

*Leave of Absence**Tuesday, June 24, 2014***SENATE***Tuesday, June 24, 2014*

The Senate met at 11.30 a.m.

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

Mr. Vice-President: Hon. Senators, I wish to advise that the President of the Senate, Sen. The Hon. Timothy Hamel-Smith is out of the country. Hon. Senators, leave of absence has been granted to the following Senators who are all out of the country: Sen. The Hon. Gary Griffith, Sen. The Hon. Raziah Ahmed, Sen. Dr. Lester Henry and Sen. Rev. Joy Abdul-Mohan.

SENATORS' APPOINTMENT

Mr. Vice-President: Hon. Senators, I have received the following correspondence from His Excellency the President, Anthony Thomas Aquinas Carmona, S.C., O.R.T.T.:

“THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

By His Excellency ANTHONY THOMAS AQUINAS
 CARMONA, O.R.T.T., S.C., President and
 Commander-in-Chief of the Armed Forces of
 the Republic of Trinidad and Tobago.

/s/Anthony Thomas Aquinas Carmona O.R.T.T. S.C.
 President

TO: ARCHBISHOP BARBARA BURKE

WHEREAS Senator the Honourable Timothy Hamel-Smith is incapable of performing his duties as a Senator by reason of his absence from Trinidad and Tobago:

NOW, THEREFORE, I, ANTHONY THOMAS AQUINAS CARMONA, President as aforesaid, in exercise of the power vested in me by section 44(1)(a) and section 44(4)(a) of the Constitution of the Republic of Trinidad and Tobago, do hereby appoint you, BARBARA BURKE, to be temporarily a member of the Senate, with effect from 24th June, 2014 and continuing during the absence from Trinidad and Tobago of the said Senator the Honorable Timothy Hamel-Smith.

Senators' Appointment

Tuesday, June 24, 2014

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 23rd day of June, 2014."

"THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

By His Excellency ANTHONY THOMAS AQUINAS CARMONA, O.R.T.T., S.C., President and Commander-in-Chief of the Republic of Trinidad and Tobago.

/s/Anthony Thomas Aquinas Carmona O.R.T.T. S.C.
President.

TO: MS. ASHAKI SCOTT

WHEREAS Senator the Honourable Gary Griffith is incapable of performing his duties as a Senator by reason of his absence from Trinidad and Tobago:

NOW, THEREFORE, I, ANTHONY THOMAS AQUINAS CARMONA, President as aforesaid, in exercise of the power vested in me by section 44(1)(a) and section 44(4)(a) of the Constitution of the Republic of Trinidad and Tobago, do hereby appoint you, ASHAKI SCOTT, to be temporarily a member of the Senate, with effect from 24th June, 2014 and continuing during the absence from Trinidad and Tobago of the said Senator the Honourable Gary Griffith.

Given under my Hand and the Seal of the President of the Republic of Trinidad and Tobago at the Office of the President, St. Ann's, this 23rd day of June, 2014."

"THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

By His Excellency Anthony Thomas Aquinas Carmona, O.R.T.T., S.C., President and Commander-in-Chief of the Armed Forces of the Republic of Trinidad and Tobago.

/s/Anthony Thomas Aquinas Carmona O.R.T.T. S.C.
President

Senators' Appointment

Tuesday, June 24, 2014

TO: MR. LARRY LALLA

WHEREAS Senator the Honourable Raziah Ahmed is incapable of performing her duties as a Senator by reason of her absence from Trinidad and Tobago:

NOW, THEREFORE, I, ANTHONY THOMAS AQUINAS CARMONA, President as aforesaid, in exercise of the power vested in me by section 44(1)(a) and section 44(4)(a) of the Constitution of the Republic of Trinidad and Tobago, do hereby appoint you, LARRY LALLA, to be temporarily a member of the Senate, with effect from 24th June, 2014 and continuing during the absence from Trinidad and Tobago of the said Senator the Honourable Raziah Ahmed.

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 23rd day of June, 2014."

“THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

By His Excellency ANTHONY THOMAS AQUINAS CARMONA, O.R.T.T., S.C., President and Commander-in-Chief of the Armed Forces of the Republic of Trinidad and Tobago.

/s/Anthony Thomas Aquinas Carmona O.R.T.T. S.C.
President.

TO: MR. FOSTER CUMMINGS

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

NOW, THEREFORE, I, ANTHONY THOMAS AQUINAS CARMONA, President as aforesaid, in exercise of the power vested in me by section 44(1)(a) and section 44(4)(b) of the Constitution of the Republic of Trinidad and Tobago, do hereby appoint you, FOSTER CUMMINGS, to be temporarily a member of the Senate, with effect from 23rd June, 2014 and continuing during the absence from Trinidad and Tobago of the said Senator Lester Henry.

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 23rd day of June, 2014."

“THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

By His Excellency ANTHONY THOMAS AQUINAS
CARMONA, O.R.T.T., S.C., President and
Commander-in-Chief of the Armed Forces of
the Republic of Trinidad and Tobago.

/s/Anthony Thomas Aquinas Carmona O.R.T.T. S.C.
President

TO: DR. SHARON BEVERLEY LE GALL

WHEREAS Senator Rev. Joy Evelyn Abdul-Mohan is incapable of performing her duties as a Senator by reason of her absence from Trinidad and Tobago:

NOW, THEREFORE, I, ANTHONY THOMAS AQUINAS CARMONA, President as aforesaid, in exercise of the power vested in me by section 44(1)(a) and section 44(4)(c) of the Constitution of the Republic of Trinidad and Tobago, do hereby appoint you, Sharon Beverley Le Gall, to be temporarily a member of the Senate, with effect from 24th June, 2014 and continuing during the absence from Trinidad and Tobago of the said Senator Rev. Joy Evelyn Abdul-Mohan.

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 23rd day of June, 2014”

OATH OF ALLEGIANCE

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

Abp. Barbara Burke, Ashaki Scott, Larry Lalla, Foster Cummings and Dr. Sharon Beverley Le Gall.

PAPER LAID

Annual Report on the Management of the Activities Financed by the Green Fund for the Financial Year ended September 30, 2013. [*The Minister of the Environment and Water Resources (Sen. The Hon. Ganga Singh)*]

JOINT SELECT COMMITTEE REPORT

**Ministries, Statutory Authorities and State Enterprises (Group 1)
Housing Development Corporation
(Presentation)**

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

Ninth Report of the Joint Select Committee on Ministries, Statutory Authorities and State Enterprises (Group 1) on the Administration and Operations of the Housing Development Corporation.

ORAL ANSWERS TO QUESTIONS

The Minister of the Environment and Water Resources (Sen. The Hon. Ganga Singh): Mr. Vice-President, the Government, as is the practice when we have guests from the other place give them the opportunity to answer questions. So, we have questions and we are prepared to answer questions 81, 91 and 103.

11.45 a.m.

Sen. Robinson-Regis: Mr. Vice-President, the Minister indicated that they would answer 81, 91, and 103. We will ask, in the absence of Sen. Avinash Singh, if that can be deferred until he returns, please?

Sen. The Hon. G. Singh: Thank you, Mr. Vice-President. We are prepared to defer because the hon. Minister of Transport is here, but we are prepared to bring him back on another occasion, with the agreement.

Sen. Robinson-Regis: Yes, we agree.

Sen. The Hon. G. Singh: Let us proceed.

