In this Act, “public moneys” is defined at section 2 of the Act in a very broad sense as including revenue, any trust or other moneys et cetera—in a very broad sense—not specifically speaking to the type of money as to its existence, whether by way of cheque or cash, or in an electronic form by way of transfer through a clearing house, or as we call it in law, a chose in action; a thing which is an intangible but which is a concept which exists in reality, like a bank account.

So the definition of public moneys, when tied into the title of the Act, when read in the aid that the interpretation Act provides, tells us what this Act is already for. But when we turn to sections 3 and 4 of the parent Act, Part II of the Act, sections 3 and 4 under the heading “Control and Management of Public Finances” says in section 3:

“The Minister shall, subject to the Constitution and this Act, have the management of the Consolidated Fund and the supervision, control and direction of all matters relating to the financial affairs of the State which are not by law assigned to any other Minister.”

Section 4:

“(1) All persons concerned in the collection, receipt, custody and payment or issue of public moneys, stores, stamps, securities or other State property shall obey all such instructions as they may from time to time receive from the Treasury in respect of public moneys, stores, stamps, securities or other State property, or accounting for the same.”

Now, who is the Treasury? The Treasury is defined in section 2 as the Minister of Finance and includes such officers or officer of the Ministry of Finance as may be deputed by him.

Section 5:

“Save as may otherwise be provided by this or any other law no expenditure involving a charge on the Consolidated Fund shall be incurred, and no sums due to the Consolidated Fund shall be remitted, without the general or specific authority of the Treasury.”

Then, Madam Vice-President, we turn over to sections 12 and 13 of the Act. Under Part IV which is headed “Collection, Issue and Payment of Public Moneys”. Section 12 says:

“An account styled “the Exchequer Account” shall be kept with such bank or banks as the Treasury”—may—“from time to time determine.”

Subsection (2):

“Subject to section 18, issues out of the Exchequer Account for the public service shall be in accordance with orders directed by the Treasury to such bank or banks.”

Section 13 says, in relation to the Consolidated Fund:

“All revenue shall be paid, at such times and in such manner as the Treasury may direct, into the Exchequer Account and the revenue shall form the Consolidated Fund...”

So, hon. Minister, we have the specific sections of this Act. We have the preamble, we have the interpretation section—section 2—we have sections 3 and 4 of the Act and we have sections 12 and 13 of the Act. What do they say collectively? They certainly say that the Treasury, who is the Minister of Finance, has the authority to direct the banks in Trinidad and Tobago in relation to the Exchequer Account and the Consolidated Fund. He can direct it in any manner whatsoever.

**Sen. Ramlogan SC:** And that includes payment and receipt?

**Sen. F. Al-Rawi:** Payment and receipt. Now, I am glad that my learned friend, the hon. Attorney General is paying attention to the debate. I want his assistance in this debate because there are other very important provisions which my learned colleague, Sen. Bharath, did not speak to.

Under this piece of legislation, Madam Vice-President, it is the Auditor General's responsibility—if there is any issue that requires clarification at law in relation to the role and function and duties, or any interpretation, under the Act in section 9 of the Act—it is in fact the responsibility of the Auditor General in section 10—sorry, 1(f) to lay before the Attorney General a case in writing as to any question regarding the interpretation of any written law concerning the powers of the Auditor General or the discharge of his duties, and the Attorney General shall give a written opinion upon such. It is also the Attorney General's assistance, otherwise and in the terms of the Act, to lay forth statutory interpretation, any issue that troubles us.

So with my learned colleague, Sen. Bharath's admission that there is nothing preventing electronic funds transfer or electronic moneys under this Act coupled with the literal interpretation of the Act itself—the parent Act—specifically in sections 2, 3, 4, 11 and 12, or is it 12 and 13?—12 and 13, the bold question here is, number one: is it that the Auditor General has some issue upon which advice has been given which says that it is a requirement that this law be passed? That is the first question. What is the legal basis for doing this? What is the advice of the Attorney General in relation to this? Is it the correct advice, most respectfully, Madam Vice-President?

Secondly, if, in fact, such advice has been given by the Treasurer, by the Treasury, by the Auditor General, by the Treasury Solicitor, if any of that advice has been given, why have we not been regaled with that advice? Why has a report not been given to us in any Auditor General's report at any time prior to this debate that there is a material deficiency in the law which must be corrected? Why, Madam Vice-President, is that the case? If in fact such an opinion has been given, what is the consequence of all Acts that have issued thus far?

You have heard my learned colleague say that electronic transfers of money exist in the system of Government right now; they exist. Go to the immigration authority, they exist; go to stamp duty, they exist; statutory bodies covered under this Act; elements of public bodies covered under the definition of the Bill and the Act including T&TEC, including WASA—all accept electronic transfers of funds right now. [*Desk thumping*] So if that advice was correct or issued, if it exists at all, that advice which has not been published to us, then the question is: what is the consequence of making the amendment?

So, number one: what is the mischief? Why are we doing this? What is the legal basis for doing this? What are the consequences of the amendment? What are they? Is it that without a saving clause put into the Bill as proposed before us right now that we are going to have a challenge to payments made prior? Is it that the Auditor General has been derelict in duty, or the Treasury Solicitor in failing to have flagged up this material deficiency in law prior to the introduction of this Bill? Or are we, most respectfully, wasting the Senate's time on work that does not need to be done?

Now, Madam Vice-President, in the two days that I had to research this Bill, having been abroad last week, I can tell you that I had the good fortune to come across legislation from South Africa, Jamaica, England, Ireland—Northern Ireland specifically—Scotland, certain European jurisdictions and the United States, Singapore as well. Do you know what jumped out at me? They have Exchequer and Audit Acts, most of which have been repealed and replaced by hold-government accounting systems as they are now called, or accountability and finance legislation. They all have it. They have all had that trail and progression. They too also have Electronic Transactions Acts. But do you know what struck me? Not a single piece of legislation that I looked at—I have them here and I will take you through them with your permission—has anything that resembles the type of legislation we are putting in now. Not a single jurisdiction!

**Sen. Maharaj:** Ground-breaking!

**Sen. F. Al-Rawi:** I am glad that Sen. Maharaj is introducing his voice into this debate because I look forward to his sterling contribution when he rises.

**Sen. Hinds:** Sat did not authorize him!

**Sen. F. Al-Rawi:** But, Madam Vice-President, the fact is [*Interruption*] that we have two pieces of legislation right now that we are amending—the Electronic Transactions Act and the Exchequer and Audit Act. If you look at section 23 which is proposed by clause 5 of the Bill to be introduced, section 23A is the real meat of it. Even though it is badly drafted, if you look at the wording of it, section 23A is inelegantly stated—perhaps I should put it that way—in that subclause (b) should be broken and the chapeau continued under with the word “may”, but sections 23B to G inclusive rarely form the basis of any rubric for regulations. They do not form the rubric for legislation in the parent Act.

That is so—my learned colleague Sen. Bharath said that the current system in Trinidad and Tobago recognizes two forms of—this legislation recognizes two forms of money, if I put it that way—cash and cheques. Do you know what?

Nowhere in the parent Act, save the regulations, is that borne out to be true. Nowhere! It is only the financial regulations standing as statutory instruments to the back of the Act dealt with in the 1960s—I believe it was 1962 that those regulations were published—nowhere in the parent Act itself is that traversed. It is in fact only in the regulations.

My learned colleague makes a case. He says, “Listen, forget the fact that there is no expressed prohibition”. He says that this is going to avoid paper accumulation. But, Madam Vice-President, tabled with this Bill—and I wish to compliment the hon. Minister—the regulations, the draft regulations were tabled before this Parliament. It is the first time we have seen a Minister of Government actually bother—thank you, hon. Minister—to table the draft regulations at the same time, and I thank him profusely for that, because it allowed us an inspection as to where we would go with regulations to be proclaimed under the Act.

But, Madam Vice-President, these regulations state—the draft regulations at clause 14 specifically—the requirements as stipulated in the financial regulations regarding the duties of accounting officers shall apply in respect of electronic payments pursuant to these regulations. What does that mean? Every last word in the financial regulations standing in the 141 clauses thereof are incorporated into that. What do they provide specifically from clauses 87 onward? The same paper trail that the hon. Minister says we are leaving behind.

But if that was not stark enough for you, no factor of the Data Protection Act has been given, so the Data Protection Act requires you to have the paper trail in any event. So if you want to get away from it, from the regulations, we have the Data Protection Act, we have the FIU Act, we have the Proceeds of Crimes Act—all of those articulating pieces of legislation require the same paper trail.

Now, let us stick a pin there for a moment. We are amending the Electronic Transactions Act. This is a piece of legislation which came about in 2011. It is Act No. 6—is it?—of 2011.

### **3.00 p.m.**

Do you know that that Act is not fully proclaimed? The proclamation stands in two phases. The Act was assented to on April 28, 2011 and then the proclamation came in two stages: on June 06 and January 18. On June 06 we proclaimed Parts I, II, III and IV of that Act. On January 18, 2012, we proclaimed Part VII of the Act. So, what has not been proclaimed, Madam Vice-President? What has not been proclaimed—Part V, the Electronic Authentication Service Providers; Part VI, which is the Intermediaries and Telecommunication service

Providers, has not been proclaimed; Part VIII, Consumer Protection has not been proclaimed; Part IX, Contravention and Enforcement, has not been proclaimed, and Part X, the Miscellaneous Provisions which deal with courts, jurisdictions, et cetera, has not been proclaimed.

But what does this Bill speak to, Madam Vice-President? Electronic authorization providers, the same thing which has not been proclaimed—which we have not figured out—is included in what is standing so far as superfluous legislation in a Bill for our consideration, and we are seeking to implement by the introduction of new sections 23A to 23G, things which require the operationalization and fleshing out of the very provisions of the Act which have not been proclaimed. So, how do we factor it?

Not only is there no explanation as to why we need this legislation, but we are putting it upon something which has not yet been built out. The real flesh and blood and the pumping of life into the body of the Electronic Transactions Act, is not yet in place. So, why are we doing this?

Let us look now at the issue of the consequences, if we do it. Let us assume the Government uses its numerical support here, and some Independent Senator is convinced that this is necessary and good legislation apposite to Trinidad and Tobago's best interest. Let us assume that goes in there, what is the consequence now? What is the detriment to putting in this law?

Well, we have some very peculiar sections in this Bill. We heard the hon. Minister—in the nine minutes that he spent describing the content of this Bill, the meat and substance—we heard him pass over some very important sections with some spectacular consequences if the right answers are not given. I ask you to look at, for instance, the definition of “public official”. This Bill, if it becomes law, says that we are to give public officials credit cards for instance. You will see that at section 23D, the new section proposed to be added in by clause 5 of this Bill. That says:

“(1) The Treasury may—

- (a) authorize the use of; and
- (b) specify the credit limits in respect of

bank cards, credit cards or electronic money by public officials.”

So, Madam Vice-President, who is a public official? A public official includes for instance a Member of Parliament and a judge. Let me just pull out those two. Why? Why on God's good earth would we wish to give a judge of the High Court of

Trinidad and Tobago or of the Court of Appeal or a puisne judge or judge of the Industrial Court, why would we want to subject them to the potential abuse of what is referred to as the Nolan Principles?

Now, the Nolan Principles that I refer to are set out and contained very neatly in Her Majesty's Treasury Document in 2007, called *Managing Public Money*. In that particular document, the global understanding of what is referred to as the Nolan Principles includes seven principles of public life. One of them is:

“Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might seek to influence them in the performance of their official duties.”

So, we have a credit card statement being managed by a Clerk I in the Ministry of Finance. The Clerk I picks up some form of explainable but at first seemingly sensational transaction on a credit card statement, and starts to knock on the door of a Member of Parliament or a judge. We have had instances of that already. Forgive me for putting it this way, but you know of the “Shopping Toppin” issue, something which was well explained by an hon. Member of the Lower House, something which was raised by the Leader of the Opposition, dismissed by the Leader of Government Business in the Lower House, but turned out to be a very substantial issue, which resulted in perhaps not coincidentally, but for us coincidentally, the loss of the heading of a Ministry. A credit card statement resulted in a Minister of Government seemingly losing a job.

So, Madam Vice-President, what happens when you turn that over to the Judiciary now, and credit card statements are put there? So, why are we exposing judges or Members of Parliament to a form of scrutiny that would potentially cause others to try to influence them in the conduct of their affairs? Why? It is for the hon. Minister to explain that to us. It is for the hon. Attorney General to explain that to us. It is for the hon. Sen. Devant Maharaj when he enters in this debate, as I am sure he will—or Sen. Barbara Gray-Burke—to do that. So, Madam Vice-President, the question is why subject people to that?

Now, let us look further; when we look to section 23E. Section 23E of this Bill says that regulations under this situation can be offered and that:

“regulations”—are—“subject to negative resolution of Parliament.”

The hon. Minister says he is taking us into the 21<sup>st</sup> Century. It shows the Government's commitment to making Trinidad and Tobago a better place, that they have spent time on doing this work. Lawyers have been employed. The

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Minister of Finance and the Economy has been employed. He has done well by bringing draft regulations to the Senate, and what do the regulations say? Draft regulations say, penalty, clause 23: a person who contravenes these regulation commits an offence and is liable on summary conviction to a fine of \$50,000.

Why do I raise that, hon. Minister? Chapter 3:03 of the Laws of the Republic of Trinidad and Tobago describes regulations in section 75 as statutory instruments or subsidiary legislation. What do they further prescribe at section 63(1)? They prescribe, Madam Vice-President, at section 63(1) of the Interpretation Act, and with your permission I will read it:

“Where a written law confers a power to make any statutory instrument...”

And as you know section 75 says these regulations are statutory instruments:

“...there may be annexed to a breach of that statutory instrument a punishment by way of a fine not exceeding five hundred dollars.”

Yet in our draft regulations, months of this Government’s work, we have \$50,000, big and bold.

So, Madam Vice-President, not only has there been no inspection, no articulation of the reasons for this Bill, but the draft regulations and—do not get me wrong, I still am grateful for the draft regulations—point out the fact that somebody is not doing their homework. And who is that somebody? The LRC, the Cabinet—[*Interruption*—yes, the Office of the Attorney General. I am sure that he cannot inspect every piece of legislation, but I am sure he is going to stand and correct me and say, well, I spotted that, and we are going to move an amendment. Hopefully, you would say that.

**Sen. Ramlogan SC:** No, I will say you are wrong.

**Sen. F. Al-Rawi:** Or he will say I am wrong, but the point is, in the face of a law standing on the books of Trinidad and Tobago and this is a book—[*Sen. Al-Rawi holds up a law volume*] up to 2009, these are the Laws of Trinidad and Tobago. So, how did that get there, Madam Vice-President?

When we look further into the Bill, we see a very spectacular clause focused on by my learned colleague in all of 10 seconds at 2.18 p.m.—that is section 23F on page 8 of the Bill.

“Notwithstanding any other law, any electronic funds transfer made in accordance with this Act shall be legally enforceable and binding.”



Well, what on earth does that mean? And what is the consequence of that? Now, I know that a section like that is intended to deal with electronic money. I know that because in the two days that I had to research this Bill I came across the EU directive on—*[Interruption]*

**Sen. Singh:** This has been on the Order Paper for the longest while.

**Sen. F. Al-Rawi:** The hon. Leader of Government Business was out when he missed the fact that I was out of the country.

**Sen. Singh:** Oh, sorry.

**Sen. F. Al-Rawi:** The fact is that the electronic money directive consultation by Her Majesty's Treasury, published in February 2011, tells you why would you want something like that, but a wording of a clause like that, where you are built upon the framework of a partially unproclaimed Electronic Transactions Act, which has no consumer protection, no fraud provisions, that potentially gives life to allowing a fraud perpetuated on the Government of Trinidad and Tobago to stand without challenge. So, Madam Vice-President, it is critical for us to look at that.

Now, what do we do in the circumstance of the kind of observation that we have had? It is quite interesting that this Bill also proposes an amendment to the Electronic Transactions Act. When we look to the Electronic Transactions Act, section 53 of the Act in particular, it is actually one of the provisions that has been proclaimed under Part VII. Section 53 of the Act deals with Government and other public bodies. It is my humble submission that if you wanted to put the intent of this Bill into a simple form of actuation, actualization, you need only look so far as section 53 of the Electronic Transactions Act which has been proclaimed and amend it.

How do you do that? You borrow a leaf from Northern Ireland. Northern Ireland's Act which is entitled, Government Resources and Accounts Act, Northern Ireland, 2001 has a very interesting section. Sorry, Madam Vice-President, I am referring you to the wrong legislation, the South African Act. The South African Act entitled, the Electronic Communications and Transactions Act, 2002 says at section 27 of that, it deals with a chapter entitled: E-Government Services. It has a subheading: Acceptance of electronic filing and issuance of documents. It says, with your permission:

“Any public body that, pursuant to any law—

- (a) accepts the filing of documents, or requires that documents be created or retained;
- (b) issues any permit, licence or approval; or
- (c) provides for a manner of payment, may, notwithstanding anything to the contrary in such law—
  - (i) accept the filing of such documents, or the creation or retention of such documents in the form of data messages;
  - (ii) issue such permit, licence or approval in the form of a data message; or make or receive payment in electronic form or by electronic means.”

Madam Vice-President, our Electronic Transactions Act, is built in the same fashion. Section 53, under the heading Part VII, Government and Other Public Bodies has the very same framework built out, save for the addition of the last subsection, number (3) which I referred you to, which says: you may make or receive payment in any form including electronic payment.

But, we said all of this when we debated the Electronic Transactions Act. We pointed out to the Government—I certainly did and members of my Bench did—that the Electronic Transactions Act that the Government was seeking to put into effect was deficient because it failed to deal with a slight broadening which was critical to putting the e-policy in place.

Now, the electronic environment, the ease of doing business environment, is not a novel concept created by my learned colleague, Sen. Bharath; it has been around under the PNM for a while. [*Desk thumping*] He came in and met a well-run Ministry. I cannot speak to the period when there was a Minister prior to Sen. Bharath, necessarily, but I can tell you that—[*Interruption*]

**Sen. Singh:** Who was that?

**3.15 p.m.**

**Sen. F. Al-Rawi:**—the Ministry itself was contemplating this, and in debating the Electronic Transactions Act, we specifically said, broaden it to include government services and payments. That is so, Madam Vice-President, because it is an easy fix and it therefore leaves us out of the consequential issue analysis as to whether the Treasury Solicitor has given or requested the correct advice; whether the Auditor General has unwittingly allowed the electronic transactions in Trinidad and Tobago to continue without proper authorization and, therefore, in breach of the Exchequer and Audit Act; and it sidesteps all of that because the

parent Act itself—from a reading of sections 2, 3, 4, 12 and 13—tells you that there is room right now to do this and the only place you speak about cheques and cash is in the regulations.

The regulations under the parent Act can be easily amended under section 141 of the parent Act as it stands right now. There is no need to have separate regulations under a proposed new section 23—under a new Part IVA of the Act. It is otiose; it is superfluous; it has not been explained. There are consequences lying in the dark ready to come to life and we as a Parliament must be careful that we pass law on the basis that we understand why the law is required; what is the need for it; what is the legal explanation for it, particularly when you have a Government like this Government that has no consultation on the need for this kind of reform; particularly when you have a Government like this Government that was happy to, as it called it, “axe the tax” and with it fell very important amendments to be put into effect under the Revenue Authority of Trinidad and Tobago.

Madam Vice-President, our entire system of allocation of funds and budgeting of finances is in need of desperate reform from two ends: from a practical end of revenue collection and sorting and checks and balances; and from a legislative end. There is no reason why, if the practical end, as was proposed under the revenue authority, went into effect—sure you want to do away with the revenue authority because it was badly rolled out, but are you throwing the baby away with the bathwater? That practical reform in place would have allowed us to move to whole of Government’s accrual-based accounting as opposed to cash balances, which is exactly what this Bill deals with; and particularly so, further, a fortiori, when you have a Government like this, that is steadfast in its refusal to explain issues of procurement.

Madam Vice-President, I heard a steups come opposite me. I pulled the *Hansard* contribution from my learned friend and colleague, Sen. Christlyn Moore, on the Finance Bill, 2013. I raised critically important issues on nearly US \$3 million, potentially, of bad procurement outside the rules of the Central Tenders Board Act, which, by the way, is included in the parent Act and this Bill. I raised those issues. I challenged her to answer them. You know what the answer included, Madam Vice-President? The answer included nine pages of Sen. Fitzgerald Hind’s modus operandi. That is what the answer was; not a single word on the breach of public procurement; not a single word, Madam Vice-President.

When this Act says—and my learned colleague should be aware—that the Auditor General has the ability to report her or the hon. Senator’s accounting officer in her Ministry of Justice for serious actions for breach of the laws of Trinidad and Tobago—it is in the parent Act. The hon. Attorney General has done nothing about it so far that I know of. Maybe he may tell us.

**Madam Vice-President:** Hon. Senators, the speaking time of the hon. Senator has expired.

*Motion made:* That the hon. Senator's speaking time be extended by 15 minutes. [*Sen. T. Deyalsingh*]

*Question put and agreed to.*

**Sen. F. Al-Rawi:** Nearly had to move for my own motion, Madam Vice-President. Thank you, hon. Senators. [*Laughter*]

Madam Vice-President, the point is this parent Act, this Bill which deals with checks and balances, under this very piece of legislation that we are considering, my learned colleague, the Minister of Justice, is open to serious difficulties. What happens if the accounting officer reports to the Auditor General that breach and says, "I stand in distinction against my Minister"? What happens—by way of another real example—where you have procurement of services and goods as properly defined under the Central Tenders Board's manual, handbook, Act, for national security? What happens when you hire cars to be paid for from a Ministry that knows nothing or is silent on a flying squad? What happens then? Not only are we in the invidious position of a Government which will not condescend to explaining the issues that stand in the national community's face—

**Hon. Senator:** Madam Vice-President, 35(1).

**Hon. Senator:** "Yuh take long, boy." [*Laughter*]

**Hon. Senator:** "Yuh trigger-happy, boy."

**Sen. F. Al-Rawi:** Tell me that is irrelevant.

**Madam Vice-President:** It is not irrelevant at this point, but just in keeping with procurement as you—kindly stick to this particular Motion, please. It is not really irrelevant at this point.

**Sen. F. Al-Rawi:** Thank you, Madam Vice-President. Of its relevance, I am absolutely and completely sure and I will point it to you because I am sure it is going to come up in this debate.

The relevance of this Act is to be found in the title to this Bill. It is to be found in clause 4 of this Bill. It is to be found in the inspection of financial intermediaries. It is to be found in the inspection of financial institutions. It is to be found in the definition section of "public body", which includes a Minister of Government and Ministries of Government. It is to be found in electronic funds transfer for the payment of vehicles that could have been procured by the Ministry of National Security. So pay attention to the Bill, hon. Senator, and "doh frighten because it gettin' hot".

Public procurement with a Government like this that will do nothing about speaking to the manner in which it is procuring goods and services is a dangerous thing and, therefore, it is critical, in the context of this Bill, for electronic funds transfer to be specified in the regulations, to be promulgated under section 141 of the parent Act and not section 23F as it is proposed or 23G as proposed in this particular Bill.

In any event, the fact is that the regulations, as put out in draft, are seriously deficient. If this Bill were to become law and these stand as regulations subject only to negative resolution—which is a difficult process—what would happen when you factor that the Electronic Transactions Act has not been fully proclaimed and that that non-proclamation is the meat and bones of protection? Not only do you have unexplained procurement by Ministries such as the Ministry of Justice and the Ministry of National Security—procurement which stands in your face and cries out for explanation—not only do you have that, but you have nothing inside of the Electronic Transactions Act to back you up and nothing in the regulations to back you up.

So, Madam Vice-President, where are we going? Why are we here? Where is the explanation for the inclusion of parliamentarians and Ministers and judges, persons who can be exploited under the Nolan Principles? Why are we doing that? Where is the explanation for procurement and its balance and its check, particularly when you factor that the Constitution of the Republic of Trinidad and Tobago and the Exchequer and Audit Act, which used the auspices of the Public Accounts Committee and the Public Accounts (Enterprises) Committee under sections 112 to 120, I believe, of the Constitution and otherwise in the Exchequer and Audit Act, when that is not there? So, Madam Vice-President, it is very important for us to consider the real amendments to be made.

I wish to put for consideration to the hon. Minister the provisions of the Financial Administration and Audit Act of Jamaica; in particular, from sections 33 to 34 of that Act. There were spectacularly important amendments included in 2009 in Jamaica, which dealt with the introduction into every single state body, public office, Ministry, every arm of Government the inclusion of internal audit committees and an audit committee. That is the kind of detail which we should be putting in here.

The low-hanging fruit before this Parliament and before this Senate is that! It is an amendment to the Electronic Transactions Act, now section 53, by borrowing the South African section 27, Introduction of Electronic Funds, as I pointed out to the honourable Senate; and it is also included in every Ministry, in

every state arm, in every state body, in every corporation, internal audit committees under the Exchequer and Audit Act and external audit committees, which comply with international financial standards.

That would allow this country to properly be in a position to move to whole of Government accounts and accrual accounting. It is that kind of work that this Parliament should be engaged in. It is certainly not the case that we should spend time to pass something which we do not know why we are doing, which appears to exist under the current laws of Trinidad and Tobago, which appears to be easily amended in another fashion, which requires much more detail in regulations than the draft regulations put out before us; and, very importantly, which requires a statement by way of analysis of the Proceeds of Crime Act, the Financial Intelligence Unit Act, the Computer Misuse Act—a statement of the readiness and preparedness for the rest of the proclamation of the Electronic Transactions Act because this Bill proposes that we will be using services of electronic authorization providers that do not exist in the Laws of Trinidad and Tobago, which were passed and assented to in April 2011 and for which we have been given no explanation or state-of-play analysis as to why they have not been brought up to date.

So, most respectfully, Madam Vice-President, this being the sixth debate that we have done as a Parliament in the Senate for the whole of 2011, from July come forward and now six times—busy, busy, busy, this Government is—[*Interruption*—for 2011 and 2012 put together—six times. Is this why we are here, Madam Vice-President? Is this the kind of debate that we should be engaged in? Is this the level of detail and attention that we need—somebody thinks it is a good idea and it will look good?

I want to repeat one point, with your permission, Madam Vice-President. Section 14 of the draft regulations before us pulls in all the financial regulations under the parent Act, which stand as laws of Trinidad and Tobago under section 141 of the parent Act. All! So how could we possibly be leaving behind the paper trail? How? It makes absolutely no sense. It stands as a stark contradiction of the truth. It shows that nobody has bothered to read the Bill before them or to do the tangential analysis that is required.

**3.30 p.m.**

Really and truly, I am extremely worried for the ship of Trinidad and Tobago because, under that kind of governance, we are going—as my friend Sen. Hinds would put it: “We have a first-class ticket, on the first-class deck on the Titanic.” [*Desk thumping*]

Madam Vice-President, it is not a happy thing. I mean not to insult personalities opposite me, but to point out the material shortcomings in their work. It is atrocious; it stands as an “F” for “fail”, and the Government has got to do a lot better than that. I thank you for the opportunity to contribute. [*Desk thumping*]

**Sen. Subhas Ramkhelawan:** Thank you, Madam Vice-President. I welcome the opportunity to contribute to this Bill to amend the Exchequer and Audit Act and to provide for payments into and issues out of the Exchequer Account and for payments of other public moneys, however held, by means of electronic transfer and for related matters.

I think, before I go on, I would like to join my colleagues in extending congratulations to Justice Anthony Carmona as President-Elect, and to wish him every success in his imminent posting to the highest office in this land, and also to wish him success in service to the citizens of Trinidad and Tobago.

During this time as well, there have been a number of comments as to whether Independent Senators—what should be their status with the election of the new President. I do not propose to address that today, even though I consider it a healthy debate, but I expect that very shortly I shall be speaking to those in the media with regard to my own position on this particular matter of the status of Independent Senators. Questions have been asked: should Independent Senators’ terms be conterminous with that of the President. [*Interruption*] I believe when you check your dictionary, you would find that conterminous is a proper word.

**Sen. George:** Sorry, my apologies.

**Sen. S. Ramkhelawan:** And I accept your apology. I think also that the question has arisen even though it was envisaged in our Constitution that the term of Senators would be conterminous with that of the dissolution of Parliament.

I think the matter was raised with regard to custom and practice, but it has been the custom and practice that Senators would serve out their full term, except in a situation where those who have appointed them wish to remove them from office under certain conditions. But, as I said, that is in the sole discretion of the President when he does come to office, and I will deal with that on another day.

I want to make some comments about this particular Bill, and I would address these comments with regard to the practicality of some of the clauses that have been put into the Bill for conversion into the Act. Let me start by looking at what this Bill is really about.