The following questions stood on the Order Paper:

**Contract WTC 197/2011 by WASA
(Details of)**

- 69.** A. Would the hon. Minister of the Environment and Water Resources indicate whether an investigation has been launched into allegations of bid-rigging, in respect of Contract WTC 197/2011 issued by WASA, in the sum of approximately \$70 million dollars?
- B. Would the Minister indicate the status of this investigation, if indeed, one is ongoing?
- C. Would the Minister confirm whether this allegation of bid-rigging, or any related conduct, was reported to either the Auditor General, the Integrity Commission or to the police?
- D. If the answer to C is affirmative, would the Minister indicate when was/were this/these report(s) made and what is the status of this/these report(s)?

- E. If the answer to C is negative, would the Minister say why no report was made and further indicate whether there is any plan or intention to do so? If so, when?
- F. Would the Minister also indicate whether the person or persons who was/were suspected to be involved in this matter is/are still in office or whether such person or persons has/have been suspended, pending the outcome of this investigation?
- G. Would the Minister further indicate what interim measures, if any, have been taken to protect the authority and the taxpayers of Trinidad and Tobago from the type of conduct that brought about these allegations and investigation?
- H. Would the Minister provide the names of the companies which bid for the said contract and which company actually emerged as the awardee, in the process now under investigation?
- I. Would the Minister say whether this contract award is the subject of any court proceedings? [*Sen. C. Robinson-Regis*]

**Colour Me Orange Programme
(Funds Expended)**

- 78. A. Would the hon. Minister Housing and Urban Development indicate what amounts of the Government's figure of \$73,568,637.50 expended on the now defunct "Colour Me Orange Programme" was specifically spent on (i) Equipment, (ii) Materials (iii) Security; and (iv) Salaries and Emoluments in both actual and percentage terms?
- B. Would the Minister indicate what plans are in place to generate further employment in the communities from which the "Colour Me Orange" programme was withdrawn and discontinued?
- C. Would the Minister explain why the government's targets of this programme of a \$300 million expenditure and the creation of 20,000 jobs, as outlined by the Prime Minister were not achieved? [*Sen. C. Robinson-Regis*]

Atrius
(Details of)

87. With regard to Atrius, could the hon. Minister of Finance and the Economy inform the Senate:

- (i) what is the status of Atrius;
- (ii) what are the impediments to the transferring of the assets from CLICO to this new entity; and
- (iii) what activities has the Board of Directors of Atrius been engaged in and are they being paid? [*Sen. Dr. L. Henry*]

VMCOTT
(Details of)

91. With respect to the Vehicle Management Corporation of Trinidad and Tobago, could the hon. Minister of Transport please inform this Senate as to:

- a) whether the CEO contract at VMCOTT was terminated by the new Chairman of the Board;
- b) if the answer to (a) is in the affirmative, on what basis was it done;
- c) whether the Chief Operating Officer position at VMCOTT was an existing position prior to 2010;
- d) whether the Chairman of VMCOTT is an Executive Chairman; and
- e) have the Managers at VMCOTT met the minimum qualifications for their positions? [*Sen. A. Singh*]

Solomon Hochoy Highway
(Details of Surveillance Bays)

100. Could the hon. Minister of National Security inform this Senate on:

- (a) the number of surveillance bays currently installed on the Solomon Hochoy Highway and their exact locations;
- (b) whether a maintenance contract exists for routine upkeep and, if so, the name of the contractor to whom such was awarded; and
- (c) if the answer to (b) is in the affirmative the cost per month of the contract? [*Sen. D. Baldeo-Chadeesingh*]

**National Academy for the Performing Arts (NAPA)
(Details of)**

102. In relation to the National Academy for the Performing Arts (NAPA), could the hon. Minister of Arts and Multiculturalism inform the Senate:

- (a) which Ministry/Department has oversight responsibility for health, safety and maintenance of the 3 functional areas at the National Academy for the Performing Arts (NAPA), specifically: (i) the Auditorium; (ii) the Academy; and (iii) the Hotel;
- (b) which Ministry/entity is responsible for handling maintenance of the complex as a whole or, if such responsibility falls separately, then who is responsible for handling maintenance in respect of each of the 3 functional areas;
- (c) are formal inspections carried out and, if so, by whom and how often;
- (d) is there a maintenance operations guide or any controlling policy in respect of maintenance and support designed to maximize the performance of the complex; in particular as regards routine repair or maintenance; and as regards preventative maintenance routines;
- (e) is there a help-line support facility available to occupiers or users of the buildings for the purposes of reporting equipment malfunctions and failures or as regards areas or aspects of the building in need of maintenance, repair or adjustment;
- (f) who is required to respond and what is the typical response time; and
- (g) if third party maintenance is used, how is the provider selected and is there a standard maintenance and support agreement? [*Sen. A. Vieira*]

Questions, by leave, deferred.

**Sinkhole along the Beetham Highway
(Details of)**

81. Sen. Camille Robinson-Regis asked the hon. Minister of Works and Infrastructure:

- A. Would the Minister indicate the name(s) of the firm(s) which undertook road works on behalf of the Ministry to refill and repair the sinkhole which developed along the Beetham Highway, in the vicinity of Sea Lots on September 6th, 2012?

- B. Would the Minister briefly describe the nature and the cause of this problem?
- C. Would the Minister indicate the total cost of repairs to this piece of infrastructure and the source of the funds utilized to meet this cost?
- D. Would the Minister further indicate the action taken to ensure that this mishap never recurs?
- E. Would the Minister also indicate whether a technical report was prepared in respect of this problem? And if so, by whom?

The Minister of Works and Infrastructure (Hon. Dr. Surujrattan Rambachan): Thank you, Mr. Vice-President. Mr. Vice-President, the question is in five parts, and the first part asks: whether the Minister would indicate the name of the firm which undertook road works on behalf of the Ministry to refill and repair the sinkhole which developed along the Beetham Highway in the vicinity of Sea Lots on September 06, 2012?

Mr. Vice-President, Jusamco Pavers Limited undertook the said works on behalf of the Ministry of Works and Infrastructure which involved refilling and repairing the sinkhole which had developed along the Beetham Highway near Sea Lots over the period September 05 and September 06, 2012.

The second part of the question asks me to briefly describe the nature and cause of this problem.

Mr. Vice-President, on September 05, 2012 at approximately 1.20 p.m. there was an incident on the Beetham Highway in the vicinity of the lighthouse. The incident described as a sinkhole, three metres in diameter, appeared on the west-bound carriage 200 metres east of the lighthouse in an area where WASA had recently carried out repairs. After the site was thoroughly excavated by Jusamco Pavers Limited, it was discovered that contractors, acting on behalf of WASA, had destroyed the underground culvert during one of their repairs approximately one week before the incident.

The third part of the question seeks to find out the total cost of the repairs to this piece of infrastructure, and the source of funds utilized to meet this cost. In November 2012, payment in the sum of \$6.693 million was made to Jusamco for completion of emergency works undertaken as a result of the collapsed culvert crossing the Beetham Highway approximately 200 metres east of the Port of Spain lighthouse. The source of funds utilized was from the Ministry of Works and Infrastructure, Highways Division, fiscal year 2012/2013, Head 69, Ministry of Works and Infrastructure, sub head 02/002/28—Other Contracted Services.

The question also seeks to find out whether any further action was taken to ensure that such a mishap never recurs.

Mr. Vice-President, the Ministry of Works and Infrastructure, Highways Division, instituted a system ensuring that all contractors have to seek the authorization from the Highways Division before works commence. Further, the Highways Division has been strengthening the utilities unit within the division by increasing the number of personnel, thus increasing the supervisory capacity of the unit. This unit deals with the assessment of utility works, ensuring that required standards and methodology are implemented.

In addition, the Ministry is holding discussions with the Ministry of Public Utilities with respect to the establishment of a memorandum of understanding between both parties to ensure that systems and procedures are in place before roadworks are in fact undertaken or before WASA does any work at all. As late as last week we met with WASA once more on that.