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Now, Madam Vice-President, the Bill really addresses a number of matters, essentially, in terms of electronic transfer, bank cards—which have been defined under the 2000 Act, which is the Electronic Transfer of Funds Crime Act, 2000, which was amended, I believe in 2005. It defines this whole question of electronic transfer via bank cards, via credit cards and via electronic transfer. Many of the other areas have been defined in the 2011 legislation which is the Electronic Transactions Act, 2011, for which there have been a number of definitions, whether it be electronic authentication product, electronic authentication service provider, electronic products, record and so on.

[SEN. DR. JAMES ARMSTRONG *in the Chair*]

I want to address some of the practical matters having been a practitioner in this particular field relating to electronic transfers. Of course, there is danger. We have heard a number of horror stories with regard to funds being transferred and getting lost in the process and that is an immediate danger.

The first matter that comes to mind is that there should be proper and intensive training for those who have to engage, on behalf of the Treasury, in this whole question of electronic funds transfer because when it goes with electronic funds transfer you cannot find it and you cannot bring it back. That is a danger, but it is not a danger that cannot be overcome, because that danger has been addressed, even though not perfectly by those practitioners in the private sector. I see no reason it cannot be embraced in the public sector with the caveat that I would have pointed out. It is very important that that training is put in place. So, I think that is the first area I would raise with the hon. Minister that he must pay particular attention to.

Then this comes back now to the whole question of regulations. Should the cart be before the horse or vice versa? I think the answer to that is quite clear. I believe the regulations must be clear and firm and ready to be put in place before we get to the point of the proclamation of the legislation.

I support wholeheartedly the thoughts of Sen. Al Rawi, particularly, with the full proclamation of the Electronic Transactions Act, 2011. We as a nation do not want to have to go through the trauma that has been experienced with other pieces of legislation where there has been partial proclamation which has resulted in much torment for our society. I think when we deal with almost real-time transfers, it is very important that all of the factors are properly linked, and I want to put that before the hon. Minister for proper consideration.



There are certain things in the Bill in terms of the construction of the clauses that I would find very difficult to support. Let me just point to a few of them that need to be addressed—and they are minor items—before I go to other areas. Most of them are in the amendment in Part IVA which relates to section 23.

When we are dealing with regulations, if you go to 23D(1), it is being suggested that:

“The Treasury may—

(a) authorise the use of...

(b) specify the credit limits in respect of, bank cards, credit cards or electronic money by public officials.”

That word “may”, Mr. Presiding Officer, is a very, very, dangerous word. When you want to establish critical controls, it is not that they “may” establish limit, they must establish limits and, therefore, that word “may” should be changed to “shall”. We cannot have a situation where you give persons credit cards, bank cards and give authority for electronic transfers without having limits, without having clear and discernible limits.

Clearly, in a banking system, and any system with regard to financial transfers, those limits are preset, they are well known and the sanctions are in place. So, I would think in terms of simply the drafting of 23D(1), that “may” should be converted to “must” or “shall” and I am sure the attorneys here and the legal draftspersons would be able to do what is necessary to make those changes.

[MADAM VICE-PRESIDENT *in the Chair*]

Again, in 23E (1), the question of regulations:

“The Minister may make Regulations to give effect to the provisions of this Part...”

Which part? Dealing with electronic fund transfers, and, therefore, it cannot be “may”, it must be “shall”, because we are dealing with money and we are dealing with the transfer of money, and we want to establish very, very, tight controls to ensure that we do not find ourselves in a very difficult situation of attempting to recollect from persons who have expended beyond their limits or persons who have acted outside of their limits in terms of fund transfers.

I will give a practical example. Most financial firms will authorize officers certain levels of signatory status, whether it be on a cheque, whether it be for electronic transfer and so and, therefore, the checks and balances that go into

place ensure that nobody can sign for electronic transfer or otherwise they cannot sign beyond their limit. Very often in the banking system you have the dual signatory and sometimes triple signatory process, so no one person has unlimited authority without a counter signature to ensure that there is some check and balance in the process.

Of course, I would expect that those matters would come into the regulations but, most importantly, in the regulations there must be predefined limits or else someone who signs off on a cheque or who signs for transfer of funds would say, "Well, there was no limit" and, therefore, if there is no limit, how can I be sanctioned? How can I be held accountable when you did not tell me what the limit was? This is a practical matter that often has to be addressed in the question of electronic transfers, bank card transfers and credit card transfers.

The amendment does, in my review, provide just a couple of new definitions; one is that of the "financial intermediary". I am concerned about that definition because when you look at that definition it implies that a financial intermediary can be, or means:

"...a financial institution, a credit union registered under the Cooperatives Societies Act or the Trinidad and Tobago Unit Trust Corporation established under section 3 of the Unit Trust Corporation of Trinidad and Tobago..."

Madam Vice-President, it is my understanding that only financial institutions, banks, can effect the transfer of funds. They are the ultimate players that can effect the transfer of funds.

I am not aware, and I am sure that the hon. Minister or the Minister of Finance and the Economy would be able or should be able to tell me whether credit unions have accounts with the Central Bank, because only if you have an account with the Central Bank can you transfer money. That is my understanding. So, I do not know where this definition comes from. I seem to recall that the Unit Trust Corporation would have some account with the Central Bank based on its legislation, but I cannot recollect whether credit unions do have that facility. In fact, I am almost certain that they do not in all cases.

**3.45 p.m.**

I would like to ask the hon. Minister, through you, to look at this definition again and see what it means. But even more particularly, under section 12 of the Act, not this amendment but the Exchequer and Audit Act, under section 12 there is a definition for this matter of an exchequer account from which Treasury can pay or receive funds.

Let me see if I can find it. Yes, section 12 of the Exchequer and Audit Act, subsection (1):

“An account styled ‘the Exchequer Account’ shall be kept with such bank or banks as the Treasury shall from time to time determine.”

This does not include a credit union. This does not include the Unit Trust Corporation, and, therefore, by a process of elimination it does suggest to me that the legislation, really, at the end of the day, envisages that an exchequer account from the Treasury would be with banks only, and until such time as that section 12 is changed there can be no other financial intermediary, and therefore we must look at that definition with regard to the whole question of financial intermediary.

Institutions, non-financial institutions, can take orders for the transfer of funds but they are only agents to get to that intermediary that can actually effect the transfer of funds, and I think that must be made clear. I am sure the hon. Minister understands what I am saying, and those definitions or that definition needs to be “re-looked” and adjusted in the context of the definition of an exchequer account by the Treasury.

Section 23G(5), refers to a schedule of electronic authentication products but when I looked at the 2011 Act there was only, I believe, one listed player. I was not sure whether it was a listed player; electronic certificates, or something, was the name given. I would ask the Minister to “re-look” this question of the schedule and who would be these electronic services providers and products. At the end of the day the legislation itself seems somewhat shaky, or the suggested amendments seem somewhat shaky on the grounds of what would be exchequer accounts, on the grounds of who would be the service providers, on the grounds of who would be the products and, in particular, on the ground that the Electronic Transactions Act 2011 has not been fully proclaimed and, therefore, we are moving in a direction where we do not have the infrastructure fully in place for us to do what is necessary here.

That infrastructure is not only within the 2011 Electronic Transactions Act but it is also that the regulations must be clearly aligned with the legislation or this amendment to ensure that we can give effect to these transactions taking place. I think Senator Al-Rawi spoke to some of the other matters with regard to protection of the investor or the mover of funds, and so on, and therefore those are some of the more important considerations of the legislation.

Let me say that, of course in principle, I support the idea of electronic transfer. It is best international practice now. It is in consonance with the pursuit of e-commerce, among other things, and therefore it makes perfect sense for us to go this route but we must ensure that the legislation is properly aligned with the intention. The road

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to hell is paved with good intentions; nobody asks about whether it is good legislation or not, but it is the intention. [*Desk thumping*] And therefore I will appeal to the Minister to have a “re-look”.

I do not think anybody in this Senate really wants to say no to electronic transfer. I do not think that that is the case because, properly done, it would give a fillip to the level of efficiency in terms of money transfers, but the legislation to support it is somewhat weak. It is not sufficiently comprehensive in nature to be able to give enabling effect to what the hon. Minister is setting out to do.

So while I congratulate the Minister on his intention I wish to raise these few points with him; have a look and let us see whether we could amend the various clauses to ensure that we give proper enforcement capability to what it is you are setting out to do. With these few words, Madam Vice-President, I thank you.

**Sen. Fitzgerald Hinds:** Thank you very much, Madam Vice-President, as I join this debate on a Bill that I get the impression the Government does not have any enthusiasm for. The Minister moved the Bill, presented the Bill. My colleague, Sen. Al-Rawi, as usual, treated this Bill as the PNM does, with great seriousness, demonstrated his usual capacity for research and for creating the linkages between this and other pieces of legislation to the extent that he was able to point out, and the Minister appeared shocked, that as he sought to amend the Electronic Transactions Act, No. 6 of 2011, the very provision, Part VI—which the Government is now seeking to introduce a Part VIA to amend it—had not yet been proclaimed. The Minister seemed stunned and shocked at that revelation.

I noticed the Attorney General has vacated the Chamber; the Minister of Finance and the Economy has vacated the Chamber. This reminds me—[*Interruption*]

**Hon. Senator:** He is never here.

**Sen. F. Hinds:** Oh, he is never here. The Attorney General is never here. I thank you for your guidance, Minister Marlene Coudray. I thank you for your intervention. [*Desk thumping*]

**Hon. Senator:** The Minister of Finance and the Economy was never here—

**Sen. F. Hinds:** He as well, the Minister of Finance and the Economy, also. [*Crosstalk*] Okay, that is all right, I understand, I understand, I understand. But the point I am making, Madam Vice-President, is that the Government, reminding us of the Beverage Bill—and you know Sen. Al-Rawi made the point that this is the sixth time that we are here to debate a Bill for probably almost a year. Is that correct?

The Government seems afraid and unwilling to come to the Parliament where it has to account to the people, and when they do come they come with this nonchalant approach and you can tell that they are not interested. They do not want to account to the people of Trinidad and Tobago in this Parliament. But we are here—Sen. Ramkhelawan spoke, I was happy to have his company today for reasons that I would not now disclose but happy to have him. He spoke today and I would think that we were going to hear from one of the Ministers of Government, those well-paid colleagues of ours on the other side, and none of them got up. This Government is half interested in this, and I rather suspect it has to do, as my friend Sen. Deyalsingh always points out, that the Government has not taken time to create a legislative agenda—one—and they have nothing else to bring here—[*Desk thumping*]*—nothing else.*

At any rate we have a few observations to make on this Bill which is described as an Act to amend the Exchequer and Audit Act, Chap. 69:01 to provide for payments into and issues out of the Exchequer Account and for payments of other public moneys, howsoever held, by means of electronic funds transfer and related matters. Madam Vice-President, let me begin by observing clause 2 of this legislation which says, simply:

“This Act comes into operation on such date as is fixed by the President by Proclamation.”

Those last three words remind me that I must join with those citizens of Trinidad and Tobago and all of my colleagues here, publicly for the first time, expressing my deep sentiments, my pride, my admiration, my joy even, at the appointment of the President-Elect, Mr. Justice Anthony Thomas Aquinas Carmona. [*Desk thumping*] When I heard of that development I felt elated at it. My party demonstrated its full support and I now have an opportunity to publicly, for the first time, say as much.

But the word that troubled me here was “proclamation”. As the President comes to office after the 15<sup>th</sup> or the 18<sup>th</sup> of March, no doubt he will encounter this Bill having been passed, or the Act for proclamation, before him if the Government has its way today. He will also meet on this desk issues arising out of a very treacherous piece of proclamation of course, section 34—that transpired sometime before he would have taken office and, of course, he would also meet on his desk a request from the Leader of the Opposition to have a look at the refusal of the Prime Minister to respond to questions that were put to her under section 81 of our Constitution; but those are matters that we will return to at another stage.

Clause 3 says, in this Act, the Act means the Exchequer and Audit Act, of which of course we took time to retain a copy. The Exchequer and Audit Act is:

“An Act to provide for the control and management of the public finances of Trinidad and Tobago; for the duties and powers of the Auditor General; for the collection, issue and payment of public moneys; for the audit of public accounts and the protection and recovery of public property; for the control of the powers of statutory bodies; and for matters connected therewith.”

Madam Vice-President, this is a very important piece of legislation. I happen to be the Chairman of the Public Accounts (Enterprises) Committee. Many of us hold membership in that and, of course, the Public Accounts Committee whose responsibility, under the Constitution and the Standing Orders of this Parliament, is to assist in the observation of public expenditure and to ensure on behalf of the Parliament and, by extension, the people of Trinidad and Tobago, that public moneys are properly utilized.

The Exchequer and Audit Act is the legislation that establishes the office and recognizes the office of the Auditor General. It outlines the duties and powers of the Auditor General—a very important functionary in the scheme of things, and, of course, the Auditor General means the person appointed as such under the Constitution. We had in the course of our work—and I do not wish to get into all of the controversial issues that may arise in this debate. I will confine myself to where we are in Trinidad and Tobago as it relates to an attempt to properly manage, oversee, the expenditure of public moneys.

What you find happening, Madam Vice-President, in many countries and certainly in Trinidad and Tobago, given the new “eat ah food” philosophy that seems to be dominating things—and you hear a lot of it; calypsonians had a lot to say over the last few weeks as it related to that Government. In particular, the Mighty Chalkdust; I was very impressed with his calypso about the woman from Tobago, “Virginia Crook”; he had a lot to say about this.

We, Madam Vice-President, at the level of the Public Accounts (Enterprises) Committee sought the opinion of the Solicitor General, the Government’s lawyer, to find out what was the relationship between the Parliament and the Auditor General. In some jurisdictions in the world the Auditor General is employed by the Parliament but enjoys a tremendous amount of independence, and in Trinidad and Tobago as well, the Auditor General stands very predominant and independent.

**4.00 p.m.**

So we asked the question, Madam Vice-President: to whom is the Auditor General of the Republic of Trinidad and Tobago accountable? We also wanted to know what the relationship was between the Auditor General and the Parliament of Trinidad and Tobago. We asked that question of the Government's lawyer, on whose opinion and advice we all willingly rely, and justifiably so. We have had good sound advice over the years. I say the Solicitor General; I am not so sure about the Attorney General, but certainly the Auditor General. I have said here before that we can hardly believe or trust anything that the Attorney General says. He does not seem able to speak in a balanced way. He has political biases which he cannot contain, in my opinion, and I would say so without apology.

We asked the Solicitor General, and under the rubric of the word "accountability", the response said, *inter alia*: section 116 of the Constitution is clear and unambiguous:

"In the exercise of his functions..."

Do not get trouble with the word "his", because section 11 of the Interpretation Act tells us males and females are one and the same—no trouble. So let me go again:

"In the exercise of his functions under this Constitution the Auditor General shall not be subject to the direction or control of any other person or authority."

The Exchequer and Audit Act in section 8(2) in particular says very interestingly that:

"Where the Auditor General is removed from office under the Constitution the Minister shall make a full statement of the reasons therefor at the first opportunity to Parliament."

I have not seen that in relation to any other office holder in this country. So that tells me that the framers of this legislation recognized the independence and importance of the Office of the Auditor General, to the extent that if for any reason the Auditor General is removed from office, the Minister with the responsibility must say to this Parliament, and by extension the people of this country, the reasons at the first opportunity. That says a lot, Madam Vice-President.

Insofar as the opinion is concerned, in respect of the relationship with Parliament, it says that in respect of his relationship with the Parliament, the Auditor General has a reporting obligation. Section 116(4) of the Constitution provides that the Auditor General must:

"...submit his reports annually to the Speaker, the President of the Senate and the Minister of Finance."

Section 116(5) makes the Auditor General indirectly, but ultimately, responsible to the Parliament where his reports are laid. However, he is not subject to the direction or control of any other person or authority under the Constitution.

Regarding the Public Accounts Committee:

“The Public Accounts Committee shall consider and report to the House of Representatives on—

(c) the report of the Auditor General on any such accounts.”

Regarding the Public Accounts (Enterprises) Committee:

This committee shall consider and report to the House of Representatives on—

“(b) the Auditor General’s report on any such accounts, balance sheets and other financial statements.”

The difference there is of course, as you know, Madam Vice-President, the Public Accounts (Enterprises) Committee does not only look at government departments, but it looks at other companies, some established by an Act of Parliament, some established under the Companies Act that are either partly or wholly owned by the State. Taxpayers’ money being involved, there is a responsibility for scrutiny by the Parliament through the two committees I have just described, and the Auditor General issues reports.

In more modern and recent times, because of the burden of work, the Auditor General has authorized some of these entities to employ the services of accounting firms, whose findings and financial statements, their reports, are sent to the Auditor General and then to the joint select committees, the Public Accounts and Public Accounts (Enterprises) Committees for our scrutiny, but it is done with the authority of the Auditor General.

Let me continue in the opinion:

“The Auditor General may at any time if it appears to him desirable, transmit a special report to the Minister for presentation in like manner to Parliament. Such special report may be made on any matter incidental to his powers and duties under this Act.”

That is found in section 25(4) of the very Exchequer and Audit Act. Madam Vice-President, a tremendous power here:

“The Auditor General may at any time if it appears to him desirable, transmit a special report to the Minister for presentation in like manner to Parliament.”



Madam Vice-President, I cannot ignore the fact that as we speak here today, raging like a fire in the society is a question of some unit that was or is purportedly in existence in this country. The Minister of National Security is denying every bit of it. Those who say that it exists, led by a certain Mervyn Cordner—this is in the public domain—told us that he had obtained resources through certain elements in the Ministry of National Security. It is that kind of matter that the Auditor General can intervene in, if he or she considers it desirable, and issue a report after investigation to the Minister who must bring it to the Parliament in like manner. In other words, you cannot interfere with it.

I am sure that that particular matter, because it is a frightening matter, to which I shall return a little later—it is that sort of thing that the Auditor General has the power to look at, to ensure that the moneys we allocate to government departments, which fall under the purview of the Minister for his general direction, under section 75 of the Constitution, and more specifically under the direction of the accounting officer of the Ministries.

The Exchequer and Audit Act, Chap. 69:01, in the definition section, so to speak, section 2, defines accounting officer. And we all know that an accounting officer means—let me read the definition:

“...any person appointed by the Treasury and charged with the duty of accounting for any service in respect of which moneys have been appropriated by the Constitution or by Parliament, or any person to whom issues are made from the Exchequer Account.”

Typically the Permanent Secretary—including the Permanent Secretary in the Ministry of National Security—is the accounting officer for that Ministry.

**Sen. Singh:** Whom you know very well.

**Sen. F. Hinds:** Recently, about two/three years ago, we established Head 64, a new head for the police service, where the then administration recognized that the police commissioner—responsible for 7,000 to 8,000 men and women with some specific functions—needed to have more autonomy. Usually the commissioner would have had to go to the Ministry of National Security for funds to do all the things he or she had to do with the police service. We established Head 64, and today the Commissioner of Police is the accounting officer for the police service in terms as I have described a while ago.

Madam Vice-President, the Exchequer and Audit Act goes further. Section 7 says:

“The Auditor General shall not be capable while holding the said office of holding any other office of emolument in the service of the State.”

Very important restriction; that is of course to underpin his or her independence and to ensure that he or she is not beholden to any other person while he or she carries out this very important public function.

As I spoke about holding other office, I could not help—looking on the clean and dignified countenance of my friend, Sen. Al-Rawi, he perplexed himself during his contribution and asked why did the Government, in particular the Attorney General, not share with us the opinion that he may have sought, or the Government may have sought, which would have justified bringing this legislation, which Sen. Al-Rawi argued comprehensively and forcefully, may not altogether have been justified. But I explained, Sen. Al-Rawi, that it appears as though the Government, embarrassed perhaps at not doing anything and coming here six times in almost a year, just threw this in for good measure, and they really do not have any interest in it. It might be that, as well as it might be in the usual secretive way, because there may in fact be an opinion.

So when Sen. Al-Rawi asked that question, I said to myself, “What is Sen. Al-Rawi asking this Government about opinion?” If this Government has a legal opinion, it is not in the habit of sharing it with anybody, unless it is forced to. And when I read this little bit here about holding two offices, I recalled that at the beginning of the life of this Government, the first action, the first order of business, as the Leader of the Opposition walked away from the President’s desk, having signed his instrument of appointment, he raised with the national community the absurdity of an individual holding Cabinet office while being a member of an international organization known as FIFA—two offices. The Attorney General told us that he received three legal opinions, one from deceased Sir Ellis Clarke, which explained that nothing was wrong with that.

**Madam Vice-President:** Sen. Hinds, you started your contribution at 3.51. You have almost finished the first 45 minutes and I would like to really know what is your point. You have raised several issues, and you have tried to draw some relevance to the points you have raised. So far they have been very vague, but I did not rule on them for irrelevance, but I am going to ask that you simply make your contribution at this time based on the Bill at hand.

**Sen. F. Hinds:** Madam Vice-President, I am shocked! I am speaking on the Exchequer and Audit Act, in a Bill to amend it. Everything I have said is related to that.

**Sen. Singh:** Direct some relevance to it. [*Crosstalk*]

**Sen. F. Hinds:** Madam Vice-President, it may be vague to some.

**Sen. Singh:** You are bringing your bad habits from the House of Representatives.

**Sen. F. Hinds:** It may be vague to some.

**Sen. Ramlogan SC:** If you want to attack [*Inaudible*] outside.

**Sen. F. Hinds:** Everything I have said so far has to do with the Exchequer and Audit Act; everything. Maybe my colleagues want me to speak about other things.

**Sen. Ramlogan SC:** We want you to talk about the Bill. [*Laughter*]

**Sen. F. Hinds:** Madam Vice-President, may I continue?

**Madam Vice-President:** Yes.

**Sen. Singh:** Take the precedent of your leader. [*Crosstalk*]

**Sen. F. Hinds:** I am simply making the point, as I move on, that an opinion—and I read one a while ago from the Solicitor General—that a lawyer’s opinion—I am a lawyer myself—has to do with what you ask the lawyer and what information you give him or her. In the opinion of Sir Ellis—this is the point I was making—he found nothing wrong with the dual appointments when the matter came up.

**Sen. Singh:** Where is dual appointments in this amendment?

**Sen. F. Hinds:** I am dealing with it; you just let me speak. [*Laughter*]

**4.15 p.m.**

He found nothing wrong with it. [*Laughter*] In fact, he described in his opinion the Minister as having an honorary position otherwise. You would later learn, just to conclude on the point, that the man was supposed to have been receiving a pension on the basis of salary. So, Sir Ellis got it wrong in other words, based on what he was told.

**Sen. Singh:** You are only saying that after he died.

**Sen. F. Hinds:** Based on what he was told. So I do not want Sen. Al-Rawi worrying too much about opinions from that Government at the end of the day.

Madam Vice-President, the Auditor General has a duty to examine, enquire and audit accounts of all accounting officers and receivers of revenue and all persons entrusted with the assessment of, collection, receipt, custody or issuance of public moneys or with the receipt, custody, issue, sale, transfer of, delivery of any

stamps, securities, stores or other state property. The Auditor General shall satisfy himself that all reasonable precautions have been taken to safeguard the collection of public moneys, and that the laws, directions, and instructions have been duly observed.

Madam Vice-President, the Minister when he piloted the legislation told us that in the year 2000 it was estimated that 61 per cent of transactions were done electronically—61 per cent. He told us that by 2012, [*Crosstalk*] 75 per cent were so done. Yes. [*Crosstalk*] Sen. Ramkhelawan told us that it was a very good idea. He suggested quite wisely, in my view, that nobody would hold any objection to this, but of course, coming from this Government, you always have to wonder about their motives and what this is all about.

The Exchequer also has a responsibility—and let me quote the section—to see that: “...all money expended has been applied to the purpose or purposes for which the same was granted by Parliament and that such expenditure conforms to the authority which governs it and has been incurred with due regard to the avoidance of waste and extravagance.

(d) essential records are maintained and the rules and procedures framed and applied are sufficient to safeguard the control of stores and other State property.”

Madam Vice-President, you would recall that in the last budget debate it was pointed out to my friends on the other side—it became clear to us that the Ministry of National Security sought 4.2—I think it was—billion dollars to deal with its affairs in national security. Strangely and inexplicably to this day the Government allocated five-point something billion dollars to the [*Crosstalk*] Ministry of National Security.

**Sen. Singh:** To pay the debts of the OPVs.

**Sen. F. Hinds:** We had never seen that before in this country [*Crosstalk*] and based on the issues that are now in the public domain we now realize that the so-called, the alleged, flying squad was in existence since October last year. We are dutybound to ask if some of that extra money allocated—[*Interruption*]

**Madam Vice-President:** Sen. Hinds—

**Sen. F. Hinds:**—had anything to do with that?

**Madam Vice-President:** Sen. Hinds, I am duty-bound to guide you. [*Crosstalk*] In addition to going back on the former ruling you have also, and you know this very well, you have filed questions of that nature; they are yet to be

approved. If it is that you wish to raise issues that are not under the domain of this, kindly do it as a substantive issue, or as a question on the Order Paper. I am going to direct that you make all your contributions from now on specific to this Bill.

**Sen. F. Hinds:** I thank you very much, but I am sure that I am permitted like everyone else to raise examples, Madam Vice-President; that is all I should do, [*Crosstalk*] to elucidate—

**Hon. Senator:** It is not a question.

**Sen. F. Hinds:**—to elucidate and to make real so that the man in the street who we speak to would understand what I am saying. [*Desk thumping*] If at the same time I remove the mask from the Government's face and they can find and see their ugly countenance—[*Crosstalk*]

**Hon. Senator:** Awhh.

**Sen. F. Hinds:** That is a metaphor.

**Sen. Singh:** When you talk about ugly look in the mirror.

**Sen. F. Hinds:** That is a metaphor. Madam Vice-President, modern Parliaments, as we aspire to be, are moving from a strict observation of financial accounts and statements to the new concept of seeking or ensuring that we also get value for money.

**Sen. Singh:** You did not know to ask Calder Hart that?

**Sen. F. Hinds:** This morning, Madam Vice-President, we saw two examples while I was in the Public Accounts (Enterprises) Committee meeting where very good and laudable ideas were implemented, but sometimes you have cost overruns. Take for an example the very building that we are in—

**Sen. Singh:** Tarouba.

**Sen. F. Hinds:**—the fact that we are in this Tower D tells us that this is a useful building; it has purpose and it had purpose when it was thought of and created, but issues may arise along the way about getting outside of budget and getting outside of time. These are the kinds of things that modern Parliaments through the Auditor General are now looking at—value for money.

We went to Australia recently, in the province of Victoria, and this was the [*Crosstalk*] essence of the deliberations there: a movement from looking purely at financial statements to value for money audits, value for money audits. Therefore,

I am duty-bound as a parliamentarian, as we debate this, to look at the Ministry of National Security in particular to see whether the money that the Parliament allocated, whether we get value for money. It is in that context that I raised the questions raised by Mr. Mervyn Cordner. That is all. A simple example.

**Sen. Singh:** He is your friend.

**Sen. F. Hinds:** Madam Vice-President, national security in furtherance of my example is responsible for dealing with management of crime in Trinidad and Tobago; crime. [*Crosstalk*]

**Sen. Singh:** You are Minister of National Security.

**Sen. George:** You have no conscience.

**Sen. F. Hinds:** Like every other citizen, I heard the Prime Minister from abroad in Haiti, she is on a conference dealing with regional security and safety, and she told them on our behalf that Trinidad and Tobago is losing about US \$35 million a year because of crime in this society. That works out to be about TT \$210 million a year.

**Sen. Singh:** Make it relevant, it might be electronic transfers.

**Sen. F. Hinds:** “Yeah”? That is all right. “I go deal with this.” That is a serious issue. When a Ministry asks for \$4.2 billion and you give them \$5 billion you expect that you would get value for money; you expect that you would get value for money. The Prime Minister is complaining about that.

However, I considered that to be a bit facetious, because so far the Minister of Finance and the Economy over the last three years, three budgets, has allocated something like \$345 million to the Office of the Attorney General to pay a team of lawyers and for legal fees to find evidence of corruption, to ensure that we are not cheated of value for money. So far after allocating \$345 million, far more than the \$210 million the Prime Minister is crying about in Haiti, all that we have had so far is about two or three half-baked civil suits and a few letters of threat, pre-action protocols, to a number of other people.

The Leader of the Opposition in a budget debate, the last budget debate, told the Minister of Finance and the Economy, and I recorded it, that the Government has to be careful that that \$345 million that has been allocated to pursue corruption does not itself become embroiled because there are deep concerns; there are deep concerns about that.

There is a so-called A-team operating and the Attorney General told us about it. They were supposed to be looking to see whether we got value for money in e-Teck, in the Sports Company, in T&TEC, in Petrotrin, in UDeCOTT. And as I said, all we have had were about two civil suits and plenty pre-action protocols.

Madam Vice-President, the question of value for money remains important because, as I was saying to you earlier, what you find is that the State in the Treasury has moneys and we see a movement of money from the Treasury to private bank accounts, and we must ask whether we, the people of Trinidad and Tobago, are getting value for money. Let me give you an example of what I am talking about. Let me give you an example. I could call the names of the people on the A-team, but I would not bother with that at this stage because the Attorney General publicly stated who they were; I would not bother.

Madam Vice-President, we have had so far 62—I am told—murders year to date in 49 days. There was some shooting yesterday in Port of Spain on Nelson Street as well. And talking about that, I want—I am sorry the Minister of National Security is not here. We have problems. We have to wonder if we are having value for money, because someone living in the neighbourhood told me last night to my shock, Madam Vice-President—[*Interruption*]

**Sen. Singh:** Which neighbourhood, yours?

**Sen. F. Hinds:** No, in the city, in Nelson Street area; told me that when the bullets finished fly he observed that the rounds of ammunition all carried the initials IMI at the base. For those who do not know, that means Israel Military Industry. Those are rounds of—well we purchase, the military in this country purchases a lot of those rounds. I do not know the source of those spent shells. I have not seen them, but what I know is that [*Crosstalk*]

**Hon. Senator:** Tampering with a crime scene.

**Sen. Singh:** “Yeah”.

**Sen. F. Hinds:**—what I know, I only heard about this [*Crosstalk*] crime scene—

**Sen. Ramlogan SC:** What relevance is this?

**Sen. F. Hinds:**—tampering with a crime scene—value for money and what is happening with the money that we are spending in national security, procurement and issues for the Auditor General? That is what I am dealing with. That is what I am dealing with.

**Sen. Singh:** So what is IMI?

**Sen. F. Hinds:** At the same time there has been no appreciable improvement in the detection rate of these murders.

I remember the Minister of National Security promising us out of his last budget allocation that the Auditor General has to look at that, he would soon import a machine that when you fire a shot he would be able to know where the shot even came from.

**Hon. Senator:** Oh yes.

**Sen. F. Hinds:** “We eh see it yet.” Are we getting value for money?

**Sen. Singh:** Technology.

**Sen. F. Hinds:** Meanwhile murders apace in the city, people “frighten like crazy”, in the face of a Government who came telling us they could do something about it. The Prime Minister in Haiti complaining about crime, and Mr. Mervyn Cordner telling the country day after day, that he was engaged in discussions with the Ministry to set up a squad that was operating clandestinely for the last few months in this country. A very serious matter, and we will get to the bottom of it. *[Interruption]* You are quite right. I filed a question in that regard, and the Minister of National Security will come here and answer my question.

**Hon. Senator:** Uh hmm.

**Sen. Al-Rawi:** If approved.

**Sen. F. Hinds:** Uh? Yes. He will come here. Meanwhile, crime is running rampant, Madam Vice-President. No let-up and other people are just getting rich; rich! People are wondering what they were doing. There are even reports that they used a national security helicopter to do some surveillance. These questions have to be answered; provision of vehicles, some place up by the airport inside the—and the allegation is that it is coming from inside of the Cabinet, Minister.

So, Madam Vice-President, we are living in very, very troubling times, and I want to say on that point before I proceed, I am very afraid for Trinidad and Tobago. These are some of the darkest days that we have had. *[Laughter]* Darkest days, and we cannot expect better from them. They have already failed their own supporters, failed all those who invested in them, and right now it is only about “eat ah food”; money. That is why I am concerned. Madam Vice-President—

**Sen. Singh:** You only have one minute.



**Sen. F. Hinds:** I know, “doh worry about that”. We had in place the Special Anti-crime Unit of Trinidad and Tobago—

**Hon. Senator:** That was a crime Bill?

**Sen. F. Hinds:**—that was established and some of the resources that went to that institution were made available electronically.

**Sen. Al-Rawi:** Exactly.

**Hon. Senator:** Ha, ha. [*Crosstalk*]

**Sen. F. Hinds:** That was dismantled by this Government, and today we are debating whether there was a mongoose gang operating worse than before.

The *Express* editorial of January 16, 2013 headlined “Criminals getting away with murder”—

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

**4.30 p.m.:** *Sitting suspended.*

**5:00 p.m.:** *Sitting resumed.*

**Madam Vice-President:** Before we broke for the tea, hon. Senators, Sen. Hinds was on his legs. According to my calculation you have six minutes remaining of your original time.

**Sen. F. Hinds:** Thank you very much, Madam Vice-President, I am certain that I would not need as much as that. I am almost certain unless I am provoked. [*Interruption and laughter*]

Madam Vice-President, essentially as we move today to amend the Exchequer and Audit Act, I simply want to remind my colleagues on this side that it would have been far more worthwhile if we had come to the Parliament in this amendment to deal with the modernization of the legislation along the lines that I have suggested earlier—that is to say, to do like has been done in Victoria, in Jamaica, in the United Kingdom. After all, public finance management and accounting has very, very deep roots, starting from as far back as the year 1314 when the records of England whose parliamentary system we adopted by virtue of our colonial relationship and past, when they recorded the first intervention and the so-called Gladstone’s reforms, and the thing has continued up to the stage that it is now at.

I would really like to see this society of ours—a former Prime Minister once told this country that money was not the problem and that statement was misunderstood and taken out of context. I understood it on my reading later to have meant that at that time in 1976 when that Prime Minister was speaking, what he was saying is that we at one time had issues with money but now that we were getting some oil revenues, money was no longer the issue; the issue was ideas and it is now about 20/25 years since—

**Sen. Singh:** How you arrived at that interpretation?

**Sen. F. Hinds:** It is right there, you do not want to hear it but it is there. And we really need—[*Interruption*—that is what he said. He said it, Stalin sang it too, the problem is really ideas.

**Sen. Cudjoe:** They would not know about that.

**Sen. F. Hinds:** No, they want to just perpetuate the myths and the lies. So, Madam Vice-President, I would have thought that this is what the Government would have done.

Madam Vice-President, there is one other issue that I would like to raise dealing with this question of audited accounts which is the domain and the responsibility of the Minister—the Auditor General. The *Express* of December 19, 2012 revealed that the very, apparently, hard-working Minister of the People and Social Development, Dr. Glenn Ramadharsingh told the country—and it is reported in the article that I just described—that last Christmas he spent about \$2 million on hampers, and according to him these hampers are worth about \$300 each, and that is just one of the three Christmases in which he had great fun, distributing hampers.

Hmm, every time rain falls anywhere he shows up with hampers, and you really have to ask yourself, what this Government, through that Minister, is all about? Whether that is the way in which public money really ought to be spent? And the distribution of food cards—I remember I took this one from a lady [*Holds up card*] who complained to me really, she said that someone wanted her vote in Tobago and just gave her a food card. She really did not need it. She was a worker who was transported to help them and apart from putting her up, they gave her the food card—[*Interruption*]—and they did that by yes—“aaah”, you see, this is it. This is a means of transposing moneys [*Laughter*] from the State to individuals—

**Sen. Cudjoe:** Electronically.

**Sen. F. Hinds:** In this case quite unnecessarily, electronically. [*Desk thumping*] So it is very relevant, and they did that in Tobago to no avail. The Minister of Justice was in Tobago too and she would have seen the euphoria and the pain that came after the resounding defeat at the hands of conscious Tobagonians. I do not want to say too much on that except that I am told that Minister Christlyn Moore is likely to head the TOP shortly but I think she is—

**Sen. Beckles:** That is a good choice.

**Sen. F. Hinds:** “Yeah, yeah, yeah.” [*Desk thumping*] I know she is far wiser than to want to beat and ride a dead horse, but, Madam Vice-President, that is another matter.

**Sen. Singh:** “Yuh can’t help yuhself, eh. Yuh can’t help yuhself.”

**Sen. F. Hinds:** I think, Madam Vice-President, that the Government needs to review this public expenditure and these are the matters I would like the Government—and I conclude, I spoke a bit about crime earlier and I did point out that the Prime Minister is in Haiti dealing with regional crime and security and I noted the fact that the Minister of National Security was not there. I would like somebody when they get up to speak, to tell us why the Minister of National Security did not go to Haiti when the portfolio is his. Why is he unwilling or perhaps afraid to travel, and more than Haiti, why has he not visited other parts of the world, the United States and so on? We would like to know that.

So, Madam Vice-President, those are matters for another occasion. I would like to urge the Government to get serious about its legislative agenda; it had an opportunity here now to amend this legislation to do things that are more modern and meaningful. It has not done that and I urge the Government to focus on the business of the people of this country for the benefit of the people of this country.

With those few words, Madam Vice-President, I thank you.

**Sen. Helen Drayton:** Thank you, Madam Vice-President. As I rise to speak on this Bill to amend the Exchequer and Audit Act, I take this opportunity to heartily congratulate President-Elect Justice Anthony Carmona and to wish him success and happiness throughout his term as our President.

Regarding the Bill, as I see it, Madam Vice-President, I see it as an opportunity to facilitate overall management of the Government’s and other departments’ electronic payments and receipts. The Exchequer and Audit Act makes reference to payments and receipts by cash and cheques, so there is a need to update the law. And in that regard I note that it is only in this Bill that the term “electronic funds transfer” is comprehensively defined for the purpose of Government and other department transactions by electronic means.

So too, public officials for reasons of EFT, that is an area that has been clearly defined in the Bill. And I know there is a school of thought that the Minister could have possibly made these changes via amendments to the regulations, but in the context of the definition alone, “electronic funds transfer” and the fact that the Exchequer and Audit Act makes reference to payments by cash and cheque, I think that the Bill is necessary.

The Bill says specifically in 23F that it has to be done in accordance—that electronic funds transfers must be done in accordance with a specific law, and this is what this Bill seeks to do, so I think the law will be an opportunity to harmonize the use of electronic payments throughout the system and more so as it deals with receipts to the Treasury.

For the Government to fully embrace electronic funds transfer, I think that is positive and it is long overdue and it should be possible in the foreseeable future for businesses and individuals to pay their licences, duties, fees, NIS, VAT, other taxes and a range of other obligations via direct electronic means, and of course to receive their refunds, be those refunds to do with VAT and other income taxes, and that would save us a great deal of time and time is money.

Now I appreciate that there will be a time lag because how the Government now moves forward to implement a common and unified platform across its many departments, I think that that certainly is a major challenge ahead. Electronic payment is merely a substitution for payment by cheque and cash. So that by itself I do not think that we should see it as the “be it and endall” with respect to eliminating the bureaucracy; it certainly provides an opportunity to start, because electronic payment is at the end of a process of approval for payments which is where a lot of the bureaucracy would take place. Improved backend processes is what would also facilitate the process of more efficient and effective means of payments.

Now while there are some issues with the legislation, it should be viewed, I think, as a start of a process of transforming the systems within the public service. [*Desk thumping*] I feel it is fair to commend Minister Bharath, the Minister in the Ministry of Finance and the Economy for the efforts that he is making with respect to improving the [*Desk thumping*] business environment.

There is one little matter with respect to the Bill that I wish to point out, and that is under the definitions; it is noted that the parent Exchequer and Audit Act already has a definition for “Minister”, which means the Minister responsible for finance, and therefore this Bill would have to be amended. I think it should be amended to delete the same definition, otherwise there will be duplication. If we note that clause 4 of the Bill, which deals with the definitions, says specifically that:

“Section 2 of the Act is amended by inserting in the appropriate...sequence the following definitions.”

—and those definitions include the definition of “Minister”.

As I said, Madam Vice-President, I will be brief, so in closing I would also like to commend the Minister for bringing the regulations with the Bill. We have been complaining about this time and again, time and again, so I hope that it is something, a trend that will be continued and it is not just for today.

With that, I thank you.

**Sen. Terrence Deyalsingh:** Thank you, Madam Vice-President, for allowing me the opportunity to contribute to the Bill an Act to amend the Exchequer and Audit Act, Chap. 69:01, to provide for payments into and issues out of the Exchequer Account and for payments of other public moneys, howsoever held, by means of electronic funds transfer and for related matters.

If I may join with the rest of my colleagues and yourself by starting with extending my heartiest congratulations to our President-Elect, currently Justice Anthony Thomas Aquinas Carmona, very powerful names and like the rest of us, I do wish him a long, happy, fruitful, I know we do not use the word “reign”, but term in office.

Madam Vice-President, in preparing to contribute to this Bill, I am reminded of the lyrics of a song by Tom Jones—

**Sen. Singh:** “It’s not unusual to be loved by anyone.”

**Sen. T. Deyalsingh:** No, it is not that one. [*Laughter*] It is also not “What’s New Pussycat”, but the lyrics that I am reminded of, of Tom Jones in preparing for this Bill is, “Why, why, why, Delilah?” Why are we here? Why bring this piece of legislation now? Because it is absolutely mind-boggling the futility of this debate.

Sen. Al-Rawi has pointed out the futility of the debate, somewhat supported by Sen. Ramkhelawan, and if I may start by asking, how are we now conducting electronic funds transfers?

**5.15 p.m.**

You can currently pay, I think, at the licensing office with a bank card, immigration, stamp duty—what is the purpose of bringing Parliament out—bringing this Senate out today—to debate this piece of legislation, when the mechanism for electronic funds transfers have been used and are being used in

this country as of today? So why, why, why Delilah? Why are we here? What is the purpose of this piece of legislation? It is only because the Government has no legislative agenda. We have to continually ask since May 2010, tell us: what is your legislative agenda? What is it, where is it, does it exist or is it like Casper the friendly ghost? Where is it? Where is the legislation to bring the Caribbean Court of Justice here, but no you bring us out to debate a piece of legislation which is not needed.

Madam Vice-President, I start by asking a simple question. This piece of legislation is amending two substantive pieces of other legislation: the Exchequer and Audit Act and the Electronic Transactions Act. If I turn to the Electronic Transactions Act, 2011, on page 27, Electronic Transactions Act of 2011, Act No. 6 of 2011, we have the definition of a “public body”, and under that definition we list out public bodies from (a) to (i)—(a) is the Parliament, a Joint Select Committee, et cetera; (b) is the Court of Appeal, the High Court, the Industrial Court, the Tax Appeal Board; (c) is the Cabinet as constituted under the Constitution, a Ministry or Department and (d) to (i).

When you turn to the Bill before us today and you go to public bodies on page 3 you will see that the list of “public body” under the Electronic Transactions Act is duplicated in this Bill, but with the notable exceptions of the first three listed under the Electronic Transactions Act. Let me just repeat that, we have two pieces of articulating legislation: this Bill before us, and if I could deem it, the parent Electronic Transactions Act. Under the Electronic Transactions Act you have public bodies listed from (a) to (i). Under the Bill before us you have public bodies listed from (a) to (e)—there are omissions. My question is what is the rationale for these omissions of these public bodies? What is the reason for it? Is it an oversight and if it is an oversight, is it fatal to this debate today?

**Sen. Al-Rawi:** What is the reason for the exception?

**Sen. T. Deyalsingh:** And if it is an exception, as my friend said, what is the reason? So maybe the hon. Minister’s drafters/assistants can help us with that so we can know why (a) to (c) have not been included. That is the major incongruity between the two pieces of legislation I am seeing. There are others but I will come to them during the course of my debate.

Madam Vice-President, there is no doubt that the Government will find support on this side—and may I say the Independents—for any serious piece of legislation that deepens the already existing electronic funds transfer regime. However, it would be remiss of us if we did not look at some themes as it applies

to electronic transfers. One of the major failures of e-commerce, e-business, e-marketing or e-government for that matter is management. This is an issue we are going to have to look at, how do we manage e-business? We already manage it to some extent, but as the process deepens, the management issues become more real and what do I mean?

In marketing terms when we look at the penetration of devices we now take for granted—cellphones, microwave ovens. When these things first came out not many people would have used them in its initial stages. You have those adventurous people who would go out and want to be the “hippest” in technology. I think the marketeers call them innovators, early adopters, and like our parents and grandparents they are loath to use credit cards and bank cards. They still want to go into the bank and engage the teller in conversation, and people like Sen. Larry Howai when he was a banker get vex for that because we are clogging up the banking hall and it is too expensive to process a transaction in person. Mr. Howai, as a banker, would like us to do everything online—*[Interruption]*

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

**Sen. T. Deyalsingh:**—but the young people will adopt that technology.

But as more and more we adopt it and it permeates through society as Sen. Howai will now know the need for security, the need for management of e-business becomes more and more crucial.

So the second theme I want to focus on is, what are the rights and liabilities of parties along this chain of payment, from consumer or business, to the intermediary which is the financial institution and finally into the Exchequer Account. We are going to have to look at this, because this is where some management issues come into rights and liabilities, because as we have the exponential growth of electronic payments these issues become more and more crucial and we need to have systems which are much more rigorous, and this leads me to the question: why is this Bill—when is it going to be proclaimed?

The hon. Minister, when he was piloting this piece of legislation obviously could not give us a time frame, and this Government has a sorry history in its recent past about proclamations of Bills—early proclamations—and then when a Bill is supposed to come into force on January 1 it cannot come into force, although we could say we told you so, but let us leave the controversy of the indictments—of the indictment Bill, that clause 34 thing. Let us look at the proclamation if you will permit me, en passant, tangential, because I want to deal with the issue of proclamation, and we in this Parliament are derelict in our duties when we pass legislation and we do not seek to find out—give us a rough time when a Bill is going to be proclaimed.

Madam Vice-President, I used an example of the Children Bill, 2012, which we supported on this side which was piloted by then Sen. Verna St. Rose Greaves—noble piece of legislation. At the time during the debate we heard about all the good intentions of the Bill. You picked up a newspaper recently; a mother took her child's hand and deliberately burnt it. You know, when you go on to the Parliament website to see what protection that child could have gotten under the Bill—do you know what is the position of that Bill? It has not yet been proclaimed. The question, is why? Similarly with this Bill now, there is nothing in place, according to the Minister, because the Minister said he has to do certain things, it would be proclaimed at some point in time, but as Sen. Al-Rawi and myself said, we are already conducting electronic transactions, and hence my reason—why, why, why Delilah, why are we here, and why is the Children Bill not proclaimed? But I will leave that for another time.

Madam Vice-President, if we look at the chain of payment from consumer or business to the financial intermediary to the Exchequer Account we can split that chain into two. Part A of the chain is from the payer to the financial institution and part B from the institution where the funds will lie in a pool and then go to the Exchequer Account.

Permit me to break that chain into two and deal with some issues—management and security issues—that we need to look at. If we look at receipts of money—I am paying via electronic transaction, I have my VAT receipts to pay and I make it with my FCB credit card. I am assuming that all the platforms that we currently have which would be like ttconnect, iGovTT, TBizLink and so on, that those might be harmonized. I am assuming that, and that when you make your payment your payment then goes to the financial institution. From my understanding, and Sen. Howai could probably correct me, my understanding is that that part of the chain is currently secured by the financial institutions. Am I correct Sen. Howai?

[*Sen. Howai nods head.*]

Good. My concern does not lie with that part of the chain from payer to financial institution. My concern lies with the transfer of funds from the financial institutions which are, let us say a holding bay to the Exchequer Account, and this is where we need to find out if somebody from the opposite side during the course of the debate can tell us, are we using global best practice standards? What standards are we using? Because the security at this part now becomes crucial as I pointed out, the financial institutions take responsibility for part A of the transaction.



So, what are the protocols to be adopted, because this is where the potential for fraud starts to happen. From the financial institution as the intermediary, you want to make sure those funds go to the correct resting place which is the Exchequer Account and not divert it elsewhere—if someone from the Government side when they rise to support this legislation can tell us this.

In my discussions with people in the industry they have raised some concerns about the generation of unique reference numbers which are unique to an individual, but not only unique to an individual because an individual could be making several payments. So you have individual A making a VAT payment, a tax payment or another series of payments into the Exchequer Account. So we want to know on this side, what is the method of assigning unique reference numbers not only by person but by person by transaction?

My research into this tells me that the use of sequential numbers, which might be easy, will not work. So in other words, you, Madam Vice-President, cannot be 001, Sen. Shamfa Cudjoe 002, Sen. Al-Rawi 3, 4 and so on, those sequential-type numbers cannot work. What my research tells me, people in the industry they want a unique number, a number unique to a person which can then be tracked by person and by transaction. So the infrastructure to deliver that type of number generation—Sen. Howai will know about this again because they use the same algorithm method to generate numbers for credit cards.

So we need to know what is the rigour of the system: are we generating numbers by algorithm supported by the financial institutions using the same algorithm that the Government will be using? What this will do, if you use sequential numbers you are going to run into problems with reconciliation of accounts. Because when the financial institution transfers to the Exchequer Account a billion dollars, the Exchequer Account has to know who is paying it, for what purpose.

**5.30 p.m.**

You want to avoid having to set up a whole reconciliation department. So I am just advising the Government when they are putting this piece of legislation into action to please look at the issue of generating unique reference numbers and not sequential.

Madam Vice-President, my area of greatest concern—so far I have dealt with payments into the Exchequer Account, but my greatest area of concern is payment out of the Exchequer Account as this Act envisages. We are moving to an electronic system of payment out of the Exchequer Account. I hope you can see where I am going with this because this is where the greatest incidence of fraud and the misuse of public funds can happen.

Somebody on the Government side who is au courant with this piece of legislation, who is au courant with this type of system, is going to have to tell us—stand here and deliver and tell us how they intend to have clear separation of duties; clear separation of roles and responsibilities so the possibility of collusion is minimized.

Madam Vice-President, Internet-based or e-based transaction is a wonderful thing. It is a tool that makes things easy. But worldwide, what happens is that the propensity for fraud increases with e-business because of the ease of someone to stay home in their home—no longer do I have to break into the Treasury building with a jackhammer or a stick of dynamite to “tief” the money from the vault—I could simply stay at home on my computer and steal the money in the vault, online. *[Interruption]* Am I kidding?

**Sen. Al-Rawi:** How you could say that?

**Sen. T. Deyalsingh:** Are you serious, hon. Minister of Justice? *[Interruption]*

**Sen. Al-Rawi:** The Minister of Justice—and being rude about it!

**Sen. T. Deyalsingh:** The Minister of Justice is asking me, am I serious; that nobody cannot stay at home on their computer and steal money.

**Hon. Senator:** You are so easily distracted—

**Sen. T. Deyalsingh:** This is absolutely shocking! For that alone we cannot support this Bill. *[Laughter]* If it is, the Government feels—*[Desk thumping]*—if it is that a senior person in the Government feels that what I am saying about cybercrime is a fiction, then why, why, why, Delilah, are we here?

**Sen. Singh:** To break down the door!

**Sen. T. Deyalsingh:** Why are we here? This is absolutely flabbergasting!

**Sen. Moore:** You cannot break into the TS.

**Sen. T. Deyalsingh:** I will break into TS because it is sad to know that a Minister of Justice does not understand that I could stay at home in my room with a computer and steal funds.

**Sen. Singh:** She better believe you have the capacity!

**Sen. T. Deyalsingh:** Rudeness will get you nowhere with me. But I go on, Madam Vice-President. Absolutely shocking! Absolutely shocking!

**Hon. Senator:** So easily distracted.

**Sen. T. Deyalsingh:** It is not a matter of being distracted; it is a matter that this country is in the hands of somebody who does not understand cybercrime. *[Interruption]* No, Sen. Burke, this is not to a—you see, you all are laughing. If this is reflective of the thinking pattern of the Government, Madam Vice-President, then we are in trouble. If this is reflective of the flippancy with which they treat this issue, I am sorry for Trinidad and Tobago. I am sorry for public funds, because it is these same public funds that are being leaked from the Treasury.

I understand Minister Bharath was talking about elimination of red tape; payment of government employees and vouchers raised. I want to ask the Government: how many vouchers were raised to pay the flying squad? That pertains to this Bill. The police is a public authority under this Bill. The Ministry of National Security is a public body under this Bill, and this is the example of fraud that this Government does not understand. Absolutely shocking! But I leave them to dwell where they dwell.

**Sen. Singh:** You feign shock.

**Sen. T. Deyalsingh:** And this is where, Madam Vice-President, when we are looking at people working in the Treasury, I want to know what their qualifications are. You may say I am being flippant by raising the issue of Resmi again, and qualifications, but, Madam Vice-President, this Government has a sorry history of putting people with false and fake qualifications in positions to deal with funds, from Resmi to the Commission of Enquiry. It never stops. That is my fear about the loss of public money via electronic transfers—poor record in vetting qualifications—poor record.

Madam Vice-President, when we look at electronic transfers, again, someone from the Government side is going to have to stand up and tell us what systems of audit are being placed, both internal audit via the Auditor General—because we are amending an Act that involves the Auditor General. Question: Will the Auditor General now have e-audit capabilities as opposed to paper-based audit capabilities? Would they be empowering the office of the Auditor General to conduct audits? Are they going to be employing the services of an independent third party officer working alongside, but separate from their internal auditor? Because global best practices tell me when you have this type of system, you need to have periodic audits both internally by your Auditor General, but also externally to test the rigour of the system and to check for risks, the possibility of breaches and the possibility of collusion.

So I would like to hear from someone on the Government side: what are the audit responsibilities and capabilities being built in to look at fraud, cybercrime—which they do not agree might exist, but which is sad—and what IT protocols are we adhering to? *[Interruption]* You cannot even protect your own people in Valsayn.

**Sen. Singh:** The first cybercrime was hacking by the PNM—

**Sen. T. Deyalsingh:** What are some of the other areas of concern, Madam Vice-President? Our cybercrime unit within the police service needs to be looked at in contemplation of this piece of legislation, and going hand in hand with that, again, whichever Government spokesperson is au courant with the workings of this Bill will have to stand up and tell us what sort of disaster recovery programme is being built in, so that in the case of loss of data we know how to recover. What back-up systems are going to be used? Are they going to have built-in testing of the system from their remote location? Because you do not wait for a disaster; you do not wait for loss of data to then go to your back-up to see if it is working. Best practices tell you occasionally you run your entire system from your back-up; from your remote disaster recovery zone.

We do not wait for something to happen, whether it is a natural event or cybercrime or whatever, because we need to look under the hood of this piece of legislation and look at the recent history again of pieces of legislation which are passed for PR purposes. I gave you the example of the Children Bill. We passed the Children Bill but people are still being burnt. The Bill has not been proclaimed. We passed legislation to give life to—and no pun intended—the Children's Life Fund, but when we look under the hood of the Children's Life Fund, payments that were supposed to be made by those opposite were not being made. When we looked under the hood of Caribbean Airlines today, we see a messy situation. So we need to avoid these messes; we need to avoid the travesty which was the Children's Life Fund, the Children Bill and what is going on now at CAL.

Madam Vice-President, this piece of legislation, if it is to have teeth—because as it stands now, it is a useless document; this is an exercise in absolute futility that we are engaging in here today, as pointed out by Sen. Al-Rawi. Absolute futility! Because this piece of legislation—the hon. Minister, when he was piloting, did not spend much time telling us how it articulates with anti-money laundering legislation. Does it need to articulate? If it does need to articulate, to what extent?

Two: the articulations with POCA (Proceeds of Crime Act), I think he spoke briefly on it, but speaking briefly on it is not good enough for this piece of legislation. We need to go into some detail to see the articulation between what we are doing here today and the Proceeds of Crime Act. We need to see how it articulates with the Data Protection Act; we need to see how it articulates with the Consumer Protection Act because right now our Consumer Protection Act, as enacted, never envisaged e-business. It speaks about hire purchase, goods, services. It never envisaged e-business. However, Part VIII of the Electronic Transactions Act, 2011 did envisage that. But do you know what? That part of the legislation—that part of the Electronic Transactions Act, 2011—has not yet been proclaimed.

Question: Why, why, why, Delilah? Why has part VIII of the Electronic Transactions Act not been proclaimed which gives protection to the very consumers you want to use this service? What is the reason? But other pieces of legislation could be hurriedly proclaimed for reasons best known to them. But you would not proclaim the Children Bill; you will not proclaim Part VIII of the Electronic Transactions Act, 2011 to give protection to the same consumers that you wish to use this service. Tell us why.

Madam Vice-President, this piece of legislation does not pass muster. This piece of legislation, the intent could have been achieved by other means, such as amendments to regulations which the Minister has the power to do. This piece of legislation needs a serious look at; this piece of legislation possibly needs to go to a joint select committee to see how it articulates with other pieces of legislation I spoke about: Anti-money laundering legislation; Proceeds of Crime Act—*[Interruption]*—you can laugh again. This Government takes legislation as a tick box: “Tick, done; Children Bill, done; everything else, done; section 34, done; electronic transactions, done, but when we examine it we see the real naked truth.

So, Madam Vice-President, before we give support to this piece of legislation there are serious questions to be asked and the major question is: Why are public bodies, as listed in the Electronic Transactions Act, why has that not been duplicated in this piece of legislation?