And finally, whether a technical report was prepared in respect of this problem; if so by whom? Yes. A technical report on the collapsed culvert crossing the Beetham Highway, approximately 200 metres east of the Port of Spain lighthouse, was prepared by the Highways Division, Ministry of Works and Infrastructure.

In fact, Mr. Vice-President, there are several culverts crossing the Beetham Highway for which technical reports have been provided, and a couple of those, in fact, culvert crossings are in danger of collapsing even as we speak here today, and the Ministry will be undertaking work very soon on some of them. Thank you, Mr. Vice-President. [*Desk thumping*]

Sen. Robinson-Regis: Thank you very much, Mr. Vice-President. Supplemental to the Minister. Mr. Vice-President, I noticed that the amount paid is very similar to the cost of retrieving a fire truck, but I wanted to know whether the MoU that the Minister indicated has been completed, or how soon it would be completed to avoid something like this happening again?

Hon. Dr. S. Rambachan: Mr. Vice-President, the MOU is in the process of being negotiated, and will be completed in short time.

Mr. Vice-President, this matter of the culvert collapsing, unfortunately it happened because work was being undertaken by WASA, but for a number of years culverts have not been maintained, as a whole, in terms of those that are crossing the Beetham Highway. And just to inform this honourable House, and by

extension the public, that to fix any one of those culverts, it is estimated will cost between nine and eleven million dollars because this is very serious work that has to be undertaken, and it will involve digging up the Beetham Highway, and in fact, replacing all these culverts altogether. This is major infrastructural work. So that when something like this happens, it is going to cost money in order to get it rectified.

Sen. Robinson-Regis: Further supplemental, Mr. Vice-President. In light of what the Minister just indicated, would the Minister indicate how soon these maintenance works will start taking place? And given the fact that the MOU is not quite ready, and two years have already passed, is there an intention to expedite the MOU?

Hon. Dr. S. Rambachan: Let me answer first on the question of the relationship between the Ministry of Public Utilities and the Ministry of Works and Infrastructure. We have an interministerial committee which involves both Ministers and others and we meet on a regular basis in order to ensure that there is coordination in terms of the works that are going on. That is why you are seeing less and less of situations where WASA would come and do work after the Ministry's works or vice versa. So we have been able to control that, despite the fact that this MOU has not been completed. But as I have said, up to last week we met with respect to a whole new series of paving projects that are going to be undertaken.

For example, in Bhagwansingh Street in my own constituency, we are about to pave that road, but WASA is changing all the lines first, and then there will be a period when the lines will be tested. So that when we come in to pave we will be sure that the lines are properly, pressure tested, and that no leaks would occur and we would not have to dig it back. And that is the kind of protocol we are using in order to ensure that we do fall into this situation.

With respect to dealing with the culverts on the Beetham that need to be repaired, we have put in place, you know, the plans to do that, including the traffic plans so that we would not be affecting the public in any significant way, although there will be some kind of displacement. But those works, we estimate, will start in the new fiscal year with the new budget.

**Regional Health Authorities Collective Agreement
(Details of)**

103.Sen. Dr. Victor Wheeler asked the hon. Minister of Health: Could the Minister state:

- A. What was the date of the last completed signed collective agreement for salary and other terms and conditions of service between the Regional Health Authorities in Trinidad and the doctors' representatives?
- B. What time period was covered by this collective agreement?
- C. If any proposals for a new collective agreement were received by the Ministry of Health or any of the Regional Health Authorities in Trinidad from the doctors' representatives?
- D. If the answer to the above is yes, what was the date that these proposals were received?
- E. Have negotiations started for a new collective agreement between the doctors' representatives and the RHAs?

The Minister of Health (Hon. Dr. Fuad Khan): Thank you, Mr. Vice-President. [*Desk thumping*] The answer to part A of the question is August 01, 2008.

The answer to part B of the question, the period 2006 to 2008.

The answer to part C, a new collective agreement was received from the doctors' representatives.

Part D, the proposals were received in January 2009, and a new proposal was received around September last year.

And part E, there have been preliminary meetings between the joint negotiating team and the doctors. Thank you, Mr. Vice-President.

Sen. Dr. Wheeler: Thank you. Minister, could you say if the taxation exemptions that doctors enjoy for the purchase of a new motor vehicle—cars—that they enjoyed for several years, and that was removed about a year ago, if that is going to be restored very soon? Or if there are plans to have that tax exemption restored to doctors?

Hon. Dr. F. Khan: Okay. That is off this negotiated question. Because the negotiations are taking place to deal with the tax exemption, but in a way I am very glad you have raised it. That tax exemption existed for all travelling officers

who were public officers over the last—since 1994, since the RHAs were formed. However, for no apparent reason, approximately two years ago the CPO just removed that from the RHA doctors; and one questions the reason why and the motive. However, I have been speaking with the Minister of Finance and the Economy to find a way for the doctors in the RHAs and the travelling officers, which are the nurses, et cetera, to get parity which they are entitled to, based on the CPO's recommendations throughout the system. So, we are working on a plan to restore that, whether or not the negotiations take care of it or not.

Sen. Dr. Wheeler: Further supplemental. Minister, I know you may not be involved in the negotiations, but do you have an estimated time frame by which you are expected that it will be completed because many of the doctors are quite anxious for this to be resolved, as it has been several years outstanding?

Hon. Dr. F. Khan: One of the representatives, together with the Chief Medical Officer, we have been working on a different plan to develop a system in the RHAs where we could have a category of staff that will work full time in the RHA system, consultants, et cetera, and we are hoping to remunerate them adequately.

Also, we are looking at the fact that there are shortages of specialists, specialist nurses, et cetera, and pharmacists, and we are looking to see if we could bring that into the negotiation loop, where we could develop a cadre of professionals that will stay permanently in the RHA system, be remunerated properly and at the same time have no private practice. So that is what we are looking at. Hopefully that should be done very soon because we have laid it before Cabinet.

Sen. Al-Rawi: Further supplemental, hon. Minister. Thank you. May I enquire, hon. Minister, insofar as there is only one representative entity and then others in part representing the RHAs—in other words than, it is in a state of disarray as to representation for medical practitioners per se—is it that the terms and conditions that are being considered right now will apply across the board and enure to the benefit of all RHA personnel?

Hon. Dr. F. Khan: To answer you on that—it is not in disarray. The representatives are in the South-West Regional Authority as a main body, but it exists throughout the system, and parity is equal throughout the system, but it is a lot better.

Sen. Al-Rawi: Further supplemental. Hon. Minister, I am very concerned—and I thank you for giving us the answer, albeit outside of the context of the question—about the statement of the removal of a benefit to an employee, to a worker in terms of the Industrial Relations Act which is not done without consent. That in law stands as a breach of the law. Can any positive step be taken to cure that serious consequence?

Hon. Dr. F. Khan: I am very glad that you asked because positive steps are being taken to cure that; exactly what you have indicated. Well, we have been asking which direction to take because we were a bit surprised that it was removed ad hoc, over the board, in one go. However, it stayed on from 2001 to 2010, and then it was just removed. So, we are trying to find a way around that to see how best we could give the benefits back to the travelling officers, which they so deserve.

Sen. Al-Rawi: Thank you, hon. Minister. It was a claim at the Industrial Court filed in this regard by the employer in those circumstances, the Ministry being concerned to get this situation right, and that stands as a breach of the law. Was any approach made to the Industrial Court for assistance in that regard?

Hon. Dr. F. Khan: Sen. Al-Rawi, as you are quite aware this is a Parliament and I cannot give an answer that I do not know. So, I think you should file another question because I would not like to make recommendations on that.

Sen. Al-Rawi: Further supplemental. Hon. Minister, is the issue of overtime pay for doctors at the Port of Spain General Hospital being considered in these negotiations?

Hon. Dr. F. Khan: In these negotiations, as I mentioned, there are new parameters and everything is being considered: overtime pay, overtime allowances, different categories of staff, et cetera, and full-time consultants versus the part-time and partial consultants, and registrars, et cetera. So it is a new package that we are looking at.

Sen. Al-Rawi: Hon. Minister, thank you. In terms of the amendments which you did to the RHA Act, I believe it was a year or two years ago, which would have allowed us the benefit of using one specialty service provider across RHAs, is that mechanism to be taken in on board in these negotiations as well—that is, the cross RHA operability of professionals?

12.00 noon

Hon. Dr. F. Khan: That could only occur when the RHAs become one body. However, we are trying to work with the contracts to be written in such a manner that consultants and doctors whose specialities are needed throughout the system can be mobile together with their remuneration as well as whatever salary that they do get. Right now it is now cut into certain parts. They do not have that mobility.

Sen. Al-Rawi: Thank you, hon. Minister. You would be aware that we passed law under your hand, under your piloting to the RHA Act which specifically made the RHAs one in terms of the provision of services, is it that there is something else going on? Is it that this has not been implemented yet?

Hon. Dr. F. Khan: I am very glad you said two years, because, usually contracts are three years. So, at the end of the contract period we can then change the contracts to suit what we did in the legislation. Right now the contracts that were signed are still ongoing. So, new contracts would take the new legislation into consideration.

Sen. Al-Rawi: So, the law has not been operationalized yet because of the limitations on the contract expiry then? Is it that?

Hon. Dr. F. Khan: What you are saying is goods and services. You are just talking about services. We have been dealing with the law with goods as well as certain services. You are defining one service which is that of doctors, but there are other services that we have used the Act for, as well as goods.

Sen. Al-Rawi: Hon. Minister, is it the Ministry of Labour that is participating in piloting these negotiations, or is it the Ministry of Health that is the new model?

Hon. Dr. F. Khan: It is between the Ministry of Health and the Ministry of Finance and the Economy.

STATEMENT BY MINISTER

Agricultural Sector (Creation of a Food-Secure Nation)

The Minister of Food Production (Sen. The Hon. Devant Maharaj): [*Desk thumping*] Thank you very much, Mr. Vice-President. I am honoured once again to rise in this Chamber to deliver a statement on the agricultural sector just following our Corpus Christi observance.

Mr. Vice-President, this affirms the People's Partnership commitment to agriculture as we work towards the creation of a food-secure nation, one of the major goals of this administration. The agricultural sector previously suffered from a lacklustre performance of a recurrent and neglected nature. Initiatives were ad hoc at best and aimless, leaving our nation in a state of food insecurity. Under this administration with the same resources and personnel, there has been a considerable turnaround. This is attributed to the concerted actions based upon the People's Partnership belief that agriculture, with the right policy framework, a targeted focus and identified challenges and encouragement to farmers, can make a huge contribution to economic growth.

Statement by Minister
[SEN. THE HON. D. MAHARAJ]

Tuesday, June 24, 2014

Mr. Vice-President, as such, the agricultural sector guided by the National Performance Framework, 2012—2015 and the National Food Production Action Plan, 2012—2015, the Ministry of Food Production has been working assiduously to reduce the food import bill, further reduce inflation primarily driven by food process, create sustainable long-term productive employment, contribute to diversification of the economy, and increase the country's food security. Thus far, the Ministry of Food Production has been able to achieve a number of unprecedented feats in terms of the agricultural sector performance.

There has been a 77 per cent increase in the contribution of agriculture to GDP from 2009 to 2013 [*Desk thumping*] and a 2 per cent reduction in the food import from 2010 to 2013. [*Desk thumping*] In September 2013, the food price inflation rate experienced a 24-month low of 3 per cent, falling sharply from 13.8 per cent in January 2013. [*Desk thumping*] Additionally, in February of this year I apprised the House of the growth of the agricultural sector. At the time provisional data obtained from the Central Bank of Trinidad and Tobago on the quarterly gross domestic product, showed that the agricultural sector for the first time in 40 years experienced five consecutive quarters of growth from the first quarter of 2012 to the first quarter of 2013. [*Desk thumping*]

Mr. Vice-President, two months ago, in April, I delivered a statement on the Government's success in the reduction of food inflation. At that time, data from the Central Statistical Office revealed that food inflation remained single digit for January and February at 3.2 per cent and 5.2 per cent respectively. I lauded some of the drivers of growth in the agricultural sector which included:

- the \$1.9 billion allocation that was made to the sector in the national budget;
- the Caroni green initiative;
- the strengthening of agriculture infrastructure across farming communities;
- unprecedented public/private sector initiative; and
- revamping and restructuring of the Agricultural Incentive Programme.

I also delivered a statement last month where I cleared the air on the issue of the Felicity 3 official land assignment. Today, Mr. Vice-President, I am elated to announce that the food inflation rate, as calculated by the Central Bank of Trinidad and Tobago, has reminded single digit for April 2014. For January 2014 it was 3.2 per cent; for February 2014, 5.2 per cent; for March 2014, it was 6.7 per

Statement by Minister

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cent and for April 2014, the rate came in at 4.1 per cent. That signifies another unprecedented and landmark achievement of the Ministry of Food Production. For the first time in 21 years, Trinidad and Tobago's food price inflation remained single digit for the first four consecutive months of the year. [*Desk thumping*]

Furthermore, under the former administration the food inflation rate, for the first quarter of 2009, read a dangerous high of 25.4 per cent. Conversely, under this administration, the average food inflation rate for the first quarter of 2014 read a significant low of 4.8 per cent. What this empirically demonstrates, Mr. Vice-President, is the performance and delivery of the Ministry of Food Production under the hon. Kamla Persad-Bissessar, the People's Partnership Government, [*Desk thumping*] and is a direct result of agriculture with the right policy framework, a targeted focus on identified challenges and encouragement to farmers.

Mr. Vice-President, the Ministry of Food Production's projections show a steady low average food inflation rate and continued positive growth in the agricultural sector for the remainder of this financial year. I wish to acknowledge the highly motivated and productive staff at the Ministry of Food Production for the work and dedication they continue to offer the people of the Trinidad and Tobago [*Desk thumping*] and I give you the assurance that this People's Partnership Government will continue to work towards making Trinidad and Tobago a more food-secure nation.

I thank you. [*Desk thumping*]

ARRANGEMENT OF BUSINESS

The Minister of the Environment and Water Resources (Sen. The Hon. Ganga Singh): Thank you, Mr. Vice-President. In accordance with Standing Order 20(4), I beg to move that the Senate consider Government Business instead of Private Business.

Question put and agreed to.

SPECIAL SELECT COMMITTEE REPORT

Planning and Facilitation of Development Bill, 2013

(Adoption)

[Second Day]

Order read for resuming adjourned debate on question [June 17, 2014]:

Be it resolved that the Senate adopt the Report of the Special Select Committee appointed to consider and report on a Bill entitled, "An Act relating to the Planning and Development of Land and to repeal and replace the Town and Country Planning Act, Chap. 35:01".

Question again proposed.