Madam Vice-President, with those few words, I thank you. *[Desk thumping]*

**Sen. Dr. Rolph Balgobin:** Thank you, Madam Vice-President. I just rise to make a few quick observations and a recommendation for how we might go forward. I am very clear in my own mind that we are already doing much of this in various areas where Government interfaces with the public. It is at this point in

time possible in some spheres to engage in an electronic transaction with the State, and so I think that we are, in effect, talking about something that is in flight; it is already happening, and I join with Minister Bharath in recognizing the urgency of modernizing the way that we do business with citizens and the way that citizens also do business with each other, which is, of course, governed by the parent Act and not by this particular piece of legislation before us.

I am encouraged also by the intent to pay instantaneously.

**5.45 p.m.**

I am looking here at the aspect of this legislation that is really talking about pushing money or payments to people who are due them. I think that that can make for effective governance. I know what the potential loopholes are and what the risks are and those exist whether you are signing a cheque or whether you are pressing a button. There are particular challenges with all strategies used for payment. Where there is money there is greed and where there is greed there is opportunity, and so we must, whatever we are doing, develop robust systems to take care of the risks that are attendant with whatever modality we are using.

You know, a couple of 100 years ago they used to transport money by stagecoach. Here we are today, talking about really what is virtual money because you are, in effect, driving a digitized transaction and no real money is moving. It just comes out by magic to the person who goes to the teller or the ATM to withdraw. So, in this regard, I think that it is important for us to recognize that we are well behind the curve, and that Trinidad and Tobago needs to take or continue to take these progressive steps to drive e-payments and electronic transactions in a way that allows us to really speed up the pace at which we do business and we get things done.

Money, of course, is the life blood of an economy and, therefore, anything that can improve that speed, the speed or quickness of getting something done is very important. I am, in particular, interested in seeing a better off citizenry if, for example, through the sorts of arrangements where we can pay people faster; we can pay public officials more quickly as the case may be, and I encourage state enterprises even to get to a place where they can do that.

Presumably, some of them are using ACH, automated clearing house arrangements, where they pay salaries electronically and so on and you want to get to a place where we could also pay suppliers this way. Presumably that is happening in some quarters, but it ought to be mandated to happen in all, and the reason being, of course, that state enterprises can cripple small and medium

enterprises that are suppliers to them, either of goods or services, and it is not uncommon to have an SME really in dire straits because the state enterprise has not paid in time. State enterprises actually can be quite disrespectful to their suppliers by using their sheer size. The colossus that a state enterprise usually represents encourages no sanction or very little and that can put a supplier in tremendous difficulty.

So, these are some of the issues that can be remedied by our furtherance along this road, but I note, when I look at the Electronic Transactions Act that only Parts I, II, III, IV and VII are proclaimed, and I was curious as to why the rest are not because the—and I will come to that because I do not plan to spend very long on this; just to make a few observations, having really joined in my own mind some of the issues that have been raised by Sen. Ramkhelawan and Sen. Al-Rawi, in particular.

I would like to draw our attention to section 23D, and when I look at 23D it says that the Treasury may, of course, authorize use of credit cards and bank cards and so on. I was not of the view that public officials were at risk, simply because if you handed me a card it does not mean I have to use it. And so, I did not feel that I was being placed in harm's way if I am a public official, say, and a member of the Judiciary or something like that and you handed me a card, I could always hand it back to you. I must have a pair of scissors; I can cut it up and give it back to you in pieces. I do not have to sign the back of it or accept it in any way.

However, I was concerned, Madam Vice-President, with 23E which really deals with regulations and it gives the Minister sweeping powers to development regulations, and 23E(ii) says:

“The Minister may make Regulations to give effect to the provisions of this Part including—

fraudulent or negligent conduct of a Department or public official and the treatment of losses occurring as a result of such conduct;”

Now, I am not sure that the regulations are the right place for dealing with fraud and negligent conduct. In fact, in the parent Act it has been made explicit under, I believe it is section 9, when we talk about contravention and enforcement and so on, and that there ought to be very stern or strict penalties that apply. For breach, I think that why this is placed in the regulation is simply to—we must acknowledge the sheer scope and complexity of the negligence that can occur or the fraud that can occur. For example, I may negligently use my credit card to buy a wig. I may use my credit card to—

**Sen. Deyalsingh:**—buy a flying squad. [*Laughter*]

**Sen. Dr. R. Balgobin:** I may use my credit card to buy a plane ticket for personal travel. That transgression, of course, is nowhere near the same as someone stealing \$20 million, \$30 million, \$40 million through an electronic transaction.

Madam Vice-President, the thing with electronic fraud and fraudulent activity in electronic transactions is when they go through, they are almost never for small amounts, and the reason being is when you break the system you go big and you go fast. I remember a few years ago—of course, we forget things so quickly here—TSTT suffered a loss of, I think it was, \$40 million or \$80 million. I think it was \$80 million. One shot! I think they did it over four or five transactions. [*Interruption*] No, it was through the commercial banking system, but it was all electronic and no one was ever really brought to justice.

I do not know that the money looked up to see who it was under, whether it was under PNM or the UNC. I “doh” know that the money when it was going, when it was travelling, looked up. To me, money stays the same colour regardless of who is in power. It is always attractive to people because of what it can do.

So we have in Trinidad and Tobago—and that is just one case that has come to light—live cases where electronic funds transfer has gone very wrong, and there are many, many cases in the commercial banking system that do not come to light. Many, many cases where banks deal with these issues very quietly, very discreetly, but they are big. So I do not know that the regulation, Madam Vice-President, would be the place for us to deal with that. I acknowledge the complexity of putting it in the main legislation. Nonetheless, I think the main legislation is where it ought to be, and I would encourage the hon. Minister to take a look at that and reconsider that.

The other issue is that while we are talking here about issuing legislation that makes it easier for us to conduct these electronic transactions, this piece of legislation remains quiet about our requirements for record keeping. Now, section 13, in particular, and sections 13 to 18 in general of the parent Act do say that if you have to keep a paper record, you ought also to keep a digital record the same way, except that you cannot. If it is a digital record, then you have two options. Option one is that you print it. If you did that—and I have no doubt that somebody somewhere would try to do that—that would, of course, nullify most of the logic for having done the transaction in the first place.



The other option is to store it electronically, and if you are doing that you need a data centre. A data centre, of course, is a fairly big thing. It is expensive. You need to have air-conditioned rooms that are water cooled from the base; you need to have a number of main frames or rack servers and so on that will give you a kind of redundancy; you need to have your own generators and then fail-safes for those generators. You need to have it locked up solid because someone going inside of there and doing one thing wrong can wipe the memory of everything in the room.

So, you have to have some kind of arrangement in place for storing this electronic or this digital material that you are creating. I do not want us to underestimate the challenge or the difficulty involved in setting that up initially, because that requires significant bandwidth coming into and out of the data centre, all manner and layers of security. We are operating in an environment where we have not done bandwidth very well, and I do not know that we—if you look at our record in the commercial system for managing electronic transactions and fraud—I do not think we have done very well there either. Therefore, the question of recordkeeping, to my mind, remains alive having merely been mentioned in the parent Act and not addressed in this piece of legislation before us at all.

I am also minded to note, that section 23G(5)—for example, electronic authentication products, referred to in the Schedule to the Electronic Transactions Act are the same ones that we use to validate and so on. I am minded to note, Madam Vice-President, that this section is an example of one which refers to a section in the parent Act that has not yet been proclaimed, and the question, of course, would be: why has it not been proclaimed? We have gone through the selective proclamation process and we have left some of these important pieces out. I am not quite clear why. So, I wish to encourage that if we are going forward with something like this, that we proclaim the relevant sections on electronic authentication service providers and so on.

I also think that Part VIII of the parent legislation that deals with consumer protection would benefit from a rapid or ready proclamation, as well as Part IX which deals with contravention and enforcement. Part X, of course, is just miscellaneous.

So, I support what the Minister is trying to do, but either we do it or we do not as they say. I am not quite sure why it is necessary to do this, save and except to satisfy the concerns of someone within our public officialdom who is saying that we do not have the requisite authority to do some of these transactions and so we need to pass this amendment in order to do it.

So that for me is not entirely clear and given the issues that have been raised, I wonder if I may be so bold as to make a suggestion that we step away from this and repair it, and then bring it back. [*Desk thumping*] I do not know that it has to go to a select committee or any such thing. I think the issues have been ventilated, and clearly so, and there is an opportunity for us to withdraw, fix, come again and get this done. I am hopeful that we consider that approach which, for example, I know is being done with beverage container and, again, I think that is a very mature approach and nothing is wrong with that.

So I want to encourage that and thank you, Madam Vice-President, for the opportunity to speak. [*Desk thumping*]

**6.00 p.m.**

**Sen. Shamfa Cudjoe:** Thank you, Madam Vice-President. I am going to be very short also. I want to share with the Members of my Bench and also with what some of the Independents said. I have a concern with the proclamation of Parts VIII and IX of the electronic transactions legislation that is so closely related to this Bill that we are debating today. The part of the legislation that piques my interest most will be Parts VIII and IX. Part VIII deals with “Consumer Protection” and Part IX “Contravention and Enforcement”.

Now, Madam Vice-President, consumer protection. Part VIII in the Electronic Transactions Act of 2011 speaks to protecting clients from receiving false information, and the breach of confidentiality in keeping the records of clients. Now, I want to place on the record that the disclosure of personal data to third parties, this could be very damaging. We are talking about employing this system in a major way—large scale—so we are talking about issuing disability grants, food cards and so on electronically, and I am concerned about the divisions or departments dealing with this information, providing the personal data about clients and about contractors and suppliers to third parties.

So, take for instance, a cancer patient, or somebody with a disability, providing information to the department or the Ministry and then that Ministry in turn, or somebody working in the Ministry, provides that information to, let us say, a health insurance company that may cause some kind of negative impact on the client. So, I think we need to implement the necessary legislation or enforce the necessary measures to ensure that the consumers and the clients—the people that we deal with under this legislation—are well-secured and that confidentiality is upheld.

Now, if data about government suppliers—which is pretty much the heart of electronic transactions—goes out to other people who are unauthorized to receive this information, it causes great lapse in the integrity of the EFT system, and then it would threaten potential and reliability of the system in people having trust and confidence in it, and that is why Part IX which treats with enforcement is so important.

Madam Vice-President, easy access to this information and being able to access this information with the press of one button, that is what I find very destructive. If we do not have the necessary measures to protect against that, just like if you are sending out an email or posting a picture on Facebook, by the click of one button, from the time you send out an electronic instruction, it is pretty much irrevocable. So the necessary measures need to be in place to protect against that in order to promote the integrity of the system. I feel there is need for stringent policies and penalties against people who distribute or publicize sensitive information. I, too, have some concerns with the Minister having the ability to create regulations by negative resolution and especially in penalties that treat with public officials misusing the system.

Earlier this year or late last year, we would have read about a premier in Cayman Islands. His name is Premier McKeeva Bush. He was arrested for the misuse of a credit card. So here in Trinidad and Tobago, you receive a rap on the knuckles whilst in other countries, Ministers and public officials are being arrested and they have to face the court. So we as the Parliament, we have a responsibility to show that we are serious about this and that we are standing up against white-collar crimes. We cannot create legislation to punish the small man on the street and refuse or avoid making legislation to treat with these issues that are not foreign to us here in Trinidad and Tobago.

Now, Madam Vice-President, I am no lawyer or no legal luminary but I think the intention is noble, but I feel the need to revisit this legislation so that we achieve what we have intended to achieve. One of the Senators, I think an Independent Senator, would have stated earlier that the road to hell is paved with good intentions. So, crafting the strong and effective rules and regulations is equally important to the enforcement of this legislation.

Now, ensuring the security of transactions, Madam Vice-President, we need to figure exactly who is qualified or who has the authority to access this information. I had the chance to look at the Ugandan experience and when they first implemented the electronic financial transactions Act, any and everybody within the department or the Ministry of Finance in Uganda had access to the files of the

clients and government suppliers, and any and everybody was sending out money to different people's accounts. They even had a problem of "ghost gangs" and people sending out money to people who were not authorized to receive that. But I think that it is the World Bank that helped the Ugandan Government to treat with this issue, and now they have implemented a strict system of tracking numbers and audit trails for the institution transmitting and receiving systems. So, we can learn from the Ugandan experience. We can learn also from the South African experience in this.

The other part that is close to my heart is having the necessary infrastructure, equipment and software to do so. I think that we would be way ahead of the Ugandan Government as it relates to software, but I am concerned about infrastructure. Most of these new and promising technological systems rely on the Internet, and we have not achieved universal coverage or 100 per cent access to Internet throughout Trinidad and Tobago. There are some rural areas that do not enjoy Internet services so we have to ensure that TSTT, Flow and the other companies that are responsible for providing these services are ready and able and equipped to do so. I am one Member of Parliament who always tries to promote having universal coverage for Internet services. I am not saying that we should go the route of Barbados and provide Internet services free throughout the island, but maybe we can have hotspots where people could pay to access the Internet.

So it is a win-win situation where the Government, the business sector and the public sector benefit from this easy access of transferring money electronically, but, where we, the consumers, the people on the ground, can enjoy paying our bills. Maybe we could embrace this whole system of e-government and e-commerce where we can file our Integrity Commission files on the Internet and file our Board of Inland Revenue material on the Internet. But, Madam Vice-President, we certainly need to have some kind of system to ensure that the infrastructure is effective and is steady and able to do what we are trying to do because many times we come to Parliament and we speak about all these noble ideas and achieving these wonderful things.

For instance, the Minister would have spoken about embracing e-commerce and embracing these new technologies. It would save us time; it would save us money; it would attract investors; it would help to improve the business environment, but these things would not be possible unless we have the necessary works, the necessary infrastructure, we have the equipment, to do so. I have been to a department in Tobago where—what do you call it?—the card reader has not been working for a while and every month they tell me "next month". They said that they have made the calls to the bank to fix the machine and that has not been done up to this minute. So we have to make sure that the banks and the different people who are responsible for servicing this equipment are ready and able to execute their duties.

It cannot be just about the ability to use credit cards or to use your debit card to pay for government services, but we have to ensure, for instance, that the bank tellers—and the bank has the staff to do stuff like direct deposits because most times—I used to work at Scotia Bank before I went off to school and I remember sometimes when the government departments send in the list of the people we are supposed to pay, the person who is supposed to key it in may not be at work today or might have gone to lunch and people have to wait. So it is intended to be quick and speedy, but there are little glitches in the system that could be avoided if we prepare ourselves. So I am hoping that we could create some kind of technical committee where we could have a memorandum of understanding with all the stakeholders that are involved in this process so that we can get to where we need to go to.

Other things that need to be considered to improve the business climate—I know, for instance, in Tobago we still have the problem of the stamp duty machine that has been down for about two years. The last time, the Minister answered the question in this Senate, he said that there is a part that is needed and the part is not available so hopefully, we would receive a new one soon. I want to put on public record and make this cry again if the Minister could hasten in his footsteps to bring that kind of relief to us because, right now as we speak, business people and lawyers are still travelling to Trinidad for the past two years to do all their business that relates to using the stamp duty machine.

So, as I said before, Madam Vice-President, it is a rather noble intention, a good initiative, but it is something that if we do not plan properly, it could turn into a horrible disaster, where you have people who are unauthorized using the system, and especially where you have Part VIII and IX of the Electronic Transactions Act not being proclaimed, so if something happens, God forbid, you cannot enforce the law to punish anybody or to penalize anybody.

I think that while we—as the Members of Parliament, the leaders, the technical people who are creating this legislation—want to see this thing passed and want to enjoy the improvement in e-commerce and so on, the consumer, the man on the ground, this needs to be a win-win situation for him also so we must get this thing right. I know we want to catch up but we must get this thing right and do what is necessary to implement the proper policy, the rules and the regulations that will redound to the benefit of not just the Parliament and the Government, but also the citizens of Trinidad and Tobago.

Madam Vice-President, with those few words, I thank you. [*Desk thumping*]

**The Attorney General (Sen. The Hon. Anand Ramlogan SC):** Thank you very much, Madam Vice-President. This is a simple but very important amendment, and it has its genesis, as indicated by Members opposite, in the developments in technology over time that allow for methods of payment—legal tender—other than cash or cheque payment. The objectives of this amendment would be as follows: it is firstly to enable Government to receive payments via electronic means and to make payments via electronic means.

I want to make that distinction at the onset because, perhaps when I come to the need for the amendment, I will demonstrate why we must separate the outflow and the inflow, the receipt of moneys by the Government—or the State—and the payment of moneys, because they carry different legal implications and consequences whether you are paying out or receiving; but suffice it to say, that will improve the efficiency of the payment and receipt system that the Government has.

**6.15 p.m.**

Perhaps a most important benefit is to allow the public to take advantage of the technological advancements to be able, in a more convenient manner, and in a more efficient and personal manner to pay for transactions with the Government. This is important because far too often and for far too long, the payment of money to the Government has been an arduous and torturous task. I am very pleased to see in this Bill, a concept introduced in the relationship between the Government and citizens in the definition section, which in itself speaks to a cultural paradigm shift, and that change is you will see the word “client” in the definition section—“client”.

I do not think that with all the public service transformation we have had, and I do not think with all the laws that we have been passing, that we have been using the word “client” often enough, if at all. It is high time that the Government, in transacting business or providing goods and services for citizens, that we start defining them and seeing them as clients or customers. That is why the definition provides for a “client” and it reads, it means:

“...a person who conducts business with a Department...”

I think that speaks to the approach of the Government in its transformational efforts, because what we want to do is to get the Government to treat with citizens, and see them as persons who are entitled to expect a business approach in the delivery of goods and services to them, and that they are treated and respected as though they are customers or clients in the private sector.

The amendment is intended to provide a safe and secure environment for the customer to transact business with the Government. The State is the largest business organization. It is the single largest business organization. When I was appointed as Attorney General, my first meeting with staff, I said the Ministry of the Attorney General is the largest law firm in the country. [*Desk thumping*] I said every single government department or public official is your client, because I came from a background of building a private practice and I knew about clients, and I knew about an attorney providing advice to a client who is a customer. I said, look, this is the largest law firm. We are here to provide a service to public officials and Ministries and so forth. I think it is in keeping with that kind of thinking that we see the concept of a client in doing business with the single largest business entity, which is the Government. [*Desk thumping*]

#### PROCEDURAL MOTION

**The Minister of the Environment and Water Resources (Sen. The Hon. Ganga Singh):** Madam Vice-President, in accordance with Standing Order 9(8), I beg to move that the Senate continue to sit until the completion of the business at hand.

*Question put and agreed to.*

#### EXCHEQUER AND AUDIT (AMDT.) BILL, 2012

**Sen. The Hon. A. Ramlogan SC:** I am grateful, Madam Vice-President. [*Desk thumping*] Of course, as Attorney General I have been painfully aware of the litigation exposure by the State, when it comes to payment and transactions with the State. I have seen where the administrative and bureaucratic inefficiencies of the State have led to litigation. I have seen where malfunctioning equipment, unauthorized access, errors in processing—through inadvertence, through human error—but the State has been sued time and again as a result of those errors and inefficiencies that are built into the system.

You know, Madam Vice-President, the most recent example is one that deals with the payment of a traffic ticket. “If someone in this country has to pay a ticket—ah policeman give yuh ah ticket—yuh driving on de shoulder, yuh speeding. To pay dat ticket is ah very, very torturous strain, you know, it is ah traumatic experience. Ah poor man has to find his way, he geh de ticket ah ready. He has to now find his way, because yuh know in San Fernando and in Port of Spain yuh hah parking problems. So de State does not provide adequate parking, and if yuh park bad, de State come an hit yuh ah traffic ticket.” “Den, the same State tells you yuh must go by de Warden Office. So in San Fernando we make ah

long trek down to San Fernando wharf by de Warden Office and when you reach de Warden Office, most of the time, de time dat yuh could go to de Warden Office is on your lunch hour. When you go by de Warden Office on de lunch hour, yuh line up and you wait, and just wen dey reach you, your day gets better because de person slap ah sign and say wah tap, “out for lunch”. And yuh say whey is dis? I next in line, yuh cyar jus take my—ah hah lunch hour, ah hah children to go an pick up from school an ting. One loud steups and dey gone.”

The days that we are trying to change, that this country suffered under, is epitomized and personified in that sign on the cashier’s booth, that every single citizen has encountered that says, “out to lunch”. We have seen those signs at one o’clock, twelve o’clock, two o’clock, three o’clock and four o’clock. “And if yuh not lucky enough to find dem out to lunch—[*Interruption*]

**Hon. Senator:** “De cashier eh come to work.”

**Sen. The Hon. A. Ramlogan SC:**—“the cashier took ah day off. And if yuh eh lucky enough to see dat de cashier did not come to work, you den see de most mysterious, recondite, obscure sign dat says, ‘cash close’. It eh hah no explanation as to why cash close, is just ‘cash close’.”

“I remember having an experience once with ah client, it was ah poor lady and you know, she went dong, she had to transact business, she went to the Warden Office about five, six time and eventually I called de Warden Office, ah say listen, dis lady real poor, she coming there to transact ah simple business, tell me something, de cashier come out today? Dey say, yes. Ah say okay. Ah say she take lunch ah ready? Dey say no. Ah say would she be dey for de next half hour, because I coming down with de lady meh self? Dey say yes, she go be here for de next half an hour. Ah say good, ah coming dong.”

“Run down de road, reach dey. Ah reach by de cashier—taking ah lil relax and filing nail an ting. Ah say Ma’am, ah come to pay some money. We come to pay some money to the Government dat dis lady owing. She say, yeah, buh ah cyar take it. Ah say whey yuh mean yuh cyar take it? She say nah, de security eh come out? [*Laughter and crosstalk*] Ah say wat? Ah say wait, de security eh come out. She say yeah, de security eh come out. Ah say ma’am is \$25 dis lady come to pay, yuh know, not no big set ah money, but de paper she need for dat \$25 is ah land and building tax receipt that real important for ah case I doing, whey she brother trying to rob she some land, and she have five children. She say, well, I cyar help yuh dey, de security eh come out, and that is the system we live in.”



This is about changing all of that. [*Desk thumping*] “This is about telling dat lady, dat her daughter at home, who received ah free laptop courtesy the People’s Partnership, will be able to log on to de laptop, [*Desk thumping*] sit dong in she bedroom, and pay dat money utilizing dat free laptop that we gave dat child, and de mother will be able to pay it using online credit and banking facilities. She doh even hah to leave de comfort and convenience of her home. Dat is what dis is about. So, de cashier could be out”—[*Interruption*]

**Hon. Senator:** “Dey eh seeing dat.”

**Sen. The Hon. A. Ramlogan SC:**—“she could be there, but is not jus de sheer convenience of the method of payment, yuh know. It is not just de sheer convenience. It is about de saving to the person in the street. Yuh see we really doh understand how poor people does hah to suffer in this country sometime.”

“When I say dat de daughter will use de free laptop and make dat payment, wat I eh telling yuh is, de mother not only saves time, dat she could stay home and look after de child or teach him ah lil homework, but de mother save de passage. It is de passage, because de passage dat yuh hah to pay to hire ah taxi, to reach dong dey, to walk in de hot sun, to line up in de Warden Office, is de passage money de does concern about. Most ah de time yuh would be surprised dat poor people cyar go to make dah payment, yuh know why? When yuh ask dem why yuh din go? Yuh hah to ask dem three times. Yuh know why dey din go? Dey din go because dey save up de money but dey eh hah de passage.”

“So, dis is about eliminating de passage, eliminating de out to lunch sign, eliminating de problem with de security not coming to work, and eliminating de problem with de cashier not coming to work. [*Desk thumping*] This is about efficient Government and catering for ah client.” [*Desk thumping*]

“Madam, Vice-President, it will improve certainty in payment, in de collection of fees, taxes and for de payment of goods and services. Yuh know how much time people get ketch because dey go and dey get ah manager’s cheque by one and de go by one Government agency an dey say nah, we does only take cash. Buh is ah manager’s cheque. Dey say no, we does only take cash, chief. There is no certainty in de method of payments sometimes. People get confused. The reconciliation exercise dat takes place in de Ministry of Finance and the whole record keeping.”

My colleague, Minister Bharath, in his rather erudite address—[*Desk thumping*] in piloting this Bill, explained all of “de” benefits, but de paper, he spent some time on “de” paper trail. This Government, we inherited a system that is creaking beneath the sheer weight and volume of the paper and bureaucracy. When Minister Bharath

outlined the curtailment of the timeline from application and processing for all those long lists of Government services, it is a fundamental benefit and change, and it signals a change in the way the Government does business.

“Yuh know, dat reconciliation exercise, people sit dong dey and de paper eh reach from office X to office Y. It is always an impossible task to effect a reconciliation and, of course, let us not even treat with de social and invisible consequences to de citizen. Yuh know, Madam Vice-President, many of the cases I did in private practice, alarmingly so, had to do with simple persons who—men in particular—who had to pay maintenance or who had ah traffic ticket. Hear what happens in real life. These are real cases I did.”

“Yuh get yuh traffic ticket and de 14 days pass to pay it, buh yuh rush down de road eventually. Maybe yuh forget it in yuh dashboard, yuh could not find it sometimes. All right, whatever it is de 14 days pass, buh yuh rush dong de road. When yuh rush dong de road by de Warden Office or by de Magistrates’ Court, dey take de money and dey geh yuh de receipt. Sometime yuh go and pay it within de 14 days. De point is yuh pay it, but for some strange reason de police who issue de ticket, dey does issue ah warrant fuh yuh arrest, because de police have to be notified by ah different government office which is from de Magistrates’ Court or de Warden Office, dat yuh pay de money.”

“You know what happens in dis country? Many times de Warden Office or de Magistrates’ Court eh send de fact of de payment to de police, and de warrant issue, and ah year or two later, man sleeping in dey bedroom with dey wife, and man come an breaking dong door and say ay, yuh under arrest. For what? For not paying ah ticket. When dat ticket issue, chief. Two years ago. Buh I pay it? Dey take yuh down. And de State is now sued for false imprisonment and ah hah to settle de case, and ah hah to pay compensation. Why? Because de transmission of information about the fact that de citizen made ah payment was simply not communicated. I see Sen. Prescott shaking his head because he is aware of these cases. [*Crosstalk*] Yuh must be hah ticket.”  
[*Laughter*]

**6.30 p.m.**

The point is that these are the hidden ramifications and implications about simple amendments like these. All that is now a saving to the State because “people could pay traffic ticket; they could pay dey maintenance and so on and dey doh have to go in person to do it.” That is the real benefit of that.

I heard “meh” learned friend, Sen. Al-Rawi—the thrust of his submission, which he spent the majority of time on, was to say, “Well look, this is not really relevant; it is not necessary.” Indeed, he went so far as to deem it otiose and superfluous.

The first thing I would like to deal with is whether or not, as a matter of policy, this different step was necessary. If it is that the law already permits it, then there was no need for a change in policy and there was no need for a new policy direction.

I want to start by pointing out that this law that my learned friend says permits this, or, put it in the negative, does not disallow it, was passed in 1959. The substantive law we are about to amend was passed in 1959. That is three years after the PNM assumed office in 1956. Back in 1959, credit cards, LINX machines, bank cards, ATMs; all of these things would not have been within the contemplation of the framers of the legislation. Now, that is not to say that the law cannot be interpreted as always speaking, but the point is, even so, you are trying to use a Procrustean method [*Desk thumping*] to straggle on to that legislative bed something that has come in 2013 by virtue of technological advancements.

That really is the crux of the matter. Nineteen fifty-nine law that did not even know about Internet, computer, cellphone—none of these things were around at the time—and my learned friend is saying that we should use that law to pass regulations and we would be all right. [*Crosstalk*]

Madam Vice-President, permit me to indicate why we needed this particular amendment to the law. The first thing is that, unlike the LINX card, the ATM card—we need to understand how these things operate. The ATM card, the LINX card, the first point is that you must go in person to pay using your LINX card, your debit card; they call it bank card. You must go in person and you must be there to pay. That is the first practical point I want to make. You must be there in person to personally pay with your LINX card.

The second point is that to use your bank card you have to have money in your account. That is why you go personally to pay. There is no concept of a loan involved with the use of an ATM card, your LINX card, your debit card, whatever you call it. There is no concept of a loan. It is money that you have in your account that is instantaneously being transmitted to the Government. So any time “a man use he LINX card” and the LINX machine, the money flows instantaneously and concurrently; it flows right away into the Government’s coffers and he goes personally.

So personally, instantaneous transmission of the money; and thirdly, and perhaps most importantly, the cost for using that LINX card is borne by the bank’s customer. So, any time you use your bank card to pay, three things happen: one, you must be there in person and you must be holding it in your hand; two, “yuh must ha money in yuh account”; and three, it costs you 40 cents to use it. Those are the three things.

How is that different to what is happening here and what the legislation is about? How is that different and why is it we needed the amendment? Let me tell you why. The first point is that section 13 of the Exchequer and Audit Act—the whole legislation was predicated on the assumption, in 1959, that whenever people pay money to the State, the money will go into the Consolidated Fund. That is why, in section 13 of that Act, it says:

“All revenue shall be paid, at such times and in such manner as the Treasury may direct, into the Exchequer Account and the revenue shall form the Consolidated Fund...”

The point I am making is, what Parliament had within its contemplation when they passed that law in 1959—without the advent of computer technology, Internet, cellphone, credit cards and bank cards—was that when the Government receives money it goes into the Consolidated Fund.

The use of bank cards does not offend against that because the minute you pay, the Government gets money and it goes into the Consolidated Fund. Credit cards are a different thing. When you pay with your credit card, there is no instantaneous transmission of funds to the Government. The three points I made about the LINX card “doh” apply to the credit card. Let me demonstrate.

Firstly, to use your credit card, you “doh” have to be doing it in person. You could pay over the Internet with “yuh” credit card, in America or anywhere “yuh” buying something. “Yuh could phone it een; yuh could pay over de Internet. So de first point is, to use yuh credit card is yuh doh have to be there in person.”

The second point is that, “unlike the LINX card whey yuh have to have money in yuh account, yuh could use your credit card even if yuh doh have money in de account.” It is a loan. It is a fundamental legal distinction that my learned friend failed to appreciate. The use of the credit card is a loan.

Last but not least, when “yuh” use “de” credit card, “de” merchant has to pay a transaction fee. The merchant, in this case, is the business entity, which is the Government. That means, therefore, because you have to pay that fee, “all de money yuh collect cannot go into the Consolidated Fund. If ah charge yuh a hundred dollars for a birth certificate or a death certificate and ah collec dah hundred dollars with yuh credit card, 3 per cent must, by law, by virtue of the banking agreement, have to go immediately to the bank.”

There is a cost associated with using the credit card and that cost is payable by the merchant to the issuing bank; not the customer. The customer pays a separate

fee to the bank; but the merchants who facilitate a credit card payment, they have to also pay a fee.

**Sen. Al-Rawi:** Three per cent.

**Sen. The Hon. A. Ramlogan SC:** Three per cent. Is it 3 per cent? Sen. Al-Rawi tells me it is 3 per cent. I will go with that. The point is that all the money you are collecting therefore cannot go into the Consolidated Fund because at source 3 per cent has to come out and go to the bank which issued the credit card.

Whereas my learned friend was correct to say that some limited use of the LINX card has been in effect, in truth and in fact, it is in effect because it may be stretching the limits of what we have in the legislation; but if you want to use other forms of payment like the Internet, mobile phone payments, credit cards payments, any other form, then you would need to amend the law. So you need to amend the law to allow specifically for the Government to be paid in the context of a situation where the understanding is that whatever you receive all of it cannot go to the Consolidation Fund and to do that you needed to amend the law. That is the first point.

The second point was that the Exchequer and Audit Regulations and, in particular, Regulation 91, says that:

“No expenditure may be met by loans except with the general or specific authority of Parliament.”

Now, as I indicated, the credit card is really a loan and if a Government is to pay for goods and services using a credit card, then that would be a loan and it was never within the contemplation of the Legislature that the Government would be paying for anything without cash or cheque. I do not think in 1959, we could have ascribed an intention to Parliament that Parliament would have intended, in 1959, that the Government would pay for goods and services other than by cash or cheque and that the Parliament would have had the foresight to say that some man “go invent credit card and all dat dong de road.”

The point is that “yuh” needed to amend the law to cater for section 13 of the Exchequer and Audit Act and you needed, in particular, to deal with the cost of the credit card and other methods of payment.

Madam Vice-President, when in support of that point my learned friend said, “Well look, you know, the Government has not shared its position”, and he made it out as if the Government really came out of the blue with this; whilst in the same breath saying that this was something that the Minister inherited—a well-run Ministry, that was already dealing with this and so on.

**Hon. Senator:** True, true.

**Sen. The Hon. A. Ramlogan SC:** What is the truth? The truth is, in February of 2006, when the PNM was in power, Cabinet Minute 457 of 2006 dealt with this matter. In 2006, under the PNM, this is what the Note to Cabinet dealt with. Permit me to simply cite what the note said. This was the PNM's policy at the time, in 2006, which they failed to implement and execute. It says in that Note, it recognizes:

There is a need to re-engineer the current archaic public financial management processes by implementing an integrated financial management system and adopting output management in the public service in order to improve business practices and thus provide a better service delivery to the public.

In tandem with this initiative, the review of the current legal framework and the development of a new Financial Management Act to give legal support to the changing business processes which include a heavy dependence on electronic transfer of funds.

A Cabinet Note detailing the systems and cost duration would be submitted shortly.

That is in 2006. They go on in paragraph 5:

The existing legal framework for financial management in the public service, however, does not allow for funds to be transferred or for data to be stored electronically.

This is the PNM Cabinet Note and they are saying that the existing legal framework for financial management in the public service does not allow for funds to be transferred or for data to be stored electronically; neither does it provide for the use of debit and credit cards to transact government business. So, when my learned friend says: "Well, oh God all yuh want to give Government Ministers credit card and judges credit card," since 2006 they were already putting things in place to deal with that—to issue government credit cards. In fact, we all know—he cited a Government Minister: "he say she loss she wuk because she use a credit card and ting."

When he started off, I thought he was going to talk about a former Government Minister who "buy wig and weave and thing and didn't loss she wuk; but he leave out that one. Perhaps he forgot about it; but it had one Government Minister who did not lose dey wuk and dey buy weave, fertility; all kina craziness. We eh going dong that road. Ah not here for dat." Insofar as he pounced on some unknown example, I thought I would just deal with it.

**6.45 p.m.**

Madam Vice-President, the Note continues, and this is the important part:

Accordingly, the Treasury Solicitor in consultation with the Chief Parliamentary Counsel will submit appropriate amendments to the Exchequer and Audit Act for the consideration of Cabinet.

**Sen. Singh:** What year that was?

**Sen. The Hon. A. Ramlogan SC:** 2006 PNM.

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

**Sen. The Hon. A. Ramlogan SC:** 2006, amendments to the Exchequer and Audit Act. [*Crosstalk*]

**Sen. Al-Rawi:** You have resources and accounts and electronic transfers—

**Sen. The Hon. A. Ramlogan SC:** And then in paragraph six:

The Cabinet is asked to note that the urgency for legislative amendments is further strengthened by the need to implement new arrangements for the supply of petroleum products at NP.

What was the decision that the Cabinet took? The relevant decision that the Cabinet took in 2006, I want to read what the minuted decision is and I quote:

That the proposed amendments to the Exchequer and Audit Act, Chap. 69:01 to facilitate electronic funds transfer including payments by means of credit and debit cards and the storage of data electronically be submitted for the consideration of Cabinet at the shortest possible time.

And in 2013, the People's Partnership must now do that which they did not do since 2006. [*Desk thumping*] We bring the amendment and they have the unmitigated gall and temerity to complain about it. [*Desk thumping*] They have the unmitigated gall and temerity to complain about it. [*Crosstalk*]

You see, my learned friend, Sen. Al-Rawi, says it is a misrepresentation. I want to take his argument at its highest, and let us assume for the moment that that is a misrepresentation. Let us take your representation and see where it takes us. What you are representing to the Parliament and the people of this country is that three years after the PNM assumed office in 1956—three years after they assumed office in 1959; three years after Dr. Eric Williams became leader of this country that since 1959, the law of this country permitted electronic payment for Government, and he then wants us to say—let us take that as highest—that since 1959 to 2013, the PNM “suffer” poor people and did not allow them to pay via electronic means.

*Exchequer and Audit (Amdt.) Bill, 2012*  
[SEN. THE HON. A. RAMLOGAN SC]

*Tuesday, February 19, 2013*

So, since 1959, the law needed no amendment and since 1959 the law permitted payment by electronic means. Well, why is it since the PNM ruled since almost half a century that they “did suffer” poor people and allow them to line up in the Warden Office and face: “Cashier closed” sign, “security eh come out”, “out on lunch”. Why “you must suffer people” like that?

Since 1959, the law permitted electronic payment and you are saying since 1959 to now, “All yuh never implement nutten and suffer poor people, and you expect the country to believe that and say that the law is unnecessary?” I would rather be more charitable to the PNM and say that the law needs the amendment and stand up for them. [*Desk thumping*] You see, their own argument, hoisted on its own petard, just does not stand scrutiny, Madam Vice-President; it just does not stand scrutiny. [*Crosstalk*]

**Sen. Al-Rawi:** Mr. Lambert, why you allow that to happen? Why? “Eh” [*Laughter*]

**Sen. The Hon. A. Ramlogan SC:** Madam Vice-President, my learned friend also, by way of illustration, cited a couple instances where people have been paying using the LINX, and I have been at pains to point out what is the difference between the LINX payment, the credit card or the phone-in payment and so on. I have been at pains to point that out, because the change in law is required to facilitate other methods of payment.

The LINX right now is fast becoming outmoded as a method of payment and transaction, and if we do not do this now, we would perpetually lag behind and we will be playing catch up. Those Ministries that are using the LINX payment for a limited range of services, there are four departments: the Ministry of Works and Infrastructure, the Immigration Department, the Customs and Excise Department and the Board of Inland Revenue.

How are they doing that? Even then, they are doing it by virtue of a special arrangement through the relevant Ministry or the Government department, the Treasury. So, it sounds like a concession but, again, you cannot use your credit card, you cannot use your mobile. It is a very special unique peculiar arrangement. You see, but all of the other Government agencies and departments—every single one of them other than those—is either cash or cheque.

You know, if the man on the street is listening to Sen. Al-Rawi, they will know what he is saying “doh” make sense, you know, because they know when they have to go to renew their driver’s permit, they know they pass through what I “talking ‘bout.” “You cyar go to renew your driver’s permit in Trinidad and Tobago and say, yuh



go swipe ah card.” No! “They run yuh; they laugh at yuh.” You have to pay cash. “The hard part is when yuh pay de cash and yuh geh de receipt and yuh run back to take out de picture, then dey tell yuh the camera eh wuking. And if you lucky and the camera wuking, they does tell yuh de man who ha to wuk de camera eh wuking, and if the camera eh wuking and the man who wuking de camera wuking, well then he out to lunch, he lunching.” [Laughter] That is the reality, and we are trying to save people from that reality which Sen. Al-Rawi says they could have been saved from since 1959.

Sen. Al-Rawi is saying that since 1959, “dem people didn have to suffer like that. Yuh could ah pay using yuh bank card to renew yuh driver’s permit.” He is saying that the PNM, since 1959, deliberately chose not to implement these kinds of methods of payments to facilitate efficient and convenient payment by poor people. “And he is saying that the law eh need changing, we must preserve the status quo, like dem gone out to lunch, [Laughter] all ah dem.”

Madam Vice-President, the poor man who “have” to pay maintenance and the poor woman who “ha” to go and collect the maintenance, listen, “is real trouble”. “Sometime de mother eh have the passage to even go and collect the maintenance, because the lil money she getting run out. She doh have to go, de money will go direct to she bank now.”

Liquor licence applications: You know, if you want to apply for a job—only recently, this is a real example. You see, we interact with people on the ground.

**Sen. Al-Rawi:** Sorry, hon. Attorney General. Just on a point of order for—

**Madam Vice-President:** Standing Orders, which one?

**Sen. Al-Rawi:**—clarification later under the provisions of the Standing Orders 34 and—I forget the other one Madam Vice-President, but I am sure you would assist me as the Presiding Officer, to provide clarification on something that the hon. Attorney General has alleged that I have said that I have not said, Madam Vice-President. I certainly did not make references to poor people and statements, et cetera.

**Madam Vice-President:** Sen. Al-Rawi, when you are clear on the point of order, you will raise it, until then Attorney General, continue.

**Hon. Senator:** “You eh ha no poor people to study. Yeah”

**Sen. The Hon. A. Ramlogan SC:** Madam Vice-President, Sen. Al-Rawi is an accomplished attorney. He married into a very prosperous family, they seldom refer to poor people. [Desk thumping and laughter] But what I can tell you is this, the

poor people that I deal with, I can tell you only last month I was trying to help a young man whose wife was pregnant, and he wanted to get a job and I tried to link him up with a little private security firm to get a little job, and he had to get a police certificate of good character.

When he went to get that police certificate of good character—when he came to me the wife was five months pregnant. Well, Madam Vice-President, “De wife make de child, geh pregnant again and he still cyar get the police certificate of good character. He still cyar get it, because de police dem make de man go one time, two time, three time from station X to station Y and, listen, and after all that he ha to pay for the police certificate of good character, but you know how he ha to pay? Not by card, not credit card, he ha to pay cash. Remember Max Senhouse, solid liquid cash; we need de moneh”. He never say we need the credit card, he say, “We need de money.” That is what the man said. [*Laughter*]

You see, Madam Vice-President, a little community, NGO, a little village council holding a little bazaar or a little sports day to help out the youths in the community, when they have to rent the facility to hold the thing in Mannie Ramjohn Stadium and so on—somebody is volunteering to do this in the community for the youths, and that man now has to take a half day off from work to go and pay for the use of the facility. Do you know how he has to pay? Cash! “Yuh know what happen to one ah de poor fellas? The man trying to help youths-at-risk, he went to pay, he take ah half day off. He ha to pay ah certain sum under \$5,000. Yuh know wha happen to tha poor fella? He geh robbed.”

**Sen. Al-Rawi:** Madam Vice-President, Standing Order 32. I am sure you could have assisted me with that earlier. I know your reflection is a little bit better, but I refresh you, 32(4), Madam Vice-President.

**Madam Vice-President:** Hon. Senator, in the first case, if you wish as a Member of the Senate to rise on a point of order, you have to be clear on the point of order that you are raising, so I can rule. [*Desk thumping*]

In the second instance, 32(4) does ask that if the—

“...Senator who has spoken on a question may again be heard to offer explanations of some material part of his speech which he alleges has been misunderstood or misrepresented, but...not introduce new matter.”

And, certainly, if you wish to do so, after the Attorney General has completed his contribution, I would allow you.

**Sen. Al-Rawi:** Thank you. [*Crosstalk*]

**Sen. The Hon. A. Ramlogan SC:** He is entitled to have his request considered. [*Laughter*] Now, Madam Vice-President, the point is this: you see, when they try to downplay the significance of this amendment in terms of the impact it has on the real lives of our citizens—and my learned friend seeks to say that since 1959 this thing could have been done, and when I say, “Well, why yuh suffer the poor people like that?” I am not saying you say it, I am saying “you suffer the poor people”. I am saying that, you know why? “When yuh born and yuh mother and father go to register yuh bot certificate, you cannot pay via any other means except cash.” [*Desk thumping*] And when “yuh dead” they cannot even get the death certificate unless you go back and pay in cash. “So from birth to death the PNM suffer yuh and dey now come to say, 1959 to now this law unnecessary”—from birth to death!

I can go on, but the long list of government agencies and state departments that continue to engage in this practice whereby citizens must journey physically and personally to the office to transact the business and pay in person, in cash, the long list is an endless list, and this amendment is necessary to change all of that.

Even in those agencies, the four that I listed, where they allow for payments using the LINX card—to tell you how urgent this amendment is—even in those agencies that allow for it to happen, they are still required to maintain a parallel artificial written record system. By that I mean, as if you are paying by cheque or cash, the same system they would have maintained, they have to continue with the same system. Why is this? You see, the little innovation to allow for the use of the bank card was only done because you have the money in the bank—you are paying for the transaction as the customer of the bank and the transmission of funds is instantaneous. That is why they interpreted the regulations in a way that would allow you to give the receipt, but what they could not do is allow for it with the credit card because a credit card company—if I pay for something by credit card now, I could call the credit card company this evening and cancel that payment on you, you know. I could do that. So the instantaneous—but you cannot do that with a LINX card, with a LINX machine you cannot do that. So you see the regulation which speaks to the money flowing into the Consolidated Fund directly and instantaneously, it would be breached, so that is why you need the amendment.

**Madam Vice-President:** Hon. Senators, the speaking time of the Attorney General has expired.

*Motion made:* That the hon. Senator’s speaking time be extended by 15 minutes. [*Sen. G. Singh*]

*Question put and agreed to.*

**7.00 p.m.**

**Sen. The Hon. A. Ramlogan SC:** I am grateful, Madam Vice-President. Madam Vice-President, where you use the LINX machine, basically, it is quite different from where you use the credit card or you might be able to phone in payment, and so forth. My learned friend mentioned, however, that, you know, in perhaps some state enterprises that they have been able to use alternative methods of payment.

Permit me to just say by way of response, just for the record, that the Exchequer and Audit Act does not govern state enterprises, save and except with respect to obtaining funds from the Government, but it does not govern their payment systems. So that is why perhaps a state enterprise, some of them, not all of them, would have been able to transact business utilizing other methods of payment. But the State, the Government itself, which is bound by the Exchequer and Audit Act, in terms of receipt and expenditure, it cannot be so dealt with.

My learned friend made heavy weather about the inclusion of judges and Members of Parliament in terms of those persons who may be able to now transact business using a credit card, and so on. Permit me to say, firstly, that in 2006 when the PNM was in power, it was clearly within their contemplation that Members of Parliament would receive the credit cards, and as evidenced, of course, by the infamous incident which occurred—which I would not dwell and go into—but the point is that has always been part and parcel of the PNM’s policy or else a former PNM Minister could not have received a credit card and used it for purposes other than in connection with her official duties. But as I said, that is not where I “pitch the ball”.

Madam Vice-President, he says why on God’s good earth would we wish to give a judge of the High Court of Trinidad and Tobago or a Court of Appeal judge, a puisne judge or a judge of the Industrial Court; why would we want to subject them to the potential abuse of what are referred to as the Nolan Principles? The Nolan Principle to which he refers, reads as follows:

“Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might”—seek to—“influence them in the performance of their official duties.”

Madam Vice-President, these histrionics and this kind of theatre, really, it befuddles but it does not clarify, because at the end of the day what you are seeking to do is to make it more convenient. When you said a judge is travelling on official business; could you imagine a Chief Justice travelling on official business and “yuh ha to geh him US \$10,000 in he pocket to walk with”—[*Interruption*]

**Sen. Singh:** Money order.

**Sen. The Hon. A. Ramlogan SC:**—“or ah money order.” How is that really going to be right? And my learned friend said since 1959 they could have changed that, we are now coming in 2013 to change it and they are complaining.

**Sen. Al-Rawi:** The regulations.

**Sen. The Hon. A. Ramlogan SC:** And my learned friend is now saying the regulations, he is saying it was so easy to do and they still did not do it.

**Sen. Al-Rawi:** Section 41, the regulations.

**Sen. The Hon. A. Ramlogan SC:** I do not know that there is anything to be scared about in that. If you are issuing credit cards, the accounting officer in the Judiciary, the Court Executive Administrator, they will no doubt have to receive the credit card statements to balance it off and so on. I mean, if you repose integrity in the Judiciary one would expect that the credit cards would be used in connection with the official performance of duties. But to suggest or to ascribe ill intent on the part of the Government which is seeking to confer a benefit and provide a convenient method of payment to the Members of the Judiciary, and to see some sinister, ominous intent in that, really, is stretching the imagination to the point where it burst.

**Sen. George:** The elastic burst.

**Sen. The Hon. A. Ramlogan SC:** The elastic burst. It is downright absurd. It is not that the scrutiny to which my learned friend refers, but more than that, what my learned friend missed in the Nolan Principle is this important point. It is this. What the Nolan Principle speaks about—and let me repeat it for my learned friend:

“Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might”—seek to—“influence them in the performance of their official duties.”

So in other words, the Nolan Principle is about someone trying to influence or interfere with the judge in the performance of their official duties. My learned friend said it is a Clerk I who would be looking at the transaction sheet and so on, so the Clerk I is looking to see if the credit card statement reconciles with the money they received from the Ministry of Finance and the Economy, and that Clerk I will be trying to tell the Chief Justice of this country, “Aye, murderer X, let them go eh otherwise I go tell them it eh adding up.” I mean, really? [*Laughter*] “They go tell ah judge, ‘Listen, yuh doh have ah receipt for ah doughnut from Starbucks so you better leh dat drug lord free otherwise is doughnut pressure for yuh.” [*Laughter*]

**Sen. George:** The elastic burst! The elastic burst! The elastic burst! Stretching it!

**Sen. The Hon. A. Ramlogan SC:** Yes. Listen, there is absolutely no possibility whatsoever, or any potential, or any threat, to the possibility of influencing a judge in the performance of his or her official duties, and to even raise it as a red herring, it belies and underscores the speciousness of all the arguments.

**Hon. Senator:** Infantile! Very infantile!

**Sen. The Hon. A. Ramlogan SC:** It is infantile.

**Hon. Senator:** “De elastic buss.”

**Sen. The Hon. A. Ramlogan SC:** Madam Vice-President, my learned friend said that the Auditor General is the person that could and should have dealt with this matter by issuing some form of advisory opinion, you know. Madam Vice-President, the Auditor General is a creature of the Constitution and the Auditor General’s role is one that we are familiar with—[*Crosstalk*]*—*and the Auditor General’s role is really to audit the accounts, balance sheets and financial statements of all enterprises that are owned and/or controlled by or on behalf of the State.

The point I am making is that the Auditor General comes in, ex post facto, to conduct an audit, but the Auditor General cannot give advice to government agencies on what method of payment they should utilize to transact day-to-day government business.

**Sen. Al-Rawi:** Of course they can, by asking you.

**Sen. The Hon. A. Ramlogan SC:** They cannot. To the extent that that suggestion is made, I simply want to say that I do not agree with it. I think the Auditor General would have been out of place and it would have been wholly inappropriate for the Auditor General to tell the Government how it should transact its system payments and conduct its day-to-day business, and I think it is for that reason the Auditor General, quite frankly, never intervened in this matter. But what my learned friend is saying, indirectly, casts a cloud over the competence of the Auditor General, because what he is saying is that this was the responsibility of the Auditor General from 1959 to now; the Auditor General just ignored it and did not do anything about it, and now he is saying the Auditor General ought to have dealt with it, but did not. I take objection to that.

I do not think the Auditor General had any role to play in this. I do not think it was any part of her constitutional jurisdiction or legal responsibility, and I do not think that the Auditor General could have intervened in this matter, and, quite properly, that is why the Auditor General, since 1959 to now, never sought to intervene—and those are the facts.

Madam Vice-President, just by way of reinforcement, when one looks at the Exchequer and Audit Act and when one looks at the regulations made thereunder, you will see that the words “cash or cheque” are used throughout the Act and the regulations.

**Sen. Al-Rawi:** Not the Act.

**Sen. The Hon. A. Ramlogan SC:** Throughout the Act.

**Sen. Al-Rawi:** Find it once in the Act.

**Sen. The Hon. A. Ramlogan SC:** My friend says, “Find it once in the Act”, and perhaps I can assist.

**Sen. Al-Rawi:** In a substantial way, it is in the regulations but not in the Act.

**Sen. The Hon. A. Ramlogan SC:** He says find it once in the Act. Okay, perhaps I can assist my learned friend: section 10(2) in the Act, my learned friend says, “Find it in the Act”, well I will find it.

**Sen. Singh:** He said find it once.

**Sen. The Hon. A. Ramlogan SC:** He said find it once.

**Sen. Al-Rawi:** Put it in context, let us go. [*Laughter*]

**Sen. The Hon. A. Ramlogan SC:** He back-pedals. Section 10(2) of the Exchequer and Audit Act says—[*Interruption*]

**Hon. Senator:** “We give yuh bad advice.”

**Hon. Senator:** “Giving trouble.”

**Hon. Senator:** Careful! Careful!

**Hon. Senator:** Go ahead! Go ahead!

**Sen. The Hon. A. Ramlogan SC:** Section 10(2) says:

“In the exercise of his duties under this Act the Auditor General, or any person duly authorised by him in writing, shall have access to all records, books, vouchers, documents, cash, stamps, securities...”—et cetera.

Then you have—there will be others I am sure, but if I may just flick through.

**Sen. Al-Rawi:** Where is that a limitation on using cash for—

**Sen. The Hon. A. Ramlogan SC:** Let me just flick through again, perhaps in 17(2). My learned friend said find it once, I will find it twice and leave it there.

**Sen. Al-Rawi:** As a limitation on cash?

**Sen. The Hon. A. Ramlogan SC:** In 17(2)—

**Sen. Al-Rawi:** “Come on; that is childish man.”

**Sen. The Hon. A. Ramlogan SC:** “Notwithstanding anything to the contrary contained in subsection (1), the Minister may from time to time authorise the issue of amounts from the Consolidated Fund not exceeding in the aggregate five million dollars to augment the cash balance held on deposit...”—et cetera.

The whole point I am making is this: the system that this law was based on was a system of vouchers, cash and cheque. Three words: voucher, cash and cheque, and those three words appear in both the parent legislation and the regulations, throughout. The entire scheme that Parliament approved in both the law and in the subsidiary legislation via the regulations, the template for it was based on cash, cheque and voucher for payments.

That is why the reconciliation exercise is such a laborious manual task; it is because you need to have the vouchers. “Listen, if one ah dem voucher loss, the whole thing grind to ah halt yuh know. Is real pressure, and dem vouchers does loss sometime—to err is human.” If you travel and you buy something and you “eh” bring back that voucher, well “crapaud smoke yuh pipe”. So when my learned friend complaining about the Judiciary and saying that this thing bad for the judges and so on, I ask myself the question, “What he talking about?” “If a judge travels and with the warm clothing allowance, he is attending a conference in Russia, he buys a winter coat or something, if that receipt misplace, when he come back, well he better make sure and wear that winter coat in the court because he ent getting back no money fuh it.” [*Laughter*]

**Sen. Al-Rawi:** That is not how it is done. [*Crosstalk*]

**Sen. The Hon. A. Ramlogan SC:** As one person reminded me—I mean, I know one person went there and they gone to get their little refund and you know they lost the voucher and I remembered the person saying, “But look the price tag in it still. It is only once and look the price tag here”, and they said, “No. Where the voucher? I want to know about the voucher ma’am, the voucher”—it is the voucher, you understand? [*Crosstalk*] Being the kind of lawyer that I was, I found a way around it; “I tell she take it back to the store, show them you eh use it with the price tag intact and geh back yuh money, and it wuk.”



Madam Vice-President, the one point my learned friend made about the \$50,000 fine in the regulations. He made a point about section 63(1) of the Interpretation Act. I have looked at it. I think that out of an abundance of caution maybe we can put in a provision in the enabling legislation to deal with it, to at least satisfy my learned friend. I do not think it is necessary but I think it is prudent, and we will put it in, so there will be a list of amendments that will come and that would be included among those amendments.

Madam Vice-President, in wrapping up I want to say that there has been a lot of smoke on the stage that has clouded the performance and the performer, but I want to say, just like the chant of “Super! Super! Super!”, the chant of “Performer! Performer! Performer!” echoes while this Government is on the stage—[*Desk thumping*—and no amount of fog and smoke would cloud that performance.

When Minister Bharath rattled off that enviable list of the time that has been cut, in some cases by 100 and 200 per cent to transact business with the Government, that is really progress and that is a Government that is serious about doing business. [*Desk thumping*] The fundamental shift in the paradigm and the difference in political ideology is that one government under the PNM passed a law in 1959, three years after they assumed office in 1956, and since 1959 to now, notwithstanding the fact that they ruled this country for almost half the century, people suffered without being better able to take advantage of convenient methods of payment and this Government is now introducing a law that will say, “We will treat citizens in this country as though they are clients and customers because we see the Government in part as a business organization and we are about to run a business.” That is what we are saying. That is a transformational shift in thinking both on the part of the Government and the public service that has been long overdue in this country, Madam Vice-President. [*Desk thumping*]

And for that, I want to pay fulsome tribute to the efforts of the hon. Minister Vasant Bharath, and my colleague, the hon. Minister of Public Administration, Carolyn Seepersad-Bachan, for the excellent work that has been done in transforming the public service.

In closing, I want to pay tribute to the hard work and effort of the public servants who have assisted in bringing us this far so that the Government can function as it wants to, and as it should, and that is as a Government providing business, convenience and efficiency to the citizens of all in this country. Thank you very much.

**7.15 p.m.**

**Madam Vice-President:** Hon. Senators, in accordance with the earlier ruling of Standing Order 32(4), I will allow Sen. Al-Rawi one minute to make a personal explanation.

**Sen. Al-Rawi:** Madam Vice-President, I rise under the provisions of Standing Order 32(4) to clarify the misrepresentation on the part of the hon. Attorney General that I had made statements in my contribution to the effect that poor people should suffer. There was certainly no form of contribution to that regard. I think that those statements are entirely misleading and unfortunate, and run afoul of the rules of Parliament.