Mr. Vice-President: The list of those who previously spoke: Sen. The Hon. Dr. Bhoendradatt Tewarie, Minister of Planning and Sustainable Development, mover of the Motion; Sen. Faris Al-Rawi; Sen. Dr. Dhanayshar Mahabir; Sen. The Hon. Marlene Coudray; Sen. Stuart Young; Sen. Anthony Vieira; Sen. David Small; Sen. Diane Baldeo-Chadeesingh; Sen. Shamfa Cudjoe; Sen. Rev. Joy Abdul-Mohan; and Sen. The Hon. Dr. Bhoendradatt Tewarie, he has 39 minutes of original speaking time remaining. [*Desk thumping*]

Sen. The Hon. Dr. B. Tewarie: Mr. Vice-President, hon. Senators, on the last occasion I was making the point that while there was a deep yearning in the society for justice and fairness, there is also the disposition and propensity to undermine justice and fairness by manoeuvring for preferential treatment and beneficial advantage.

And if you insist on fairness and justice, the people who seek preferential treatment and beneficial advantage want to know what is wrong with you and who “yuh playing.” At the same time, people who apply rules in our society, many of them show little flexibility and sometimes little common sense. The end result is that we end up with abuse of office and the arbitrary exercise of power by officialdom against the ordinary citizen, who actually pays the salary of public officials, and this is the challenge of justice and fairness in our society: the tension between the arbitrary exercise of power and the insistence on breaking the rules to facilitate preferential treatment and personal advantage.

When the rules are broken to facilitate preferential treatment, that also represents an abuse of power, and such abuse of power can be prompted by love or by money or by some other inducement or even by the need to feel powerful, which is ego driven. And that is how corruption seeps into a system, eventually spreads and becomes first an option, then a habit of behaviour, and with the spread and entrenchment of habit, it becomes a feature of culture and then a cultural phenomenon in the society at large.

It is very difficult to fix a corrupt system when there are so many beneficiaries. There are those who argue that corruption emerges when systems become dysfunctional, and there might be some truth to that. But it is equally possible to make a good case that dysfunctionality can be facilitated by interested parties, so that corruption can thrive and grow and create illegal businesses and sources of income and opportunities for advantage where this did not exist before. So, the potential for justice and fairness is undermined by initiatives geared to create dysfunctionality in the system.

When I came into the Ministry of Planning and Sustainable Development on May 12, 2011, I had a backlog of 6,000-plus applications in Town and Country Planning. I had a backlog of appeals dating back to 2009; enforcement matters were statute-barred every day and we had literally four years of backlog of enforcement matters and few officers or resources to enforce. That is another way of building corruption into a system, under-resourcing, so you make the system dysfunctional and open the door to inducement, gaining practices and corrupt practices. You under-resource, you provide neither the skills in sufficient quantities nor the number of bodies required to support efficiency, service quality and the delivery of results. And that is why Sen. Cudjoe can tell her story of the queuing-up of citizens to be helped by a person in Town and Country Planning who is willing to help them for a fee.

12.15 p.m.

Sen. Cudjoe: To tell “a” story, not “her” story.

Sen. The Hon. Dr. B. Tewarie: There are more elaborate schemes that have come to my attention, but we have dealt with the built-in inefficiencies of the system by doing the following things and achieving the following results, while attrition has taken care of some of the main contributors to disfunctionality.

I take this opportunity to share with you some information which will reinforce in your own mind, general improvements made, and things actually achieved over the years of my tenure responsible for Town and Country Planning Division.

The first matter I wish to address is the fact that there has been a significant process reengineering at TCPD. Five years ago only one in four applications was processed within the statutory two-month period, and approximately one in three of all applications was refused. That is what existed. What we have done has caused a realignment of staff to reduce backlog of processing. We have a review process for potential refusals of planning permission. That is to say, if there is the likelihood of refusal it gets an immediate second review and we are proceeding, of course, with updating of policies and standards.

An internal review system has been implemented to ensure that all matters recommended for refusal are reviewed to ensure that applications are processed. Two, as the facilitation of good development and to minimize matters having to be appealed. As you know, the way the system worked, a person would try to push his application through Town and Country Planning even to the point of getting a refusal, so that they could quickly go to the process of an appeal.

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In terms of applications, between the period 2010 to 2013, Town and Country Planning had an overall total of 30,787 applications. A total of 29,555 or 96 per cent have been processed, 4 per cent pending. Of these applications reviewed and processed, 63 per cent have been approved. For the period January 2014 to April 2014, a total of 2,605 applications were received, with approximately 70 per cent being processed. Of the 70 per cent processed, 68 per cent were processed within two months, the statutory time, which is a marked improvement from the earlier 33 per cent or so, which dates back to about the middle of 2011. A backlog of approximately 3,710 applications was also dealt with during this period.

So that, at the present time, we have only about 50 applications that are pre-2014, in which we are trying to work with the clients, with the customers, with the citizens to find solutions, and in the 2014 period we are fairly much up-to-date, meeting the statutory requirements for two-month response to applications, and we are proceeding on that basis.

In terms of complex state projects, a total of 920 state projects were reviewed with 98 per cent being processed. Over 70 per cent of these applications had been approved with approximately 15 per cent being refused and returned undetermined because of various defects in the application process. State matters are those concerning the development of state projects undertaken by a state or a quasi-state agency and these matters are usually given high priority.

In terms of appeals for the period January to December 2013, the advisory town panel requested 326 reports from Town and Country Planning Division for matters being heard under its jurisdiction. I want to indicate that the appeals board has eliminated entirely its backlog up to 2013, and is only dealing with matters now that date 2014. [*Desk thumping*] The enforcement unit of Town and Country Planning was re-established in May 2013, with the recruitment of 12 enforcement officers, a total of 4,259 matters were assessed, and in order to move towards greater efficiency and effectiveness, approximately 2,327 matters were identified as requiring attention. Therefore, we eliminated over 2,000 of the matters that were simply hanging there. [*Desk thumping*]

A new mediation programme was also developed to assist the alleged offenders in complying with the requirements of the enforcement offices. So we not only issued the enforcement offices, we had a communication and mediation strategy. The Town and Country Planning also recorded the successful completion, two enforcement proceedings against one hotelier, and that resulted in a charge of \$800,000 payable to the Government of Trinidad and Tobago. We actually won the case.

In addition, three other alleged offenders complied with the steps required within the enforcement notice, by the demolition of the unauthorized structures and restoration of the building to its former use. The enforcement unit also deals with matters sent for attention from the office of the Ombudsman and other correspondence from other agencies and members of the public. I would say, as of now, of the matters inherited and evolving over time, and having to do with the last four years, we are not pursuing 50 per cent of the enforcement matters because they can be either resolved or are trivial, and the other 50 per cent we are proceeding—which is about 2,000 matters—on the basis of mediation; and if mediation will not work we are insisting on taking the matters to court. So we have been increasing efficiency, service delivery and minimizing the opportunities for corrupt practice or the arbitrary use of power.

I want to pay tribute to some of the people who have helped me and who have worked collaboratively with me to achieve this. First of all, to my Permanent Secretary, Mrs. Arlene McComie, who is a responsible, thoughtful professional and respected public servant who works diligently to find solutions. [*Desk thumping*] Secondly, to my Deputy Permanent Secretary, Mr. Clint Ramcharan, who in order to structure systems and deploy resources to address the backlog of challenges in Town and Country took direct responsibility for the project and worked with the leadership team of Town and Country Planning to make expeditious progress, and he is now working to improve ICT infrastructure and to facilitate ICT-based improvement, efficiency and effectiveness gains in Town and Country Planning.

I want to say special thanks to Stara Ramlogan, the Acting Director of Town and Country Planning Division, for the leadership she has always provided in anything asked of her no matter how challenging the circumstances. I want to recognize her strength, her resilience, her purposefulness and thoroughness and her commitment to her work, the Ministry and our country. I want to give recognition to her ability to deliver results and to be fair and just and sensitive to the aspiration of citizens, but firm when firmness is required.

I want to pay tribute to Marie Hinds, the Acting Assistant Director, Town and Country Planning Division, who was the constant and integrating link between Town and Country Planning and the National Planning Task Force, and who was a prime mover in the development of the national spatial strategy. This wonderful lady is a most valued member of the leadership team of Town and Country Planning.

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I also want to pay tribute to Clyde Wache, the second Acting Assistant Director, Town and Country Planning, for his steadfastness, his persistence and his willingness to go the extra mile to get the job done. And I take the opportunity to thank the Public Service Commission for settling the leadership issues in Town and Country Planning, and so giving us the opportunity to move forward in the department.

Sen. Robinson-Regis: You do not want to thank me for leaving such a good department?

Sen. The Hon. Dr. B. Tewarie: Finally, I pay tribute to the heads of the regional offices—you did not hear me talk about the legacy I inherited, or what?
[*Laughter*]

Sen. Robinson-Regis: No, no.

Sen. The Hon. Dr. B. Tewarie: I pay tribute—but you build on what you inherit, you know?

Sen. Robinson-Regis: Well say that.

Sen. The Hon. Dr. B. Tewarie: I pay tribute to the heads of the regional offices and their staff for the dedication that they have shown in getting the job done. We could not have done this backlog retrieval system had it not been—I know that there were times when these people worked seven days a week—I am not kidding, in order to get it done, and they worked long hours during the day. They are serving our citizens properly and bringing greater efficiency and effectiveness as well as higher levels of performance to the offices under their charge. For the North Regional Office, Mr. Kerry Pariag; in the Tobago Regional Office, Miss Jassodra Kuizon; in the South Regional Office, Miss Camille Guichard and in the East Regional Office, Miss Petal Howell.

Permit me therefore, Mr. Vice-President, hon. Senators, to address the issue of what value this particular Bill, the Planning and the Facilitation of Development Bill, creates and what difference it will make going forward. The first thing to appreciate is that while we have built on past endeavours as part of an evolutionary process to design, structure and to create this Bill, this is the first time that any Government has come with a Bill of this kind, supported by a vision of what planning through effective land use and thoughtful physical planning should yield 20 years hence.

12.30 p.m.

The law which established the Town and Country Planning Division was passed in 1964 and the National Physical Development Plan was not ready until 20 years later, in 1984. So the Bill was being administered without a national physical plan, and the plan only came 20 years later, after the Bill was passed.

For the sake of the historical record, I want to say that the person who piloted the Town and Country Planning Bill in 1964 was none other than the hon. Prime Minister at that time himself, Dr. Eric Eustace Williams, and he received immediate support for the passage of the Bill by the then Leader of the Opposition, Dr. Rudranath Capildeo, who made a very short response, basically saying that this was the time for this; we should do it and we should get on with our business. And that Bill was passed at that time.

The National Physical Development Plan, which came into being in 1984, has never been revised since 1984. But we have laid before this honourable House our National Spatial Development Strategy. This was laid around the same time that we laid the Planning and Facilitation of Development Bill for first reading, and that National Spatial Development Strategy is driven by a vision, and the role and function of the Bill—which I hope that with the help of all Members we will pass in the Senate today—is to facilitate the achievement of the vision for Trinidad and Tobago 20 years hence.

Let me share with you this vision for our country, as articulated in the National Spatial Development Strategy, because the Bill is really the administration and execution arm of the policy, and the policy and strategy framework. So our vision in the National Spatial Strategy is that by 2033, 20 years from now, Trinidad and Tobago will be a nation where all people enjoy a high quality of life within a safe, healthy, inclusive and sustainable physical, socio-economic and cultural environment. The country will be a hub of innovation-driven economic prosperity, focused on sustainable development and environmentally-sensitive design standards. Both urban and rural areas will provide good employment opportunities, and city and town centres will cater equitably for the needs of both residents and visitors through the provision of retail and commerce, recreation and cultural facilities, and education and health services, in a peaceful, secure, accessible and healthy environment.

We also envisage food security, and energy efficiency will be achieved through innovation, diversification and targeted investment in the agriculture and fisheries sectors in the first instance, and the renewable energy sector, in the

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second. An efficient, integrated and sustainable transport system will link homes, jobs and key services while reducing dependence on private car use, and making alternatives more viable and more attractive to use. Benefits of reduced congestion and pollution will be reflected in improved productivity, better health, reduced stress, all of these supporting a stronger economy.

The benefits of an enhanced quality of life based on sustainable development will be shared across the nation, urban and rural areas alike, so that disadvantage, injustice and poverty are eradicated. People will be actively involved in the planning of national and local environments, and management of change will be based on the transparent and consultative decision-making process.

This is our vision, not only for how the country will be, but how we will operate as a country, and what will be the relationship between those who govern and those who create the conditions for governors to lead the country. And the idea is that we are moving into a phase of greater and deeper democracy, of more decentralization, of more devolution of authority and more inclusion for the purpose of building an economy based on principles of equity, as far as we are able to create the conditions for opportunity in the society. So, we say people will be actively involved in the planning of national and local environments, and management of change will be based on the transparent and consultative decision-making process.

The second issue of note about this Bill is the comprehensiveness of the coverage of this particular Bill. So the first one is the alignment of the Bill with a clear, national spatial strategy, and that is linked, as well, to regional strategies, and the idea is to build community strategies that are linked to these. And the second issue of note is the comprehensiveness of the coverage of this particular Bill.

This Bill will not only manage the business of land use to facilitate orderly development in keeping with sustainable development principles, but it will also set the standard for the following matters: first of all, building codes. Regulations governing building codes will be made to the standards applicable to the construction of buildings for structural and fire safety, health and general welfare of persons within or nearby the new buildings being constructed.

I want to say, we are now in the third year of a microzonation study which my Ministry initiated some years ago, and we are already at the point where we are getting reports for the major city centres, such as Port of Spain and San Fernando. But at the end of this microzonation study, we will be in a position to assess the

risk factors involving earthquakes for critical areas of the physical landscape, so that the building codes will be aligned to these elements in it. So that what we are doing here is part of a well-thought-through, integrated approach and strategy to bring development plans and development thinking in this country into the 21st Century, into the most contemporary and enlightened thinking about development practices in any country.

The second thing is that it will regulate land use and planning permission in a way that manages the sustainable development principles, which is economic prosperity on the one hand, environmental considerations and ecological considerations on the other, cultural and social harmony on the other. It will create the conditions for rights, too, and mechanisms of appeal, so that the citizen is not crushed in a mindless or a blind system.

It will develop all spatial strategies within the context of sustainable development. For example, the protection of trees is part of the legislation. And some may laugh at this, or smirk at it, but it is a serious matter, in a small island nation state of seven relatively little islands, really—five of them off Chaguaramas—Tobago, and Trinidad the largest one. But the point is that these things are important.

Setting quality standards for building applications, except for simple applications which will be aligned to the simple building codes, by ensuring that they are submitted by a registered professional. So we are bringing the professional into the process and giving them a role and creating the conditions for self-regulation but also for government determination of the standards.

Offences and penalties: it is an offence to assault, obstruct and intimidate an officer operating under this Act. It is also an offence to supply false information and to fail to comply to the various orders under this Act. It is also an offence to offer a bribe to an officer operating under this Act, and an officer accepting a bribe is also subject to penalty. So we are trying to make the system as clean, as transparent, as open as possible.