**Sen. Ramlogan SC:** I never said that.

**Sen. Al-Rawi:** He did say that. Sen. Beckles certainly did hear that. I thank you, Madam Vice-President.

**Madam Vice-President:** Next speaker. Sen. Beckles.

**Sen. Penelope Beckles:** Thank you kindly, Madam Vice-President. I would like to make a brief contribution on this Bill to amend the Exchequer and Audit Act, Chap. 69:01, to provide for payments into and issues out of the Exchequer Account and for payments and other public moneys, howsoever held, by means of electronic funds transfer and for related matters.

My contribution really deals almost exclusively with some of the issues raised by the Attorney General. I must say that I think all Trinidadians and Tobagonians listening to his contribution would be quite happy that the Government is looking at citizens as clients and customers, specifically with a view to improving service delivery. I think we have all, at some point in time, understood that when we go to renew our driver's permit, or go to customs or any government department, that it is painful to have to go through the exercise to line up, sometimes to come back the day after or what have you. Therefore I understand the import of that particular statement.

When the Attorney General referred to "super, super, super", I think he was referring to the chant and call of many people who were referring to Super Blue and his great performance. At the end of the day, when we talk about people as clients and customers and delivering service, we have to look at the philosophy. It is no point saying that you have been a super, super government and, at the end of the day, the public say that this was the worst Carnival we have ever had, [*Desk thumping*] and that the Dimanche Gras show left a lot to be desired. So we could

talk about super, super, super, and we could talk about all these modern forms of payment, but at the end of the day we have to go back to the process, the procedure. In boasting that this new method we have put in place would improve the delivery, the real issue for the public is that we would wait to see if that would happen. I am fairly certain, with the experiences that I have had, that that is not the case.

Before I explain why the Attorney General should not be beating his chest and saying that this is going to revolutionize, and that the public would now be able to take advantage of technological advancement as he said—before I explain why it is not as simple as he says, I want to make the point that he spoke about a certain Minister that had got into some difficulty with the credit card issue. One of the concerns, and I think Sen. Al-Rawi was reminding me about it, is the whole issue of expenses and how that would be treated with in the legislation.

Some of us may remember that when the information came out into the press about several Ministers and MPs who had received these cards, Madam Vice-President, you may remember that several persons who received the cards had never used them, and yet still their names appeared on the newspapers as owing First Citizens Bank moneys, because they obviously charge you for services. So your name came up in the newspapers as owing all these moneys for services and credit card fees. It is one of the reasons actually why I never took a card—

**Sen. Singh:** Very prudent.

**Sen. P. Beckles:**—because nobody could have said to me if you receive this card exactly what would happen, whether you would have to pay for service charge. As a matter of fact, they told you, “No, no, if you do not use it, no payments.” And lo and behold, both on the Government and Opposition sides actually—and I am sure the Minister of Public Utilities would remember—people’s names appeared.

It raises, of course, two issues: the issues of security of information, because it meant that this information in relation to several Ministers and Opposition MPs was leaked into the public domain from the information from the banks, and it all became this big headline. I do not suspect anything is going to change, you know, because Trinidad and Tobago is a country where everything gets out into the public domain.

So here it is you have a bank account—supposed a confidential transaction—and all your business is in the newspapers: “wha yuh buy, wha yuh did not buy”, and the fact that you never even used it, yet still your name is there as owing

money to the particular bank. I know, for example, that one of the persons who was a victim of that was Sen. Hinds, because it came up that he owed some \$25 on something, never ever having used the card.

**Sen. Al-Rawi:** That is the Nolan Principle.

**Sen. P. Beckles:** That is the Nolan Principle. I know the Attorney General spoke about the judges, vouchers and all sorts of things. All of us know that no longer exists. It was actually under the UNC that the regulations were amended where you did not have to bring back all those receipts, in order to account for what was spent. I am sure the Attorney General knows that because the majority of us here would have travelled.

**Sen. Al-Rawi:** He has travelled significantly.

**Sen. P. Beckles:** If you spend more than—but you are not supposed to spend more than. The point is that if they give you “X” amount, he is saying that if you go and buy something you have to show a voucher. There is no voucher. In Parliament if we are given money to purchase—some warm clothing allowance or moneys for hotel and all of that—we know very well that there is no voucher to bring back. So I do not know where that is going. That issue of providing every receipt for the moneys received was changed years ago under the UNC administration. So let us be very careful when we make those statements. I just want to make it clear that I am referring to the fact that when you return, you have to provide vouchers and receipts showing what you have spent.

I want to go a little further. When the impression is being created that with the passage of this Exchequer and Audit Act, as soon as the Act is passed, that this magic wand and this revolution—I just want to say that is not going to happen. It is not just a question of making a statement that you could pay electronically. Yes, that is revolutionary in a sense, but the point is that all the other regulations, procedures and practices still exist. So let us be clear. Let us not give the public the impression that this is such a great achievement and the Government has done so much, and the PNM did not do it.

**Sen. Al-Rawi:** Reckless.

**Sen. P. Beckles:** Let me use a simple example: You are going to pay your driver’s permit. You go to the Arima court, you got the ticket in Port of Spain. “Yes you have debit card and credit card”, the point is they are not going to accept it, because you still have the jurisdictional issues that still exist. So let us not give this impression. If you really want to talk about revolutionizing the

system, let us do that, but let us not give the public the impression that everything—because people go and—I know that the Minister of Public Utilities is a practising lawyer and knows what I am talking about. That is what we need to do. We need to not just talk about this, but we need to free up the system. So you are in San Fernando, you come into Port of Spain, you want to be able to do those things. The issue of jurisdiction is very, very critical, and that has not been dealt with.

Madam Vice-President, I want to share with you this other issue of appointment. The issue of section 24 of the regulations:

“A receiver of revenue shall be appointed by a letter addressed personally to him by the Treasury setting out in detail his duties and responsibilities.”

This has not changed; this remains the same. The hon. Attorney General talked about the fact that you go to renew your licence and the cashier’s cage is closed. “Yuh leave, yuh pay and de cameraman not there.” How does this legislation change all of that? It changes nothing actually.

I would just share an experience that I had when I was Minister of Public Utilities and the Environment. I know that Minister Singh may or may not have to deal with a similar issue. The nursery in Santa Cruz was closed for somewhere between 10 to 15 years. Do you know why, Minister? Cashier—under this section nobody was appointed, and you could not go to pay for any items from the Santa Cruz nursery because no cashier was appointed. We might think that is a simple issue; that is not a simple issue, because there were several issues. One had to do with people not even wanting to accept that position; no travelling was paid for the job. So we have to understand that this is not a simple thing.

As it relates to the current regulations, actually at section 14 it says:

The requirements as stipulated in the financial regulations regarding the duties of accounting officers shall apply in respect of electronic payments pursuant to these regulations.

So that the section 24 still exists; it means it has not changed. When the hon. Attorney General speaks about the fact that the cashier is closed, whether or not the cashier is closed has nothing to do with whether we are putting sections relating to a debit or credit card.

Madam Vice-President, I am sure you have gone to the port or you may have gone to any government place to pay. The issue is whilst we talk about customer service, it is a critical area that we must address if this is really to work. Again,

the impression is being given to the public that once this is passed, everything will be hunky-dory. We know women who go to collect their maintenance in the court, and it is a painful experience. But the reality is we cannot give people the impression that everything is just going to change like “Bewitched” with a magic wand. In truth and in fact when Sen. Al-Rawi spoke about the fact that there have been government agencies where you have been able to use the credit card, that is so. There are others, I do not know why they have not been using it. But if you can go to the port and other places, and you can use your debit card, why is it in some other places you could not do that in order to pay, let us say, your traffic ticket?

**Sen. Al-Rawi:** That was the question to the Auditor General.

**Sen. P. Beckles:** That was the question to the Auditor General. The Chief Justice, I think it was sometime last year, issued—what is the safest word to use—I guess an order, that if you want to pay your traffic ticket you have up to 10 o’clock to pay it. That means if you have a traffic offence, traffic matters do not start in the court until 10.00; again, you have the issue of payment by cash. But our procedures and our process and our paperwork and everything else are still very, very, very lengthy.

This is section 91 and 92, and this is Loans and Loan Expenditure. If I could just read it, Madam Vice-President. This is of the existing Exchequer regulations. Section 91 says:

“No expenditure may be met by loans except with the general or specific authority of Parliament.

92. Accounting officers shall keep all the necessary records to ensure that a proper control is kept over expenditure from loan funds.”

**7.30 p.m.**

So, when it is—and we go back to what I said earlier that section 14 means that sections 91 and 92—

**Sen. Al-Rawi:** Stays.

**Sen. P. Beckles:**—of the regulations remain. So I am not really clear in my mind exactly what it is the Attorney General is saying. All these things that exist in the regulations of the existing Exchequer and Audit Act actually remain. So unless there is an amendment, then it means that the point that was made by Sen. Al-Rawi was absolutely correct. Right. [*Desk thumping*] It may very well be that the Attorney General did not understand what Sen. Al-Rawi was saying.

**Sen. Al-Rawi:** He was not here when I said it.

**Sen. P. Beckles:** Okay. Well, the fact of the matter is that when he spoke about it—I know that the Attorney General was not here; somebody may have told him about it, but what he said was correct. All you need to do is to read the existing regulations, and read what is now put forward in this Act and what it is saying that everything that exists as it relates to loans and expenditure, as it relates to government and public bodies, as it relates to appointment of persons who receive the funds, all of it still exists. So do not say with that magic wand that all these things would just go. [*Crosstalk*]

**Hon. Senator:** “Yuh fooling poor people.”

**Sen. P. Beckles:** The point about it, it still exists. All right. So to give the impression that the PNM did not do it, and therefore, poor people suffered and this Government is now doing it so that poor people would no long suffer, that is not going to be the case.

**Hon. Senator:** “Fool de people. Fool de people. Fool de people.”

**Sen. P. Beckles:** Madam Vice-President, I would tell you something, and there are several Ministers who could bear me out on this, the Minister of Local Government and the Minister of Public Utilities. There is this system, for example, of preparing pay sheets and mistakes that are made and it goes backward and forward and all of that is what causes the distress for a lot of persons in terms of getting their salaries on time. This is not going to change.

**Sen. Al-Rawi:** It stays in the regulations.

**Sen. P. Beckles:** The regulations are still there.

**Sen. Al-Rawi:** Section 81—

**Sen. P. Beckles:** Sometimes the persons that we put, who we give the responsibilities to prepare these things, are the persons who are not really paid very well. Okay? Sometimes it takes two weeks, it is going back and forth, the wrong name, the name is spelt wrongly, the amounts of this is—and those are things—we have to find some way of modernizing those systems if it is that we really want to make this thing work.

**Hon. Senator:** Absolutely.

**Sen. P. Beckles:** All right? Therefore, you know, I am very concerned with the impression that says, well okay, you know, you are going to take advantage of technological advancement and therefore, you know—yes, I agree that in principle

this is what is needed. I do not want to leave with the impression that it is not needed; it is needed. If we talk about us being first world; if we talk about us—I mean real-time payments and really getting to where we want to as a society that is moving forward, this is absolutely necessary.

There are a number of other things that we must put in place if this is to really have the effect and the impact that we want to have for the citizens of Trinidad and Tobago. Right?

**Sen. Al-Rawi:** You need to ask, what is the meaning of this?

**Sen. P. Beckles:** Madam Vice-President, I am asking the Minister of Trade, Industry and Investment, Sen. The Hon. Vasant Bharath—

**Sen. Al-Rawi:** The 1959 law is still valid.

**Sen. P. Beckles:**—that in relation to section 13 of the 1959 Act, and this was raised by Sen. Al-Rawi and it says:

“All revenue shall be paid, at such times and in such manner as the Treasury may direct, into the Exchequer Account and the revenue shall form the Consolidated Fund,…”

**Sen. Al-Rawi:** How is that limiting it?

**Sen. P. Beckles:** So, the point is that, I mean, that is a very valid question. Right? And that was not answered by the Attorney General. He spent a lot of time trying to discredit—[*Interruption*]

**Sen. Al-Rawi:** Histrionics.

**Sen. P. Beckles:**—the contribution of Sen. Al-Rawi, which he did not, in my humble view succeed in doing because he has not properly answered a number of the very valid issues that have been raised.

The last point that I want to make is that we need to find out why it is that several sections in the—

**Sen. Al-Rawi:** Electronic Transactions Act.

**Sen. P. Beckles:**—Electronic Transactions Act have not been proclaimed? I think that combined with several of the other points that have been made is really, really very important.

**Sen. Al-Rawi:** The heart and soul of it.



**Sen. P. Beckles:** At the end of the day, Madam Vice-President, we are debating this today, this piece of legislation. We debated the Electronic Transactions Act that to a large extent would deal with a lot of the problems that we have had, but similar to the point that I am making today and that is the issue of processes, practices, and infrastructure. We are passing a lot of legislation and we know very well we cannot proclaim the legislation because a number of things need to be done before they can be operationalized.

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

**Sen. P. Beckles:** This is another such case. So I think a number of persons had made contributions, both the Independent Senators and Opposition and had raised it at the time about that Electronic Transactions Act. The whole issue of the proclamation, the operationalization and we were given the assurance, yes things would be put in place, but we come back today and we realize months later that the majority of the sections—*[Interruption]*

**Sen. Al-Rawi:** Years later.

**Sen. P. Beckles:**—have not been proclaimed. *[Desk thumping]* Right?

**Sen. Al-Rawi:** Absolutely, years later; 2011; it is 2013 now.

**Sen. P. Beckles:** It was passed in 2011.

**Sen. Al-Rawi:** That is right.

**Sen. P. Beckles:** Okay. So two years, no proclamation. Okay? I therefore want to close by saying that—*[Interruption]*

**Sen. Al-Rawi:** The 1959 Act is still valid.

**Sen. P. Beckles:**—as my colleagues said, there has been no response by the Attorney General as it relates to the existence and the validity of what is in the 1959 Act.

I also would like the point to be made that all the regulations that exist in the existing Exchequer and Audit Act—*[Interruption]*

**Sen. Al-Rawi:** Stand.

**Sen. P. Beckles:**—that are relevant to the present Act—*[Interruption]*

**Sen. Al-Rawi:** And which constitute the bars—*[Interruption]*

**Sen. P. Beckles:**—which in essence would ensure that the Act is properly implemented, that that still exists, and therefore, if it is the impression is created

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that all those regulations and all those practices and procedures have been amended, it exists and it is going to affect the way our customers —[*Interruption*]

**Sen. Al-Rawi:** And that is where the complaint lies.

**Sen. P. Beckles:**—and our clients are dealt with, and that is our major concern. Thank you very much.

**Sen. Al-Rawi:** Well said. [*Desk thumping*]

**The Minister of Trade, Industry and Investment (Sen. The Hon. Vasant Bharath):** Thank you, Madam Vice-President. When we came here today some six hours ago—“yeah”, six hours ago—to review six clauses to the amendment to an important piece of legislation, I really did not contemplate that we would have been here six hours later dealing with many of these issues.

However, some valid concerns have been raised, but I want to first of all thank hon. Senators on both sides. I want to thank Sen. Ramkhelawan and Sen. Balgobin for the valuable contributions they have made. I also want to make special mention of the brilliant way and manner in which the Attorney General—

**Sen. Al-Rawi:** No!

**Sen. The Hon. V. Bharath:**—dealt with some of the legal issues [*Desk thumping*]

**Hon. Senator:** Yes.

**Sen. Al-Rawi:** You cannot say that with a straight face!

**Sen. The Hon. V. Bharath:**—some of the legal issues that were raised by the other side.

**Sen. Al-Rawi:** Shame on you!

**Sen. Deyalsingh:** Rebutted by Penny.

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

**Sen. The Hon. V. Bharath:** The fact is, Madam Vice-President, we have got to determine what we are here to do. What is it that this Bill, this piece of legislation represents, not just to us in this Chamber, but to the people of Trinidad and Tobago?

I took great pains when I spoke earlier on to highlight a lot of the work that the Ministry of Trade, Industry and Investment has been doing with regard to the ease of doing business. I also said that this piece of legislation essentially is just another string in the bow, just another arrow in the quiver of the achievements that would allow us to create a better quality of life for our people.

The Attorney General when he spoke highlighted a number of areas in government activities where the population of Trinidad and Tobago, the citizens of Trinidad and Tobago, have been under great stress and burden for 50-odd years. He made mention of several specific examples—to put an application for a passport; application for a birth certificate; application for death certificate; for work permits; for construction permits—all of which are very tedious exercises, Madam Vice-President, all of which are very frustrating exercises. I think when you talk to citizens generally about what afflicts them and what would improve the quality of their lives really it is these basic services that would do that—[*Desk thumping*] basic services that the ordinary man and woman are looking for.

You know, Madam Vice-President, I was in South Korea last year some time and I was being given a tour of what is equivalent to the licensing office. We came down, it was mid-morning, and there was absolutely nobody there, apart from maybe two people behind the counter; nobody! This is an office that must have been 5,000—6,000 square feet on one floor alone. I said to the director who was taking us around: I said, what has happened? Where is everyone? He said, well, people only come in here when they have a major problem because everything is done online. Every single service, including payment for whatever service they require, is done online.

**Sen. Karim:** Singapore.

**Sen. The Hon. V. Bharath:** And of course, I went on to Singapore two weeks after that, on part of the same journey, and it was exactly the same thing.

**Sen. Karim:** That is correct.

**Sen. The Hon. V. Bharath:** You wondered how these countries operated when you hardly saw people around looking for services, because services were actually provided online. No wonder South Korea is the number-one ranked country in the world for the provision of e-services to its citizens and Singapore is in the top five.

But Trinidad and Tobago, as I mentioned earlier on when I spoke, is very low down the totem pole in many of these rankings. Rankings, Madam Vice-President, that if we were to increase our values in, would certainly catapult us as far as in terms of how the outside world perceives Trinidad and Tobago. When one looks at almost every facet of life in almost every service or many services that the Government currently gives to its population we would rank quite low, I suspect, if you were to ask the ordinary man on the street.

So, essentially what the Government is attempting to do is to fast-track how we deliver these services to our population. It is not always about water or it is not always about drains or it is not always about physical delivery, it is also about some of these intangibles that really do affect the quality of people's lives positively.

So, Madam Vice-President, I just want to make mention, during the winding-up, of some of the points that were made by some of the speakers. I would take Sen. Beckles who talked about the fact that we ought not, or the population ought not to expect a miracle when they go into any of these service providers tomorrow or the day after tomorrow. Well we know that, but at the end of the day we have got to get the legislation in place to be able to put the architecture in place. We could not certainly go out there and put the architecture and the IT infrastructure in place, without having the legislation first to allow us to do that.

In fact, when I spoke earlier on I mentioned that we would utilize the time frame between enactment of the legislation and the proclamation to be in a position to deal with all of those, to deal with the IT infrastructure, to deal with the collateral agreements and arrangements that we must put in place with the financial intermediaries, because we are not going to be able to function without the financial intermediaries, and we are going to have to develop agreements and arrangements with the banking sector in Trinidad and Tobago to be in a position to deliver on those services. We are also going to take the time during that period to hire the relevant consultants to be able to assist us through this process.

We are not the first people or the first country in the world that would be implementing e-payments, Madam Vice-President, for our public service. We are not even in the top 10. The fact is that there are people who have been out there who have done this, been there before, and they are the kind of people that we are going to ask to come in to assist us during the period of enactment before the proclamation takes place.

But, this is a massive cultural change and—as took place last week when we discussed or we brought the Finance Bill to Parliament—where we had to actually physically force a cultural change to make sure that it happened. We are behind the curve at the moment, Madam Vice-President, in many facets of our life. The rest of the world is leaving us behind, and if we were to continue in the manner in which those in Opposition would like us to continue, we would fall further and further behind the curve, much in the same way as the Attorney General mentioned.

This legislation was contemplated since 2006, we are now in 2013, and it is left to the People's Partnership Government to bring relief to the population of Trinidad and Tobago. [*Desk thumping*]

**7.45 p.m.**

Madam Vice-President, I want to deal with some of the issues that were raised, because Sen. Al-Rawi when he spoke, said that in the main body of the Exchequer and Audit Act there was no mention of the word "cash" or "cheques", and in fact it was mentioned only in the regulations. Well I dare say he probably was not conscientious enough in terms of looking through that Act, because in fact I did a quick check of it this afternoon and actually the words "cash" and "cheques" are mentioned on 25 occasions.

**Sen. Al-Rawi:** But in what context?

**Sen. The Hon. V. Bharath:** Twenty-five—you said it was not mentioned. I am saying the words "cheques" and "cash" have been mentioned on 25 different occasions in the main body of the law.

**Sen. Al-Rawi:** You could do better than that. [*Crosstalk*]

**Sen. The Hon. V. Bharath:** You know, Madam Vice-President, I think he was prompting Sen. Beckles to talk about moneys being received into the Treasury—[*Laughter*—into the Exchequer Account. Well, it is very specific, the only person who can receive moneys is either someone appointed as a receiver by the Treasury or a collector. And a receiver of funds has and must be in the employment of the Government of Trinidad and Tobago—must in fact be authorized to do so and must be an officer in the employment of the State, and a financial intermediary is not. Therefore that is why you are required to have the amendment to allow financial intermediaries to interact directly with the—

**Sen. Ramlogan SC:** "Its credit union and Unit Trust, its poor people place."

**Sen. The Hon. V. Bharath:** Then the other issue that was raised was why is it that credit unions—I think Sen. Ramkhelawan raised the fact that—why is it that credit unions fall into the ambit of financial intermediaries since they are not able to deal directly with the Central Bank?

Well, the intention is that there are many people who have accounts only with the Unit Trust or with a credit union and they would actually use a financial—[*Interruption*—they would actually use a bank as a financial intermediary to get to the Central Bank.

**Sen. Al-Rawi:** Financial regulations, not the Act.

**Sen. The Hon. V. Bharath:** Yes. So, those are the two issues with regard—*[Interruption]*—will deal with that.

**Sen. Al-Rawi:** Under the regulations.

**Sen. The Hon. V. Bharath:** I also wanted to make mention—and I think the Attorney General touched on it—the fact is that statutory bodies such as WASA, TSTT and so on, are governed by their own laws and therefore they fall outside of the ambit of the Exchequer and Audit Act except where there is a shortfall as far as budgeting is concerned. So, when the matter was raised that, yes, you can go and pay your bill, your water bill or you can go and pay your TSTT bill via electronic transaction, the fact is they fall outside of the Exchequer Act.

You know, the one issue that I took umbrage with is the issue of credit cards, because what the Opposition is suggesting is that Members of Parliament and members of the Judiciary are almost irresponsible in their—

**Sen. Al-Rawi:** No, can be irresponsible.

**Sen. The Hon. V. Bharath:** On, can be irresponsible.

**Sen. Al-Rawi:** Or exploited by others—

**Sen. The Hon. V. Bharath:** Well, the fact is a credit card, Madam Vice-President, is an instrument that is widely used internationally and used predominantly across the private sector. But you know why? A credit card allows a trail of expenditure that is far more secure than if you use cash.

**Sen. Ramlogan SC:** Indeed.

**Sen. The Hon. V. Bharath:** Because every single transaction that you utilize a credit card for is actually logged on the bill that is received by your employer, so, therefore, it is far easier to track if you give someone a credit card with a \$10,000 limit as opposed to handing them \$10,000 in cash.

We are recommending and suggesting in this day and age, in 2013, in the 21st Century that our Judiciary and our Members of Parliament—I hate to think if someone from outside of Trinidad and Tobago would have been listening to that debate *[Interruption]* *[Desk thumping]* because essentially what they would have thought—

**Sen. Al-Rawi:** Implementation without electronic transaction—*[Inaudible]*

**Sen. The Hon. V. Bharath:** Nevertheless, nevertheless—

**Sen. Al-Rawi:** It is a misrepresentation—[*Inaudible*]

**Sen. The Hon. V. Bharath:** Nevertheless, Madam Vice-President, the fact is once the correct checks and balances are in place—and any type of payment, electronic payments, cheque payments, any types of payment need to have the proper checks and balances in place, and it is done widely in the private sector.

For the last 20 or 25 years we have been operating with the RTGS system and the ACH system which is the real-time gross settlement system and also the automated clearing house. And yes, there have been issues and there will always be issues, but the facts are that you have got to put the necessary checks and balances in place to ensure that there is a proper flow of transactions [*Desk thumping*] regardless of who is conducting the transaction. [*Crosstalk*]

One would expect, Madam Vice-President, that if we are to enter into collateral arrangements and agreements with these financial intermediaries that they have sophisticated and mature systems that have been running for several years, not just in Trinidad and Tobago but across the world, and those are the systems that would be put in place by these experts. We are not developing, as Members of Parliament, we are not going to go there. We are not going to ask our public servants to go out there and start from scratch and develop a system. We are going to adopt a system that has worked worldwide and is working worldwide to be in a position to implement these systems.

Sen. Deyalsingh actually raised the issue with regard to—re the definition of public bodies [*Interruption*] and I wanted to just alert you to the fact that the reason that the first three items—a, b and c—had been omitted was that actually in the definition of “department”, in the definition section of the Exchequer and Audit (Amdt.) Bill, it says, “‘Department’ means a Ministry or a department of Government not under ministerial control”, and when one looks at all of those, those that are not under ministerial control, so therefore, as a direct result they have been omitted. They would have been redundant and superfluous to have kept them in there because the definition of department means a Ministry or a department—

**Sen. Deyalsingh:** Minister, repeat that please?

**Sen. The Hon. V. Bharath:** Yes. The definition of department, which is on page 2, clause 4—

**Sen. Deyalsingh:** Under which Bill, Sir?

**Sen. The Hon. V. Bharath:** Under the Bill that we are discussing today. The definition of department means a Ministry or a department of Government not under ministerial control. Right? And when one looks at all of these, these are certainly all—but when we talk about the definition of a public body none of those is under ministerial control.

**Sen. Al-Rawi:** So a, b and c fall under department?

**Sen. The Hon. V. Bharath:** Yes, correct, so they are superfluous. They are redundant essentially.

**Sen. Ramlogan SC:** Look at the first part of the definition section.

**Sen. The Hon. V. Bharath:** Yes.

**Sen. Ramlogan SC:** Department means—[*Crosstalk*]

**Sen. The Hon. V. Bharath:** Yes, so that is the reason why—I have to admit I had to check that myself. [*Interruption*]

Madam Vice-President, a lot has been covered today. We are going to be circulating certain amendments, I think we have already started circulating them, primarily dealing with certain definitions, really just to expand on certain definitions to make them a bit clearer.

I wanted to say also that it was the Ministry of Trade, Industry and Investment that had actually approached Cabinet with regard to proclaiming sections or Parts I, II III IV and VII of the Electronic Transactions Act which are the sections that would allow the single electronic window to be made properly operational, and these were done via legal notices 1 and 3 of 2012. This is the basis on which we expect our e-Government solutions to evolve.

Madam Vice-President, the Ministry of Trade, Industry and Investment has embarked on a very aggressive programme to put Trinidad and Tobago into the 21st Century. I mentioned earlier today a number of the areas in which the TTBizLink has been interacting with the population of Trinidad and Tobago to make their lives easier. We have a number of other initiatives that we will be discussing over the next three to six months that will essentially catapult us and remove the handcuffs, so to speak, or the shackles that have tied us somewhat to the past. We have got to start looking at things differently. We have got to do things in a manner that is no longer incremental but transformational. [*Desk thumping*]



I have said that in many aspects many of our Caricom neighbours, many of our regional neighbours and certainly a number of our international counterparts have left us behind. We are struggling to catch up. We have a lot in our favour, we have a very literate workforce, we, thankfully are very strategically geographically located, we have wonderful weather, we have wonderful people, we have a lot of potential. It is for us as the leaders to ensure that we can extract the maximum potential from our people and that we can leave this place a better one than when we came.

Madam Vice-President, with those few words, I beg to move. [*Desk thumping*]

**Madam Vice-President:** Hon. Senators, before I put the question and before we go to committee stage I propose to take a short break. This sitting is now suspended until 8.15 p.m.

**7.56 p.m.:** *Sitting suspended.*

**8.15 p.m.:** *Sitting resumed.*

*Question put and agreed to.*

*Bill accordingly read a second time.*

*Bill committed to a committee of the whole Senate.*

*Senate in committee.*

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

*Clause 4.*

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

**Sen. Bharath:** Madam Chairman, I beg to move that clause 4 be amended as circulated as follows:

- 4
  - A. Delete the definition of “client” and substitute the following definition:
 

“ “client” means a person who conducts business with a Department or any other person who is entitled to receive or required to make payments to such a Department;”
  - B. Delete the definition of “Department” and substitute the following definition:
 

“ “Department” means—

    - (a) A Ministry; or
    - (b) department of Government not under ministerial control;”

- C. In the definition of “financial intermediary” insert after the words “institution,” the words “a foreign financial institution,”
- D. Insert after the definition of “financial institution” the following definition:
  - “ “foreign financial institution” means a financial institution incorporated in a jurisdiction other than Trinidad and Tobago and approved by the Treasury for the purposes of Part IVA;”

**Sen. Drayton:** There is one other amendment I want to request, and that is the definition of “Minister” which is already defined exactly as is here in the Exchequer and Audit Act which means it would be a duplication.

**Madam Chairman:** What is the amendment that we—

**Sen. Drayton:** To delete the definition of “Minister” in this Bill.

**Sen. Ramlogan SC:** I think that is a fair comment. It is already defined in the parent Act that we are amending, so there is no need to duplicate that, so that can be dealt with. We can delete the definition of “Minister”.

**Sen. Prescott SC:** I had raised this with the hon. Attorney General and I wish to do so publicly. When Sen. Bharath was speaking on the matter, he sought to give an explanation for the absence from the definition of “public body” of three authorities—one of them, the Judiciary; the other, Parliament; and I cannot recall the third one. I do not think that the explanation he gave is satisfactory.

In particular, if you remember he had said that those three bodies had been elided from the amendment Act and were now to be considered as being “Departments”, the “Department” is defined in clause 4. But when we look at the new clause 5 of the Bill, a reference to section 23B, you will find that a reading of 23B would suggest that the three bodies are not contemplated in 23B so that, for example, where a payment is to be made by a department, the department covers those three bodies.

Two: One of those three bodies, 23B does not apply. I suspect that is not what was intended by this piece of legislation. You would note also, that in the same clause 4, “public officials” are described and they have included those very people, the President, the Minister of Government and the Judge. So, it does appear to me, hon. Attorney General and Sen. Bharath, that we need to look again and see if that is really what is meant to have happened or if it is merely an oversight that the definition section does not include in the word “public body”—those three institutions.

**Sen. Ramlogan SC:** Senator, I think the concern you raised with me is section 23B where it speaks to a payment being made by a department to a client or public body. And the query really had to do with, for example, if one of the departments that does not fall under ministerial control has to make a payment to another such department it would not be accommodated by the wording here. Well I did raise it with the Comptroller of Accounts and the indication was that that does not happen.

**Sen. Prescott SC:** They cannot—

**Sen. Ramlogan SC:** No, that there are no charges interstate between government departments—

**Sen. Prescott SC:** I see—

**Sen. Ramlogan SC:**—and therefore that is why it is worded as such, and that they were quite happy with it as is.

**Sen. Prescott SC:** So the definition given for “Department” is deliberate and means to cover those three other—

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

**Sen. Dr. Bernard:** But I think that—if I may add at this point, I think if we stay with Sen. Prescott SC’s first point—*[Interruption]*

**Sen. Ramlogan SC:** Sure.

**Sen. Bernard:** One of them he was enumerating, but he gave us two: Parliament, a Joint Select Committee of Parliament or a committee of either House of Parliament. But (b) is the Court of Appeal, the High Court, the Industrial Court, the Tax Appeal Board or any court of summary jurisdiction which certainly will not be a department.

**Sen. Ramlogan SC:** This is an issue—I think I had raised it at the LRC because it does sound a bit strange. But I think because all of these bodies have a ministerial conduit to the Cabinet, it is considered a department for the limited purpose of this Act which has to do with the method of payment and nothing else. There would be a department of Government that is not subject to ministerial control. So, for example, the Industrial Court, the line Minister for administrative purposes is the office of the Attorney General. This simply is consistent with that kind of public service apparatus that has obtained without detracting, without influencing or injecting any measure of control. If perhaps we were to come up with a wording where we can excise the Judiciary—but you see the point, then you go down the road to Parliament, for example, has a line Minister—Notes to Cabinet come—*[Interruption]*

**Sen. Prescott SC:** May I suggest Attorney General, could we not consider broadening the definition to say “it includes” those other things.

**Sen. Ramlogan SC:** Yes that will work, instead of “means”—

**Sen. Prescott SC:** It grates badly on the tympanum to say that the Judiciary is a “department of the Government”—

**Sen. Ramlogan SC:** We can change “means” to “includes”. Yes that crossed my mind and that would solve it, would it not?

**Sen. Prescott SC:** Yes.

**Sen. Ramlogan SC:** Okay, we agree to change “means” to “includes”.

**Sen. Prescott SC:** Then put specifically those that we have elided, Judiciary, Parliament, et cetera. So that one does not get the impression that we are saying that the Judiciary is a department of Government—[*Interruption*]

**Sen. Ramlogan SC:** We can add—we can say “department includes” and add a “C”—[*Interruption*]

**Madam Chairman:** Attorney General, I just wanted to offer one suggestion.

**Sen. Ramlogan SC:** Sure ma’am.

**Madam Chairman:** You have two definitions under “public body”, which refers to the bodies or entities, institutions. Then you have “public official” which captures those persons who fall under the question under contention, meaning the President, the Ministers, the parliamentary secretaries and you also have the definition of “client”. Is there any way that you could incorporate all three so that you cover—

**Sen. Al-Rawi:** Madam Chair, if I could say, I anticipated—well I am grateful that you raised the issue of public official. I most respectfully think that if we were to use “includes” leave “public official” because it is now certain by way of tie in to a public body that these people are included, and leave “client” because the distinction between the Electronic Transactions Act, and this Act is the introduction of the word “Department”. So because we have a term which is not defined in the Electronic Transactions Act, I would think that just “includes” would take care of it with the tie in definition, plus having it on *Hansard* as we do now.

**Hon. Senator:** [*Inaudible*]

**Sen. Al-Rawi:**—because that will take care of the concern, when the AG catches it of the inclusion of persons in the THA who are also not under government control.

**Sen. Ramlogan SC:** I think what we can do, we can come back to (B). I have asked that they draft—Sen. Prescott SC—we will say “department includes” and we will insert a “(C)” to include the three. Sen. Dr. Bernard—so that we will take on board that point and we will include the three that have been—just for the sake of clarity. I am advised that it is comprehensible and it is quite easy to understand in terms of the public service apparatus and jargon, but I think it is wise to make it clear because it is not right to refer—it does sound a little bit weird to refer to the Judiciary as a department of Government. So that is fine and we will come back to that. Thank you, Madam Chair.

**Madam Chairman:** We defer clause 4 until the drafters have come up with it.

**Sen. Ramlogan SC:** Are there any other problems with clause 4 before we move on?

**Sen. Ramkhelawan:** Chair, with regard to this whole question of “financial intermediary”, I still hold to the view that electronic funds transfer can only take place via banks. I am sure the Minister of Finance and the Economy would support me on that. But with regard to—the Minister has suggested, this is the Minister of Trade, Industry and Investment, that the approach that is being considered here is that a person goes to his credit union or to the Unit Trust and gives an instruction—it is the Unit Trust that would give an instruction to the bank and so on, but even so the definition of “financial intermediary” is quite discriminatory because we are taking a class which is the credit unions; but on the other hand we are taking the Unit Trust Corporation, which is part of a class of mutual funds. I think the Minister of Trade, Industry and Investment would be quite discriminatory if he were to take one part of the mutual funds and leave out others.

**8.30 p.m.**

So I am suggesting that he change Unit Trust Corporation to mutual funds registered with the Securities Exchange, domiciled and registered with the Securities Exchange Commission.

**Sen. Ramlogan SC:** It is a point that was raised with us by your colleague, Sen. Drayton, and it is a point we have taken on board and one of the amendments that we are, in fact, going to deal with will treat with that issue. Sen. Drayton, you can perhaps speak to—

**Sen. Drayton:** What I was suggesting is that the definition simply stops at “institution”. “Financial intermediary” means a financial institution. Because following that, you have the definition of “financial institution” which has the meaning assigned to it in section 2 of the Financial Institutions Act, and I think that would cover what the definition should be.

**Sen. Ramkhelawan:** If your intent is that you will work through these institutions, which will eventually work through the banks, then you would exclude credit unions and mutual funds because of the fact that a financial institution has a specific definition that excludes credit unions and mutual funds.

**Hon. Senator:** That is right.

**Sen. Bharath:** The intention really, as I said earlier on, is that if I had an account with a credit union and I did not have a bank account, I could still go to my credit union and deal through the credit union, through a financial intermediary with the—

**Sen. Ramkhelawan:** Yes, but you could tell them debit your account. You could say, make payment, but the electronic transfer cannot take place between a credit union and a bank.

**Sen. Bharath:** I agree. I agree. No, no. The bank will act almost as an intermediary between the credit union and the Central Bank, if that is the intermediary.

**Sen. Ramkhelawan:** The bank is the transferor.

**Sen. Bharath:** That is correct.

**Sen. Al-Rawi:** But just to let you know, a financial institution, as set out under the Financial Institutions Act, specifies that it is a company which carries on or used to carry on all or any aspects of banking business and business of a financial nature.

**Sen. Bharath:** Okay. So it excludes—

**Sen. Al-Rawi:** Yes, specifically. [*Crosstalk*] I think that the suggestion in respect of mutual fund operators is you want to go for a generic tag as opposed to a specific now-in-time tag.

**Sen. Ramlogan SC:** The point is well made that specifying the Unit Trust Corporation or singling out credit unions, as it were, could well give rise to arguments of unfairness and discrimination: Why single them out? So that is a valid point that Sen. Drayton did raise with us. We have taken it on board and we will, in fact, accommodate the points made.

**Sen. Ramkhelawan:** That is not the point that I am making in its entirety. The point that I am making, Chair, in its entirety, is that if you are going for a class of institutions, credit unions are covered. If you are going for a class of institutions with mutual funds, of which the UTC is one—

**Sen. Ramlogan SC:** Yes, of course. And you are saying that we should deal with all of those registered with the Securities and Exchange Commission.

**Sen. Ramkhelawan:** Correct, as a class.

**Sen. Ramlogan SC:** I got the point. I listen to you. [*Crosstalk* ]

**Sen. Bharath:** So we will have it as a separate—we have been informed that Unit Trust is not regulated by the Securities and Exchange Commission, so therefore we will leave Unit Trust as a separate—and then add “and all other”—

**Sen. Ramkhelawan:** No, but the mutual funds of the Unit Trust are under the SEC.

**Hon. Senator:** That is right.

**Sen. Bharath:** Okay. So, although as a body it may not be, but the mutual funds are. So “all regulated mutual funds”.

**Sen. Ramkhelawan:** Correct.

**Sen. Al-Rawi:** The SEC receives products which are registered depending upon the trade that you are in. So you register the products individually.

**Sen. Bharath:** Yes, so it is the products rather. Okay.

**Madam Chairman:** So just for clarification, I think what Sen. Ramkhelawan is saying is that the Unit Trust is just one example of the umbrella body, the term—

**Sen. Bharath:** Yes, we are aware. So we want to bring the umbrella of all registered mutual funds.

**Madam Chairman:**—of registered mutual funds. Is there a proposed amendment and subsequent wording?

**Sen. Al-Rawi:** Just to point out while you are looking, hon. Attorney General, at the definition of “public official”, I do not know if you want to include any reflection on the Tobago House of Assembly there, in the class of persons that we look at.

**Sen. Ramlogan SC:** I think that could be dealt with in the county council legislation— municipal corporation legislation—and so on, if it comes to it.

**Madam Chairman:** They are under “public body” as well.

**Sen. Al-Rawi:** I do not quite follow that.

**Sen. Ramlogan SC:** I am trying to tell you that the mere mention of it conjures up images of a county council election.

**Sen. Prescott SC:** But more to the point.

**Sen. Al-Rawi:** But the answer to the point, the Tobago House of Assembly, as an included class of persons here, is nowhere apparent.

**Sen. Ramlogan SC:** No, but it will be because—

**Madam Chairman:** It is under “public body”.

**Sen. Ramlogan SC:** It is under “public body”. It is covered as a public body already. “Public body” means, (a) the Tobago House of Assembly.

**Sen. Al-Rawi:** No, I catch that. This is why in discussing public body’s definition and tie in to public official, I agree that the two flow to each other, but I am just observing now that a public official has all classes of persons that we referred to in the public bodies, save and except the Tobago House of Assembly.

**Sen. Ramlogan SC:** Well, it will be covered in the primary part of the definition because there would be an individual exercising a public official function or acting in a public official capacity. So they will be covered nevertheless. I do not think there is any need to list them out separately. [*Crosstalk*]

**Sen. Prescott SC:** I mumbled that you may not want to use the word “Chief Secretary” at this time.

**Sen. Ramlogan SC:** Yes. This is the point. [*Laughter*] I agree with you. Sen. Prescott is just reminding me we would not want to specify the Chief Secretary at this point in time in a Bill like this because there are obvious accounting and forensic issues affecting expenditure at the THA, and insofar as the Auditor General has a backlog of accounts to examine the expenditure of the THA, we would not really want to deal with that here.

**Sen. Hinds:** You have some political troubles with the THA as well.

**Sen. Ramlogan SC:** We do, and the Auditor General’s reports are outstanding for such a long time so that we need to deal with it.

**Sen. Al-Rawi:** Okay, but in terms of remitting moneys due to the THA or them receiving their moneys—[*Interruption*] Very smoothly put, my good friend.

**Sen. George:** Is that not the function of the accounting officer—



**Sen. Ramlogan SC:** It is, actually.

**Sen. George:** And the accounting officer is mentioned there.

**Sen. Ramlogan SC:** The accounting officer would be the person, Sen. Al-Rawi.

**Sen. Al-Rawi:** I see. Sen. Moore is rather quiet on the inclusion of Tobago issues tonight.

**Sen. Hinds:** The people of Tobago dealt adequately with that.

**Sen. Ramlogan SC:** We could go on to clause 5 and come back.

**Sen. Prof. Bernard:** Before you go on to clause 5, “signatory” has the meaning assigned to it in section 2 of the Electronic Transactions Act, 2011.

“signatory” means a person who may or may not hold a signature-creation device and acts either on his or its own behalf or on behalf of another person to create an electronic signature;”

Do I take it that we are discounting personal identification number—PIN—as an electronic signature, which will not be, in fact, developed or created by the person? And if so, do we have, as a remit of our law, PIN? Because in some of my readings I found that, in Europe, particularly, the European Union situation, it falls outside digital signature laws, and it is only in the United States that the laws empower parties to a transaction to choose the type of signature which will bind them thereto.

**Sen. Al-Rawi:** Perhaps I could help the hon. Senator. The definition of “signature” in the Electronic Transactions Act is tied in to the meaning of electronic signature in that Act as well.

“‘electronic signature’ means information in electronic form affixed to, or logically associated with a data message which may be used to—

(a) identify the signatory in relation to that data message; or

(b) indicate the signatory's approval of the information...”

And I think that a PIN would safely fall within that definition of “electronic signature”.

**Sen. Ramlogan SC:** That is right. In fact, that point was specifically, I think, raised in that context when we were dealing with the electronic signature. So it would be covered.

**Sen. Prof. Bernard:** And we are safe with it within the remit of the law?

**Sen. Ramlogan SC:** Yes, I think so.

**Sen. Prof. Bernard:** Thank you.

**Sen. Bharath:** We have a little issue, and that is, we need to get some clarification because the fund—or a mutual fund is actually not a body. We are talking here about a:

“‘financial intermediary’ means a financial institution, a credit union registered under the Cooperative Societies Act”,

which they are both—they are referring to bodies. If you insert there, “mutual funds”, you are now talking about products.

**Sen. Al-Rawi:** No, no, no, not mutual fund, he said. He said, a registered mutual fund, an entity which trades in registered mutual funds, because you can be an entity that has a product that is regulated and therefore be a participant in a process to a department or by a department.

**Sen. Bharath:** Yes. You are quite correct, because you could have organizations—

**Sen. Al-Rawi:** You may otherwise be outside of the scope, yes, but that product, you would be in the sphere. The question is how do we get you in? [*Crosstalk*]

**Sen. Ramlogan SC:** Senator, what the advisors and technocrats are pointing out is really the definition of “financial institution” in section 2 of the Financial Institutions Act. Can I just take you to that to show you what it says?

The Financial Institutions Act, section 2, it defines “financial institution” as meaning an institution. It means:

“...a company which carries on or used to carry on all or any aspects of banking business or business of a financial nature;”

So what they are saying is in light of that definition of “financial institution”, financial intermediary, which means a financial institution as defined below, you really do not need to specify anything, you know, because whether it is mutual funds regulated by the SEC or otherwise, it would be covered by the definition which is widely there in section 2 of the Financial Institutions Act.

**Sen. Ramkhelawan:** No, no, no. I think we are making a fundamental error in terms of what we are setting out to do. The Minister of Trade, Industry and Investment has said financial intermediary means a financial institution and we have a definition of financial institution, and I take it to mean, and a credit union which is not a financial institution, and a mutual fund which is not a financial institution. The definition of a financial institution is doing the business of banking or business of a financial nature. I am just trying to remember what—

**Sen. Ramlogan SC:** Well it says “any aspects of banking business or business of a financial nature”.

**Sen. Ramkhelawan:** No, no, no. There is a clear definition in the Financial Institutions Act as to what a business of a financial nature is. It is taking stock, giving loans, et cetera. There is a definition.

**Hon. Senator:** That is right.

**Sen. Ramkhelawan:** Business of a financial nature is not crafted out of the air; it has specificity in definition under the Financial Institutions Act.

**Sen. Bharath:** Okay. What is the terminology you are recommending, so we could just move on?

**Sen. Ramkhelawan:** What I said initially is that the only people who could move money is a bank, a financial institution. You have added other types of institutions which cannot move money. They have to instruct their bank or their financial institution to move money, and I thought that the Minister of Finance and the Economy would have backed me up on this 100 per cent, and stop the thing at financial institution. But if you want to extend it, I am saying you cannot discriminate against any class, which I think we understood that.

**Sen. Ramlogan SC:** So you would be happy if we put a full stop after “financial institution”? And that would cover credit unions and UTC?

**Sen. Al-Rawi:** No, it would not.

**Sen. Ramkhelawan:** It will exclude.

**Sen. Al-Rawi:** It will exclude them.

**Sen. Ramkhelawan:** So if you want to include, you take the class of credit unions, credit unions are covered under the Cooperative Societies Act—

**Sen. Ramlogan SC:** Which we have done.

**Sen. Ramkhelawan:**—and if you want to include mutual funds as a whole, you will have to take that under the new Act, which is collective investment schemes under the Securities Act, 2012.

**Sen. Bharath:** Right.

**Sen. Ramkhelawan:** Otherwise, you are going to discriminate and say, well this institution—

**Sen. Bharath:** And so any other institutions registered under—

**Sen. Ramkhelawan:** Registered and domiciled. The system must be able to give us certain safeguards to be able to protect both funds and data against theft, against loss, against misuse and against uses that may be against the instructions of the client.

**8.45 p.m.**

**Sen. Drayton:** And I would like to just check on what is the definition of business of a financial nature. What is the definition? [*Crosstalk*]

**Sen. Ramlogan SC:** Chair, can we go on to the next clause and come back to this whilst we are trying to formulate something that will fashion a solution to meet the concern raised by Sen. Ramkhelawan?

**Madam Chairman:** Certainly.

*Clause 4 deferred.*

*Clause 5.*

*Question proposed:* That clause 5 stand part of the Bill.

**Sen. Bharath:** Madam Chairman, I beg to move that clause 5 be amended as circulated as follows:

5                    Insert after proposed subsection (2) the following subsection:

Proposed

section 23E

(3) Notwithstanding any law to the contrary, Regulations made under this Act may provide in respect of any contravention of a regulation a penalty not exceeding a fine of fifty thousand dollars.

**Sen. Ramlogan SC:** Chair, this proposed amendment deals with a point raised by Sen. Al-Rawi with respect to the imposition of a fine of \$50,000 in the regulations, and in light of the provision he referred to during his contribution in the Interpretation Act and whether or not it would be appropriate to have such a fine. The way to deal with that concern, I thought, is that it would be prudent and appropriate to insert this section in the parent legislation so that that particular regulation can be *intra vires* and considered to be made in conformity and pursuant to the authority of the parent Act and that is why we have drafted clause 5.

**Sen. Al-Rawi:** That is correct. Thank you, hon. Attorney General, and that is in fact the way the Jamaican Act does it as well. So you are perfectly correct. Thank you.

**Sen. Prescott SC:** Chairman, would you permit me an intervention, please?

**Sen. Ramlogan SC:** Sure.

**Sen. Prescott SC:** Thank you very much. Chair, it is more of the nature of a question for the framers of the legislation. When we look at the definition of “public official” which includes the President, I wonder if at page 7, 23E(1)(e)(ii), it is contemplated that a President may be engaged in fraudulent conduct and may cost the State some money. I know everything is possible.

**Sen. Ramlogan SC:** The answer is that insofar as there is constitutional immunity and protection for the President, that would trump anything in relation to him.

**Sen. Prescott SC:** So it is superfluous? Is it redundant there?

**Sen. Ramlogan SC:** Well, superfluous only insofar as the Office of the President.

**Sen. Prescott SC:** Yes.

**Sen. Ramlogan SC:** But it is not superfluous because it is just that the Constitution would trump it.

**Sen. Prescott SC:** I thought it being redundant, we probably should not even be contemplating it.

**Sen. Ramlogan SC:** You mean to say save and except for the office of the—

**Sen. Prescott SC:** I could not even imagine the language you would use. Forgive me, Chairman.

**Sen. Ramlogan SC:** I think it is better to probably just rely on the trump of the constitutional protection and immunity, rather than to think about that because you could run into all sorts of problems.

**Sen. Prescott SC:** You may be right.

**Sen. Dr. Balgobin:** May I ask just two quick questions, Chairman?

**Sen. Ramlogan SC:** But point taken, Sen. Prescott.

**Sen. Dr. Balgobin:** Is it necessary then to include the President at all?

**Sen. Ramlogan SC:** I think it is because, you know, you may want to issue a credit card—no, help me.

**Sen. Prescott SC:** No, you are right. It is meant to include him where he gets a benefit.

**Sen. Ramlogan SC:** That is correct. It is to confer a benefit.

**Sen. Prescott SC:** But regrettably he also takes the disadvantage of being looked upon as somebody who might cause the State some money with some fraudulent activity.

**Sen. Dr. Balgobin:** Okay, next question. The proposed section 23E, the fine of \$50,000, how does that jibe with the rest of the fines proposed in the parent Act because you are talking about fraud? Can it be for a sum significantly in excess of that?

**Sen. Ramlogan SC:** Well in the Exchequer and Audit—let us take, for example, in regulation 141, the financial regulation, this is the—

**Sen. Dr. Balgobin:** I think section 9 of the parent Act does deal with some issues of offences and so on.

**Sen. Ramlogan SC:** Let us just look at that. But your point about the consistency, if one looks, for example, at regulation 141 which deals with penalty, it says:

“Any person who contravenes any of the provisions of these Regulations is liable on summary conviction to a fine of one hundred and fifty dollars.”

**Sen. Prescott SC:** One hundred and fifty dollars?

**Sen. Al-Rawi:** Yes, because it is under the \$500 limit prescribed by the Interpretation Act.

**Sen. Ramlogan SC:** Because it is under the \$500 limit. But for the use of a credit card and given the need to maintain the integrity of the system and given the concerns worldwide about credit card misuse and abuse and fraud and so on, one will want to have a stiff penalty to ensure—

**Sen. Dr. Balgobin:** I wish to suggest respectfully to you, Attorney General, and I stand to be corrected by the former banker to your right, that perhaps \$50,000 might be a little bit low and that we would not be disadvantaged if we said \$150,000.

**Sen. Al-Rawi:** Yes! Could I give you the wording of the Jamaican Act just by way of comparison?

**Sen. Ramlogan SC:** Sure!

**Sen. Al-Rawi:** The Jamaican Act says in section 50(4):

“Notwithstanding section 29 of the Interpretation Act,”—in this case here any other written law—“regulations made under subsection (1)”—or under this Act as we would put it—“may provide for the imposition of penalties on summary conviction”—I think it is important to put that in—“in a Resident Magistrate’s Court”—we do not need to put that—“of a fine not exceeding one million dollars or imprisonment for a term not exceeding one year or of both such fine and imprisonment.”

I thought of that wording because I have just found it.

**Sen. Ramlogan SC:** [*Inaudible*]*—*Jamaican converted to TT because it is \$100,000. I am not—

**Sen. Dr. Balgobin:** Maybe \$150,000 because you know we think big here. So if you put an upper limit of \$100,000 and/or—

**Sen. Ramlogan SC:** Remember the regulations are really proposed regulations, but what I can say is—it is a draft regulation. I take on board the point and if Senators feel strongly that the \$50,000 is too low, I am prepared to give an undertaking, after consultation with Minister Bharath, that the Government would be prepared when it is doing the actual regulations to insert a higher penalty of \$150,000.

**Sen. Al-Rawi:** But the key is to the parent Act so that we are—

**Sen. Dr. Balgobin:** I am talking about the proposed section 23E.

**Sen. Al-Rawi:** Yes, exactly. So we are changing it—

**Sen. Ramlogan SC:** We will change it in the enabling.

**Sen. Al-Rawi:** So that we are in vires.

**Sen. Ramlogan SC:** Yes. We will have to change it in the enabling.

**Sen. Al-Rawi:** And include the mention of “on summary conviction”.

**Sen. Ramlogan SC:** We will just have to put in the words “one and”. Well “one hundred and”.

**Sen. Al-Rawi:** And the reference to summary conviction. Did you want to include an imprisonment term as well?

**Sen. Dr. Balgobin:** I think that you should make a jail if you are found guilty of fraud and—

**Sen. Ramlogan SC:** The second part of it I was going to come to that. Do we want to impose the fine and the prison term?

**Sen. Al-Rawi:** I would think that you would.

**Sen. Ramlogan SC:** I would want the benefit of the wisdom of Sen. Prescott on this, as to whether or not we should include the jail term in addition to the fine.

**Sen. Prescott SC:** I think we are overdoing it a bit.

**Sen. Ramlogan SC:** I think so too. I think \$150,000 is more than sufficient.

**Sen. Dr. Balgobin:** I beg to differ. This is the people's money.

**Sen. Al-Rawi:** Hon. AG, this is people's money—

**Sen. Ramlogan SC:** Sure!

**Sen. Al-Rawi:**—and the regulations is what we are talking about. That is the real crux of this debate. Let us put aside the swords for a moment and our philosophical differences on this. The regulations are really the only thing that confines us to cash or card in this system, and it is a breach of those regulations as it relates to electronic transfer fraud, et cetera.

**Sen. Ramlogan SC:** No, no, I am aware of the gravity and the seriousness about what—

**Sen. Al-Rawi:** And all the much so, particularly when in section 23 later on—I think it is section 23F—we make it binding, legally enforceable and binding.

**Sen. Dr. Balgobin:** Attorney General, would we be—

**Sen. Hinds:** Jail and a fine.

**Sen. Ramlogan SC:** They will have the discretion.

**Sen. Dr. Balgobin:** They still have the discretion. So you are not disadvantaging—

**Sen. Hinds:** You may have a second time offender, a third time offender, so you want to have provisions. I mean without going over the top, it may not be a first offence, it may not be once, and in any case, it would be up to the Magistrate or the court to decide what it would do in the particular circumstance.

**Sen. Dr. Balgobin:** I think we could give the Judiciary that flexibility.

**Sen. Ramlogan SC:** Sen. Prescott, what is your take?

**Sen. Prescott SC:** The framer of the regulations is being given power here—



**Sen. Ramlogan SC:** Indeed! That is my concern.

**Sen. Prescott SC:**—to introduce a fine, and if you broadened it and say you may also include imprisonment, he still has a discretion to do as I say and say, let us go with the conservative \$50,000. The framer of the regulations may determine himself that there is no need to go to the full extent.

**Sen. Ramlogan SC:** I suppose the query will then be whether or not the ceiling should be placed higher and—

**Sen. Dr. Balgobin:** I think that my colleague is going down a dangerous road there because that comes right back to what I was saying, which is that, do we really want to have the framer of the regulations to have this kind of power?

**Madam Chairman:** Attorney General, could you put up to \$150,000 and leave it as—

**Sen. Ramlogan SC:** We say not exceeding, that is fine.

**Sen. Beckles:** Okay, well “not exceeding”.

**Sen. Dr. Balgobin:** And let us agree that the intent of Parliament is that, or some custodial sentence, and we give the Judiciary the latitude to interpret as they see fit.

**Sen. Ramlogan SC:** Well, let us see how we look at it.

Notwithstanding any law to the contrary, Regulations made under this Act may provide in respect of any contravention of a regulation a penalty not exceeding one hundred and fifty thousand dollars and a custodial sentence not exceeding one year.

**Madam Chairman:** And/or.

**Sen. Ramlogan SC:** You will have the “and/or”. And/or.

**Madam Chairman:** Yes, leave the discretion on the judge.

**Sen. Ramlogan SC:** We could put it like that to give the maker of the regulations that discretion. Sen. Al-Rawi, what is the Jamaican Act?