The difference that this Bill will make is that under the guidance of the National Spatial Development Strategy, to which regional plans will be aligned for harmonization, the decision-making strategies to facilitate orderly, sustainable development practices, and the control of those matters just identified, for which clear standards will be set, with all of these things in place, we will then be able to link prosperity for all economic strategies. We will be able to manage in a thoughtful and judicious manner, legitimate environmental and ecological

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demands, and we will be able to support sociocultural harmony and social capital building, by the way we design communities, build infrastructure, create green spaces and commons, facilitate commerce, business and industrial strength, and create the conditions for an equitable spread of benefits and opportunities which will strengthen the platform for equity itself.

So part of the value of the spatial strategy is to spread prosperity geographically, and this is an important part of the development of the country, and in order to support this—and I want you to see, hon. Members, Mr. Vice-President, how integrated and complementary a number of our actions are in relation to the development strategy for the country. Already we have completed four studies for the growth poles in Trinidad. More discussion is required on the growth pole in Tobago with the Tobago House of Assembly, and we have initiated that process. But four studies have been done, and these studies have all yielded actionable strategies.

Recently, work by the East Port of Spain Development Company has been stepped up, as infrastructure projects targeted at increasing the physical stock of assets, and making lives better for residents and businesses have received attention. Over the past years, several projects have been completed. This includes the construction of a hard surface, multi-purpose recreation court at Jacobin Street in Morvant; the construction of storm-water drains, access stairs, foot bridges at Manda Trace off Lower St. Francois Valley Road in Belmont; the rubble retaining walls, drains, steps and new roadway constructed at Upper Mc Kai Lands in Upper Belmont; retaining walls, new roadways built at Thompson Trace in Never Dirty in Morvant; construction of reinforced concrete steps, drains, walkways and installation of pedestrian handrails at Sapodilla Hill, Map Lands in Morvant; lay and hill infrastructure upgrade in Lower St. Francois Valley Road; the construction of storm-water drains, paving works at Enforcer Recreation Grounds, St. Francois Valley Road, Belmont; the construction of a new pavilion with washroom facilities and general upgrade of Morris Marshall Recreation Ground, Trou Macaque; the renovation of pavilion, construction of new toilets, cafeteria at Coconut Drive pavilion in Morvant.

12.45 p.m.

Recently, we signed a loan agreement involving US \$120 million with the IDB for a flood alleviation programme in Port of Spain. This IDB-financed programme will mitigate flood events in the city by supporting the improvement of catchment management through the implementation of drainage infrastructure such as interceptors, drainage system, detention ponds and pumping stations, and these are being executed by the Ministry of the Environmental and Water Resources.

For the north coast of Trinidad, that is the fourth—[*Interruption*]

Mr. Vice-President: Minister of Planning and Sustainable Development, you have three more minutes.

Sen. The Hon. Dr. B. Tewarie: Three?

Mr. Vice-President: Yes.

Sen. The Hon. Dr. B. Tewarie: To complete?

Mr. Vice-President: Of the original time.

Sen. The Hon. Dr. B. Tewarie: Okay. Thank you, Mr. Vice-President.

For the north coast of Trinidad, which is the third growth pole in Trinidad, the actionable strategies include, based on the study: regularization of the layout of existing landholdings and the land tenure of present occupiers of the plots, of the settlements; upgrading of roads and other infrastructure in agricultural areas; intensification of agricultural production and where viable, expansion of activity unto other lands suitable for cultivation; promotion of agricultural research and experimentation and the introduction of agricultural training in the region; promotion of organic farming methods involving mixed farming, restricted soil tillage and the use of natural fertilizers and pesticides rather than chemical projects; establishment of agro-processing facilities as a means of adding value to the products and increasing business and employment opportunities; upgrading of the fishing centres at Las Cuevas, Maracas and Blanchisseuse.

Activities proposed for the recreation and tourism sector include resort development, entertainment, shopping, beach-oriented recreation, swimming, water sports, yachting, fishing, hunting, camping, hiking and pleasure driving;—one of the things about that north coast area is that almost half of the area is under forest cover and basically enjoys one of the most beautiful rainforests in this part of the world—management of the forest stock through such measures as maintenance of existing vegetation; reforestation of disturbed areas with native species; replacement of old and diseased trees; and thinning of dense areas where necessary.

All of these things we have identified as actionable items for the north coast and this does not take into account the decisions made by Town and Country Planning which have also, in fact, facilitated private sector investment in the tourism sector in that part of the country, but the whole approach there is the approach of sustainable development. In that entire area, you only have 3,000 people living, their skills are quite limited. I want to indicate that the first report on the City of Port of Spain was done by McKenzie with recommendations for how to proceed. The second report on the—
[*Interruption*]

Mr. 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. [*Hon. G. Singh*]

Question put and agreed to.

Sen. The Hon. Dr. B. Tewarie: Thank you very much, Mr. Vice-President. [*Desk thumping*] Thank you very much Leader of the Senate and hon. Senators. The second study on the north coast was done by Ivan Laughlin and Associates on the physical side, and the Trade and—I forget what is the name of the unit at the University of the West Indies—and Economic Development Unit, I think, at the University of the West Indies. So we had a physical assessment of the assets and liabilities and challenges, and we also had an economic assessment of what might be possible given the strategy of preserving and conserving this part of the country, but understanding the need to have economic progress and prosperity and to raise the standard of living of people there, and to build a tourism industry that was clean and that was aligned to the principles of ecological sensitivity and sustainable development.

For central Trinidad the strategies include, that is to say, the “executionable” strategies and, again, a study was done here. The executing agency for the study in this particular case was the Arthur Lok Jack Graduate School of Business. What they recommended for actionable strategies going forward is first of all increasing parking facilities for Chaguanas including possible park and ride, investigating the possibility—which we have agreed now to do—of city status for Chaguanas using a cluster approach. Several clusters were identified in central Trinidad; these include retail and wholesale distribution, energy services, pottery and tourism with a special approach to the central port, that is in Point Lisas, involving logistics. These recommendations were made to further develop the competitive advantages these clusters have, including building supporting infrastructure such as the usual roads and drainage, but also ICT infrastructure, increased police presence in the main commercial centres and a business incubator programme for pottery, as well as promoting pottery as a viable export product.

The south-west peninsula. This study was recently completed and done, again, by the Arthur Lok Jack Graduate School of Business. For San Fernando, some of the clusters identified were energy support services, finance, insurance and legal services, construction, printing and publishing, and educational services. For

Siparia, clusters include agro-based industry, fishing, meat processing and upstream energy. For Penal/Debe, clusters include agro-based industry, fishing, wood and wood-related products, construction, fabrication and energy. For Point Fortin, clusters include upstream energy, fashion and garment, and construction. In terms of tourism, also a major cluster that is common to all the sub-regions. Within each of these sub-regions and clusters, recommendations were developed for their further development.

Mr. Vice-President, I want to say that in all of these studies the focus has always been on how do you bring the people one by one into economic prosperity. That has always been the driving thinking in our development strategy, and you will see that as we develop not only do we have a national spatial plan, regional development plans and you have this Bill now, but you have these strategies for the growth poles. These things have been based on studies and they have been done on a micro understanding of the economy in the sub-regions.

So that for each of these areas, let us say in the south-west, they have identified the anchor industries, they have identified the existing clusters, they have identified the potential cluster building possibilities, they have identified the small and medium enterprises and the potential for expansion of these industries, and they have identified the mix between Government and private sector intervention that might stimulate the most intense and quickest intensity of growth of these particular areas. I think, let us say, when you talk about south-west, you also have to take into account, for instance, that you have a major investment coming there in the form of the Mitsubishi, Neal and Massy investment in that part of the country.