**Sen. Al-Rawi:** I would suggest if we are looking at the amendment sheet, we start with the words “Notwithstanding any law to the contrary, Regulations made under this Act may provide”—and I would insert the following:

“...for the imposition of penalties on summary conviction of a fine not exceeding one hundred and fifty thousand dollars or imprisonment for a term not exceeding one year or of both such fine and imprisonment.”

**Sen. Ramlogan SC:** Well just say “and/or” and leave out number 3.

**Sen. Al-Rawi:** Yes, you could.

**Sen. Ramlogan SC:** All right? I think that is fine. We can leave out the (c) and put “and/or” to separate (a) and (b) and that is fine.

**Sen. Al-Rawi:** So “and/or imprisonment for a term...”—

**Sen. Ramlogan SC:** And I do that with the full support of Dr. Henry.

**Sen. Al-Rawi:** And Sen. Moheni.

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

**Sen. Dr. Henry:** Yes.

**Sen. Bharath:** I found the definition of business of a financial nature, so I just wanted to read for the benefit of us all—

**Madam Chairman:** That is clause 4.

**Sen. Ramlogan SC:** We are on a different clause.

**Madam Chairman:** That is a different clause. Can we just conclude on clause 5? So if I can just read clause 5:

Notwithstanding any law to the contrary, Regulations made under this Act may provide in respect of any contravention of a regulation a penalty not exceeding a fine of one hundred and fifty thousand dollars and/or a custodial sentence not exceeding one year.

**Sen. Ramlogan SC:** Additional penalty on summary conviction. Mind you, there is no need to put the “and/or” as a matter of drafting because there is a case that says it is implied in any event. So you can leave out the “and/or” really. Leave out the “or” and just put the “and”.

**Sen. Al-Rawi:** “And” is interpreted as “or”.

**Sen. Ramlogan SC:** “And” is interpreted as “or”. The case is *Grant v Jack*.

**Sen. Al-Rawi:** That is right.

**Sen. Ramlogan SC:** In *Grant v Jack* the courts have ruled that “and” makes it discretion—

**Sen. Al-Rawi:** “And” is “or”, to allow for judicial discretion.

**Sen. Ramlogan SC:** Yes.

**Madam Chairman:** So insert the words “on summary conviction” after the word “penalty”. Is that it? And it is custodial sentence not exceeding one year.

**Sen. Al-Rawi:** That is correct.

**Madam Chairman:** The question is, clause 5, as circulated and further amended—

**9.00 p.m.**

**Sen. Ramkhelawan:** Madam Chairman, I have two points to make under clause 5.

**Madam Chairman:** Under clause 5, sure.

**Sen. Ramkhelawan:** I was just waiting for you to clarify this particular aspect.

**Madam Chairman:** Okay, sure.

**Sen. Ramkhelawan:** Under clause 5, section 23D(1), the wording is that the Treasury may authorize the use.

**Sen. Ramlogan SC:** Yes.

**Sen. Ramkhelawan:** “May” specify credit limits. But I think it should be “shall” because what you cannot afford is to have a situation where “may” meaning you could or you do not have to. But I think if we are making this kind of law, we have to specify and be certain that these things shall be put in place, there shall be limits, because what would you say to somebody who spent \$1 million who was supposed to be spending \$100,000. So he says, well, you said—you did not make any regulations to put—  
[*Interruption*]

**Sen. Al-Rawi:** You see, the fact is that A and B are mutually exclusive in that sense.

**Sen. Ramkhelawan:** You must put limits.

**Sen. Al-Rawi:** The problem is that A and B are mutually exclusive in that sense so it is when—and this is where you would want an “if” and therefore “may”—you authorize the use of. It is in that circumstance that you “shall” but not both, because if you use “shall” prior in the chapeau, then you are going to make it compulsory that you have to use that to the exclusion of the existing system which may not be apposite to your best working.

So it is “The Treasury may authorize the use of and shall in such circumstance specify”—if you want to put it in less elegant drafting language.

**Sen. Ramkhelawan:** Yes, I accept your language.

**Sen. Ramlogan SC:** Yes, that makes sense.

**Sen. Howai:** Yes, I think that makes sense.

**Sen. Ramkhelawan:** "...may and shall specify..."

**Sen. Ramlogan SC:** Yes.

**Madam Chairman:** Is that okay, Sen. Ramkhelawan?

**Sen. Ramkhelawan:** Yes, because that was it.

**Sen. Al-Rawi:** Just for the record, my contribution in that does not change the fact that I consider that is entirely the purpose of regulations and really ought not to be in the parent Act at all.

**Sen. Ramlogan SC:** Yes, we get that!

**Sen. Al-Rawi:** Right.

**Sen. Ramkhelawan:** Madam Chairman, under 23E(1)—[*Interruption*]

**Sen. Ramlogan SC:** Sorry, can we? So 23D(1) will now read "The Treasury may authorize the use of and shall specify the credit limits in respect of bank cards, et cetera..."

**Sen. Ramkhelawan:** Once it authorizes use of it, it must specify.

**Sen. Ramlogan SC:** Yes, because—well, you must have prior authorization to specify the limit.

**Sen. Ramkhelawan:** Right. "Yuh happy with that?"

**Hon. Senator:** Yes.

**Madam Chairman:** Anything else on that clause 5?

**Sen. Al-Rawi:** For clarification—sorry, Senator, you had another one.

**Sen. Ramkhelawan:** 23E(1), this question of the Minister may make regulations to give effect to the provisions of this part, this suggests that the Minister can or cannot.

**Sen. Ramlogan SC:** Which one is that, Sir?

**Sen. Ramkhelawan:** 23E(1). I think if you want to have controls and structures in place, the Minister shall make regulations relating to electronic funds transfer. Who else will do it? Is it going to be a vacuum? Shall put in place processes—make regulations for processes and control.

You see, we are making law for the future. We have a law which is in place since 1959 that we are amending. The Minister of Finance and the Economy is a fine gentleman, but he may not always be there. We might have some other player and they must be—it must be stipulated in law that the Parliament said that you “shall” make regulations for processes and controls, for guidelines, liabilities of the State, not “may”.

**Sen. Ramlogan SC:** Senator, you will see that that word “may” always appears wherever there is a power to make regulations.

**Sen. Ramkhelawan:** Right.

**Sen. Ramlogan SC:** There is in fact a Privy Council case that dealt with the Integrity Commission. You may recall many years ago, when they did not in fact prescribe the forms for persons—[*Crosstalk*] Yes, it is Chandresh Sharma and the Integrity Commission; that is right—where they did not prescribe the forms to enable persons in public life to fulfil their statutory duty to file their annual declarations of income, assets and liabilities, and their statements of registrable interests.

Now, that case went to the Privy Council and the same use of the word “may” and “shall”, turned upon it and so on. What they said really is, look, it is wise to have the word “may” as it were in legislation because sometimes not all the functions that you may have to make the regulations for may necessarily be relevant to operationalizing the law fully, and you may have to do it on a piecemeal basis sometimes. If you put “shall”, then you handcuff yourself to making everything in one go. Sen. Al-Rawi is familiar with this and perhaps you can assist me in this regard.

**Sen. Al-Rawi:** Yes. Just to point out that section 45 of the parent Act under which the financial regulations 1962 were made, in fact, uses the word “may” as well—[*Interruption*]

**Sen. Ramlogan SC:** Exactly.

**Sen. Al-Rawi:** —and the Chandresh Sharma decision at the Privy Council, which I am well aware of, does in fact say that. So the problem is the shackling position.

But what I had a concern in relation to 22E was in 22E(1)(e)—[*Interruption*]

**Sen. Ramlogan SC:** 22E?

**Sen. Al-Rawi:** Sorry, 23, the same section page 7—was the concept of the liabilities of the State with respect to fraudulent—look at (ii)—or negligent conduct of a department. Is it right in subsidiary legislation to contemplate making and imposing and stating for the first time, liabilities of the State with respect to fraudulent or negligent conduct of a department particularly when in the clause following—23F: “Notwithstanding any other law, any electronic funds transfer made in accordance with this Act shall be legally enforceable and binding”?

**Sen. Ramlogan SC:** Yes. I think you would need 23F simply because any third party dealing with the State would want to have the comfort to know that whatever your problems are internally, my method of payment is valid and is going to be binding on the State. Because, suppose for example, I paid a fine to you, there are personal, legal consequences attached to that for me. So that if, for example, someone in your public service does something wrong and as a result of it, the money goes into someone’s pocket and it does not go into the Judiciary’s coffers or wherever it has to go, and I then have to be in prison because I am treated as having not paid the fine. That is a serious issue.

So you would want to say that notwithstanding anything, you know, it is legally enforceable and binding on the State, but you would also want to say—you would also have to treat with the offending official who conducts themselves negligently or fraudulently. But bear in mind, it is a liability of the State so that in any event, the State would have to deal internally with that person.

**Sen. Al-Rawi:** But that is a good example and I can see the context there. My position is on the private sector side.

**Sen. Ramlogan SC:** Sure.

**Sen. Al-Rawi:** So someone takes my credit card, I am no longer in possession of it, goes up to the court—I have actually had an incident where a gentleman sold a piece of land and when you did the searches, the name, et cetera, was exactly the same because he turned up ID in the correct name, transaction in the position, but he had done a deed poll and changed his name two years before, so he is correctly the same person.

Somebody commits identity theft, rolls up to you, takes your credit card, swipes it, pays a \$10,000 fine or \$100,000 fine for Customs, let us say, 23F now makes it legally enforceable and binding that that transaction follows through. So how do we deal with the setting aside of that transaction on the ground of fraud?

**Sen. Ramlogan SC:** Yes. Well, firstly, permit me to say that I find it inherently incredible that anyone would attempt or want to impersonate you [*Laughter*] and having made that rather important point, I want to say that 23F says that:

“Notwithstanding any other law, any electronic funds transfer made in accordance with this Act...”

Now, the words “made in accordance with this Act” would mean that it has to be a lawful use in the first place or it has to be law. In the regulations, I would expect that that is a point that will receive treatment so that it will deal necessarily with the unauthorized use by a third party of your credit card and stuff like that. Do you know what I mean? It will have to deal with that.

**Sen. Al-Rawi:** I am grateful for the explanation on *Hansard*—[*Interruption*]

**Sen. Ramlogan SC:** Yes. In other words, the “made in accordance with this Act” would be the point—the soft area that will take care of that.

**Sen. Al-Rawi:** On the issue of the statement of liabilities in subsidiary legislation, are you comfortable with that?

**Sen. Ramlogan SC:** Beg your pardon, sorry?

**Sen. Al-Rawi:** In 23E.

**Sen. Ramlogan SC:** 23E, sorry. “Yuh goin back to E now.”

**Sen. Al-Rawi:** Page 7 now; going back now. Just going back to the point of whether we are comfortable with regulations or subsidiary instruments creating a statement of liabilities for the State.

**Sen. Ramlogan SC:** Well, I think yes. I am comfortable with it simply because one would have to treat with a wide, vast range of permutations and they would really want to consider it properly in the regulations, and also, it may be something that would have to change from time to time.

I mean, remember, for example, credit cards will very well become outmoded in the next—our children may not know what a credit card is, I mean, “yuh know”, because everything would be done by mobile phones. People would be paying—you know, your credit card and everything would be part and parcel of your mobile phone. So that I would want to leave it that way so that it makes it easy to move with the times rather than have to come to back Parliament to amend law and have a debate on it. I think that is okay actually.

**Sen. Al-Rawi:** Just so long as we are not overstepping the rules of statutory operations.

**Sen. Ramlogan SC:** But bear in mind—yes, just one point—if any person suffers a loss as a result of any of these acts complained of, nothing in this law takes away their right to sue the State under ordinary law for damages for negligence, for damages for fraud and conversion or anything of this kind. So that it does not trump that. Yes?

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

**Sen. Ramlogan SC:** I am happy, Sen. Prescott, that you are okay with that. All right?

**Sen. Ramkhelawan:** So, Attorney General, “the Minister may”, “may” shall mean “shall”.

**Sen. Ramlogan SC:** Yes.

**Sen. Ramkhelawan:** Okay, good.

**Sen. Ramlogan SC:** It may mean shall and it shall mean may.

**Sen. Prescott SC:** Attorney General, perhaps you should not allow Sen. Ramkhelawan to go with that interpretation.

**Sen. Ramlogan SC:** [*Laughter*] No, no, no.

**Sen. Prescott SC:** I think what needs to be said is that if you were to impose the word “shall” on this—[*Interruption*]

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

**Sen. Prescott SC:** It requires all the legislation to be put into effect or any of it has any effect—[*Interruption*]

**Sen. Ramlogan SC:** In one go! “In voosh!”

**Sen. Prescott SC:**—you will derogate from the substantive parts of the legislation. So you allow the Minister the power to make the regulations. If he does not do it, the rest of the Act takes effect. Something may go wrong, something may have to be done and it is done under the Act. If you use the word “shall” and you wait until the Minister has made the regulations, all the world has gone by while he is playing with it, nothing comes into effect.

**Sen. Ramlogan SC:** Okay, we are grateful. So can we now put, Madam Chairman—[*Interruption*]



**Sen. Al-Rawi:** Just to also—sorry—point out to you—[*Interruption*]

**Sen. Ramlogan SC:** Yes, sorry?

**Sen. Al-Rawi:**—in terms of drafting style at page 5, 23A(1).

**Sen. Ramlogan SC:** 23A(1), page 5.

**Sen. Al-Rawi:** “Notwithstanding any other law, a payment into or issue out of—

(a) the Exchequer Account; or

(b) other...moneys, howsoever held,...

—should really be a break there.

**Sen. Ramlogan SC:** Yes, after the word “held”.

**Sen. Al-Rawi:** Right, yes.

**Sen. Ramlogan SC:** I agree with that, and in fact, I have pointed it out to the drafting officer. 23A(b), we should in fact break at the word “held”, but that is something that we can—I do not think it is an amendment, they will deal with it by way of tidying up.

**Sen. Al-Rawi:** Right. Then there was one more point that the South African Act had which was quite useful. Sorry, if I could just find it. The intent of what I want to ask you to have a look at was whether we wanted to be as specific as saying in electronic forms. In other words then, did we want to say in any form? The reason is that—[*Interruption*]

**Sen. Ramlogan SC:** You mean by the means of electronic funds transfer?

**Sen. Al-Rawi:** Yes. My issue with amending this Act in this way is that it is technology-specific for now.

**Sen. Ramlogan SC:** Yes.

**Sen. Al-Rawi:** My proposition for consideration in the debate was really that the Act broadly stated is a better definition which is open—even though it is a 1959 creation, it is still open to use—bearing in mind that technologies are going to change, did we want to be as specific as saying may be made by means of electronic funds transfer or did we want to say may be made by any transfer including—by any means whatsoever including? Because that would give us the flexibility in the future not to have to come back and amend this for a technology change.

**Sen. Ramlogan SC:** Yes, I did ponder on that and I had raised it with the persons but they expressed a certain discomfort about broadening it like that, because they have to now create a whole infrastructure to support this.

**Sen. Al-Rawi:** I have found the section 27. The South African Act puts it this way, if you just hear it?

**Sen. Ramlogan SC:** Sure.

**Sen. Al-Rawi:** Any public body that pursuant to any law provides for a manner of payment may, notwithstanding anything to the contrary in such law, make or receive payment in electronic forms or by electronic means. It is a little bit broader because, well, there are two other subcategories before that, but the point is that it does not confine you in a development of law coming in the future to come back and amend this.

**Sen. Ramlogan SC:** I think we would want to leave it as is for now. I mean, if the technology, changes later, I think it might warrant coming back really to let Parliament have a full say on the matter rather than to allow changes via the back door.

**9.15 p.m.**

**Sen. Al-Rawi:** Last attempt at persuasion. In the Scottish and Irish Acts:

“A requisition or order under this section—

(a) may be produced, authenticated and transmitted in any manner which the Department, with the approval of the Comptroller and Auditor General, decides to adopt...”

[*Sen. Hinds leaves the Chamber*]

**Sen. Ramlogan SC:** Well, I will like to hear Sen. Hinds on that. I beg your pardon. I see he has left the Chamber.

**Sen. Al-Rawi:** He has just gone to the library to bring the Financial Institutions Act.

**Sen. Ramlogan SC:** He is seldom in the Chamber when we require his assistance as one of the attorneys on the Opposition Bench, but in his absence we will hear you.

[*Sen. Hinds returns to the Chamber*]

**Sen. Al-Rawi:** Listening to the Scottish—and thank you for your indulgence.

**Sen. Ramlogan SC:** Yes.

**Sen. Al-Rawi:** Listening to the Scottish and Irish versions, requisitions or order in this case here, payments for electronic funds may be made:

“...and transmitted in any manner which the Department with the approval...decides to adopt...”

**Sen. Ramlogan SC:** I think we are comfortable with it as is, and if technology changes, I think—the way of the future is clearly people will be able to run their lives basically from their mobile phone, and effect payments and so on. I really think that, you know, it would deserve—*[Interruption]*

**Sen. Al-Rawi:** Perhaps we may wish to hear Sen. Hinds on this point.

**Sen. Ramlogan SC:** Seeing that I have called back Sen. Hinds as it were, *[Laughter and crosstalk]* I think—*[Interruption]*

**Hon. Senator:** It is very important.

**Sen. Hinds:** I was looking at the provision from Iceland. *[Laughter]*

**Sen. Ramlogan SC:** You were looking at the provision from afar.

**Sen. Hinds:** It is similar to the one that, you know, Sen. Al-Rawi—*[Interruption and laughter]*

**Sen. Al-Rawi:** That you may do it in any form, yes. *[Laughter]*

**Sen. Hinds:** But, let us get on with it. *[Laughter]*

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

**Madam Chairman:** The question is that clause 5 be amended as circulated and further amended at 23D(1).

**Sen. Bharath:** At 23D(1), it says:

“The Treasury may—”

and then we changed “and shall”, so the “may” will have to drop down to (a) so:

“The Treasury—

(a) may authorize the use of...”

**Madam Chairman:** And (b) shall specify.

**Sen. Bharath:** Yes.

**Madam Chairman:** As well as to insert after 23E(2), the amendment as circulated and further amended as follows:

“(3) Notwithstanding any law to the contrary, Regulations made under this Act may provide in respect of any contravention of a regulation a penalty on summary conviction not exceeding a fine of one hundred and fifty thousand dollars and a custodial sentence not exceeding one year.”

**Hon. Senator:** And imprisonment.

**Madam Chairman:** No, it is custodial sentence.

**Sen. Beckles:** Not exceeding—[*Interruption*]

**Madam Chairman:** Not exceeding one year.

**Sen. Al-Rawi:** Imprisonment.

**Madam Chairman:** Okay, and imprisonment. All right.

*Question put and agreed to.*

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

*Clause 6 ordered to stand part of the Bill.*

*Clause 4 reintroduced.*

**Sen. Deyalsingh:** Chair, I think that Sen. Moheni has a very erudite statement to make on this point.

**Madam Chairman:** I am sure if Sen. Moheni wishes to contribute he will do so.

**Sen. Ramlogan SC:** He passed his note to me. I will deal with it.

**Sen. Ramkhelawan:** Chair, while the deliberations are going on, and just for the benefit of the Attorney General, under 17—Attorney General?

**Sen. Ramlogan SC:** Yes, Sir?

**Sen. Ramkhelawan:** If I may crave your indulgence, under the Financial Institutions Act 17(2) definition, “business of a financial nature” means—did you find it?

**Sen. Ramlogan SC:** Yes. Yes.

**Sen. Ramkhelawan:** Okay, good.

**Sen. Ramlogan SC:** You are correct it says—“business of a financial nature” is specifically defined.

**Sen. Howai:** But this would fall under business of a financial nature in the mutual funds. Is it what you are saying?

**Hon. Senator:** No.

**Sen. Howai:** What are you saying?

**Sen. Ramkhelawan:** This would fall outside. [*Crosstalk*]

**Sen. Ramlogan SC:** Let us send our proposed formulation to you.

**Sen. Bharath:** Definition of the financial intermediary:

“financial intermediary” means a financial institution as defined under section 2 of the Financial Institutions Act, a credit union registered under the Cooperative Societies Act or any other institution approved by the Treasury for the purpose of Part IV.

**Sen. Ramkhelawan:** So, you are taking out mutual funds?

**Sen. Bharath:** Only because mutual funds are—[*Interruption and crosstalk*] what I have been advised is that “approved by the Treasury” will include whichever institutions you wish to bring in which would be credit unions and mutual funds.

**Sen. Ramkhelawan:** No. The thing is you have embedded in the law the approval of credit unions. Why are you discriminating against any other player by not including them at this point in time?

**Sen. Drayton:** What about the foreign financial institutions?

**Sen. Ramkhelawan:** Because if you want to do it that way, why do you not say financial institutions or any other institution approved by the Treasury. Because we know financial institutions must be there. You agree?

**Sen. Bharath:** I agree.

**Sen. Ramkhelawan:** Okay. Well, let us go with that.

**Sen. Bharath:** So, financial intermediary means:

...a financial institution as defined under section 2 of the Financial Institutions Act or any other institution approved by the Treasury for the purpose of Part IV.

Yes?

**Sen. Ramkhelawan:** Fine enough.

**Sen. Drayton:** Sorry, or any other institution or any other financial institution? No? Institution?

**Sen. Bharath:** Any other institution.

**Sen. Drayton:** Okay. [*Crosstalk*]

**Madam Chairman:** Minister, you also had the definition of “department” and the other areas under the amendments here. Under clause 4 you had four circulated. So we have other amendments to deal with before I put the question. You have to look at the definition of “department”.

**Sen. Ramlogan SC:** Yes, we have that. [*Crosstalk*]

**Madam Chairman:** Perhaps you could read it out.

**Sen. Bharath:** Department includes:

A Ministry, Parliament, a Joint Select Committee of Parliament or a committee of either House of Parliament, the Court of Appeal, the High Court, the Industrial Court, the Tax Appeal Board or any court of summary jurisdiction, a department of Government not under ministerial control.

**Madam Chairman:** We are inserting that given definition under “financial institution”?

**Sen. Bharath:** No, that is under—[*Interruption*]

**Madam Chairman:** No, I am looking at the circulated amendments, (d), are we still going with (d)? Because (c), we have dealt with “financial intermediary”?

**Sen. Bharath:** Right.

**Madam Chairman:** And (d)—[*Interruption*]

**Sen. Bharath:** What I have just handed you there is (b) and that goes:

...department includes (a) a Ministry or, (b), and then current (b) becomes (c).

**Madam Chairman:** I am looking at the Bill, under another “financial intermediary” there is another definition of “financial institution”.

**Sen. Bharath:** We will have to delete.

**Madam Chairman:** So that is what I am asking you, we are deleting—[*Interruption*]

**Sen. Ramlogan SC:** Delete a subhead.

**Madam Chairman:** That is what I am asking. The question is that clause 4 be amended as circulated and further amended by the definition:

“financial intermediary” means a financial institution as defined under section 2 of the Financial Institutions Act or any other institution approved by the Treasury for the purpose of Part IV.

Deleting the definition of “financial institution” and changing—*[Interruption]* So, we are deleting the words “financial institution” in the definitions?

**Sen. Bharath:** Financial intermediary.

**Madam Chairman:** We are not deleting that?

**Sen. Bharath:** And you are replacing it with the new definition.

**Madam Chairman:** Right! I said that. Are you keeping the definition of “financial institution”?

**Sen. Bharath:** Yes, we are.

**Madam Chairman:** All right. Okay. And “foreign financial institution” goes where? Or are you deleting the proposed (d)?

**Hon. Senator:** (c).

**Madam Chairman:** (d) is proposed that we include the words “foreign financial institution”.

**Hon. Senators:** Yes. Yes.

**Madam Chairman:** But where?

**Sen. Al-Rawi:** In its appropriate position. It is just before “information”.

**Sen. Ramlogan SC:** Just before “information”, after “financial institution.”

**Sen. Al-Rawi:** On page 3.

**Sen. Bharath:** They are saying they do not need it again.

**Madam Chairman:** Because then the financial institutions are covered under the Treasury purposes of approved by the Treasury.

**Sen. Ramlogan SC:** If the Comptroller is saying she does not need it, that is fine.

**Madam Chairman:** Okay. So, clause (d) is not included. We are also changing the definition of “department” to read:

“department” includes—

- (a) A Ministry;
- (b) Parliament, a Joint Select Committee of Parliament or a Committee of both Houses of Parliament?

**Hon. Senator:** Either House.

**Madam Chairman:** Either House of Parliament:

- (c) The Court of Appeal, the High Court, the Industrial Court, the Tax Appeal Board or any court of summary jurisdiction; and
- (d) A department of Government not under ministerial control.

**Sen. Ramlogan SC:** Just re-read that for me, please.

**Madam Chairman:** Sure. Department includes:

- (a) A Ministry;
- (b) Parliament, a Joint Select Committee of Parliament, or a committee of either House of Parliament;
- (c) The Court of Appeal, the High Court, the Industrial Court, the Tax Appeal Board or any court of summary jurisdiction; and
- (d) A department of Government not under ministerial control.

Yes?

**9.30 p.m.**

**Sen. Al-Rawi:** That Act was what was based on the Electronic Transactions Act essentially. Got you. The first three, (a), (b) and (c) of section 2 of the ETA. Just for clarification, “financial institution”, insofar as section 2 of the FIA, says it is just a company that was involved in banking. That would take care of the foreign financial institution. Correct? Because it is regardless of jurisdiction, is that why?

**Sen. Ramlogan SC:** It is covered by “Approved by the Treasury”

**Sen. Al-Rawi:** My point is that it is not a combination effect to exclude foreign institutions, then. That is what I want to be sure of.



**Sen. Ramlogan SC:** No.

**Madam Chairman:** It would include because of the definition “as long as they are approved by the Treasury”. That is their definition here.

**Sen. Al-Rawi:** You know that we have had issues with institutions that are not licensed but yet still have moneys. Are we excluding that? Sometimes there is a debate as to lack of registration being an ouster to the issue; yet the moneys are still bona fide then the transaction can prevail. So the question is: are we unwittingly excluding them?

**Madam Chairman:** Then the bulk of companies that you have to deal with in this case.

**Sen. Bharath:** It says as approved by Treasury, but—

**Sen. Ramlogan SC:** As approved by the Minister, not Treasury.

**Sen. Al-Rawi:** The Treasury is the Minister.

**Sen. Ramlogan SC:** Treasury means Minister?

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

**Sen. Ramlogan SC:** Well that is fine, then.

**Sen. Al-Rawi:** Under the parent Act, section 2.

**Sen. Bharath:** I get the impression that it may only cover foreign institutions that are registered in Trinidad and Tobago.

**Sen. Al-Rawi:** We do have jurisdiction. Jurisdiction may be voluntarily acquired. That is the bit I did not hear.

**Sen. Bharath:** “And any other institution approved by the Minister.”

**Sen. Al-Rawi:** That is the bit I did not hear in what was read out and that would make the difference.

**Sen. Bharath:** He will determine what stays in and what stays out.

*Clause 4, as amended, ordered to stand part of the Bill.*

**Sen. Al-Rawi:** Madam Chairman, is there anything in there that greets Sen. Ramnarine in wishing him a happy birthday today? Just to put it on the record.

**Sen. Dr. Bernard:** Chair, I am a little inquisitive. It would not be too long, but I would like to ask the Attorney General that we did not take into account the role of the Banking Ombudsman. I read somewhere that in the UK, the Banking Ombudsman and not the courts has the burden of proving that the ATM machine was not at fault in a matter involving the court and rather having the court involved in what one would consider simple matters as investigating whether an ATM machine really did what it was supposed to do, that that matter was passed to the Banking Ombudsman.

**Sen. Ramlogan SC:** Senator, I want to thank you for that rather excellent point and no doubt due consideration will be given to it in the drafting of the regulations as to how one would prove those matters.

*Question put and agreed to:* That the Bill, as amended, be reported to the Senate.

*Senate resumed.*

*Bill reported, with amendments, read the third time and passed.*

#### ADJOURNMENT

**The Minister of the Environment and Water Resources (Sen. The Hon. Ganga Singh):** Madam Vice-President, I wish to take this opportunity to wish our colleague, the hon. Minister of Energy and Energy Affairs, a happy 41st birthday. [*Desk thumping*] You can recognize that he spent the greater part of the day engaged in public service and public duty. [*Desk thumping*]

In that light, I beg to move that this Senate do now adjourn to Tuesday, February 26, 2013 at 1.30 p.m. and we will continue the debate on the Private Members' Motion moved by Sen. Fitzgerald Hinds.

*Question put and agreed to.*

*Senate adjourned accordingly.*

*Adjourned at 9.37 p.m.*