In Tobago, more discussion is needed as I said, but we have some amazing private sector proposals for a comprehensive ecotourism community development, skills development, entrepreneurship and business development strategy. One of the interesting things about the north-eastern part of the island is that that land is not owned by the State. So that in order to develop those lands and to create the conditions for development there you need private sector collaboration and cooperation, and it just gives us a wonderful opportunity to work with the THA, to work with the private sector, to work with the community to make something that is genuinely different in that part of the country.

It is within this framework for growth poles that economic development zones have been identified—so far, seven of them by the hon. Minister of Trade, Industry and Investment. Connected with this are the local economic development strategies—LED strategies and projects—led by local government entities and the

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Ministry of Local Government through the various local government entities in their area. And with this kind of perspective and world view comes the need for an integrated planning approach with people at the centre as major beneficiaries through education, skills, jobs, entrepreneurial opportunities, business growth opportunities, and people at the centre as our principal resource base in terms of their human and intellectual capital and their imaginative capital which is our one national inexhaustible source of creativity and innovation—that is to say, not oil, not gas, the imaginative capital which resides in every single human being and citizen of this country.

Let me explain that an examination of sustainable development as a framework for action and as the desired objective to be achieved requires us to appreciate that sustainable development can only be achieved with perpetual innovation, and perpetual innovation is only possible by tapping into the inexhaustible resource of the human imagination. One good thing about the human imagination is that it does not necessarily diminish because of lack of education. If that was true, native ingenuity would not exist and pan would not have been created.

Another thing to appreciate about the human imagination is that it is not necessarily hindered by lack of wealth. If that was so, the poor would never have contributed so much to scientific and technological invention, and artistic and cultural creation and innovation. The many gifted writers that we have produced, including Nobel Prize winning V. S. Naipaul and Commonwealth Award Winner Earl Lovelace, would never have seen the light of day.

Sustainable development therefore not only requires us to honour the balance between economics, environmental and sociocultural goals, but it demands inclusion and it aspires to greater equity to spread the benefits of sustainable opportunity. And what can be more inclusive than the acknowledgement of the human imaginative capability of every human being, and therefore, the innovative capacity inherent in the inclusion, mobilization and unleashing—under conditions of freedom and responsibility—the energy and spirit of our people.

So at the end of the day, planning is about people: one human being; one family; one community; one infant; one child; one teenager; one adult; one man; one woman; one father; one mother; one grandfather; one grandmother; one great-grand at a time; human beings from birth to exit; citizens all of our society and not only their bodies and physical needs, but their mind, their spirit, their ability to motivate themselves and to make and to do and to create and to innovate. That is the essence of the source power of development. But the land shapes the people, and how you shape the land affects the sensibilities and ultimately the expectations, habits, behaviours and cultural patterns, and the fabric of this society.

Mr. Vice-President: Hon. Minister, you have three minutes to wind up.

Sen. The Hon. Dr. B. Tewarie: Three?

Mr. Vice-President: Three minutes.

Sen. The Hon. Dr. B. Tewarie: Thank you. Do not think for a minute that the problems and challenges we face in this society have nothing to do with the land and the landscape and the way we have treated it. Members of the Senate have spoken of indiscriminate building—*[Interruption]*

Mr. Vice-President: Hon. Minister, please. At the time now it is a minute past one, 1.30 p.m. I intend to have an early lunch, and therefore, I will now suspend the sitting until 2.01 p.m. One hour lunch. Thank you.

1.01 p.m.: *Sitting suspended.*

2.01 p.m.: *Sitting resumed.*

Mr. Vice-President: Hon. Senators, when we broke for lunch, when the suspension was taken, the hon. Minister of Planning and Sustainable Development had three minutes to end. Hon. Minister, please.

Sen. The Hon. Dr. B. Tewarie: Thank you very much, Mr. Vice-President. I am going to proceed to conclude my presentation this afternoon, and I simply want to conclude by saying that the way we have used the land and engaged the landscape may well have created the mindset we carry, the mindset we have, the way we look at things.

Our policies of the last 50 years are related to the way that we have used the land and the evolution of the dominant mindset. So, for instance, when the Town and Country Planning Act was brought to the House in 1964 by the then hon. Prime Minister, Dr. Williams, the thinking then was purely in terms of economic development, and he talked of economic development and economic planning. Today, within a sustainable development framework, the thinking has to be broader, more inclusive in nature.

But, the limits that we have had over the last 50 years have also facilitated the imposition of limits on our own human imagination. Individuals break out, they aspire, they dream and they conquer, and they uplift us all but the collective, well, the mindset has distorted imaginative possibilities and has hindered us as a country, as a society, a people, from soaring together. And so, we remain individuals battling for individual space with no society to really claim and to own and to belong to, and all of this talk of trini does not fool me one bit. It is quite superficial in some ways because we have no clue about what we truly believe in, and we do not know by which code we are living, and what are the important values that we truly share.

Planning and Facilitation Bill, 2013
[SEN. THE HON. DR. B. TEWARIE]

Tuesday, June 24, 2014

So, I say let us start with the land. What are the values that we really share in relation to land that history and economic forces have conspired to make our inheritance? First of all, do we have a long view or a short view? Are we living for today or for tomorrow and the next day too? Because the answer to that question will determine whether we take actions to mash up the place or actions to build patiently and strategically to achieve sustainable development goals.

I just want to quickly close, Mr. Vice-President, by showing what Trinidad and Tobago consists of in terms of the land that we have. Seven per cent of our land is in water bodies and wetlands. The Pitch Lake occupies a few acres but not enough to make 1 per cent. Thirty-one per cent of our land consists of ecologically sensitive sites; 9 per cent consists of existing settlements; rivers, streams and reserves make up 1 per cent; road reserves, 1 per cent; forest cover, 11 per cent; agricultural lands, 30 per cent; land stock available—and therefore available for development—10 per cent. Ten per cent of a 2,000-square-mile nation is—what is that? Two hundred square miles.

Now, that is not large by any means but it is not small by any means. For instance, the island of Bermuda is 22 square miles and if you think of Tobago, it is 110, so you are talking about twice the size of Tobago available in the country of Trinidad and Tobago for development. But we have to proceed very carefully and cautiously with that if we are to achieve sustainable development, and if we are to build a society for 1,000 years. And we, you might say, are, at least, beginning the process, and I hope that we will get the support of the House to begin this process.

I want to close by saying that I acknowledge the suggestion of amendments. I do not know—there is some discussion taking place now and I do not know what ultimately the amendments will be that come before the committee stage in this debate, and to this honourable House. But I want to say that I want to stand by the Standing Orders which govern our business when a report comes from a committee of the Senate to this House and I hope that at the committee stage, Mr. Vice-President, hon. Senators, we will be able to zero in on those specific clauses that Members really wish to interrogate to make amendments to at that particular stage, because we have already gone through in the committee stage clause by clause, close to 100 clauses that are in this Bill. Mr. Vice-President, I thank you very much for the opportunity to speak and I beg to move. [*Desk thumping*]

Mr. Vice-President, I beg to move that the Report of the Special Select Committee on the Planning and Facilitation of Development Bill, 2013 be adopted.

Question put and agreed to.

Report adopted.

**PLANNING AND FACILITATION OF DEVELOPMENT
BILL, 2013**

[Second day]

The Minister of Planning and Sustainable Development (Sen. The Hon. Dr. Bhoendradatt Tewarie): Mr. Vice-President, the report of the Special Select Committee has been adopted subject to the recommittal of the following clauses of the Bill to a committee of the whole Senate:

Clause 3, clause 5, clause 8, clause 10, clause 11, clause 12, clause 13, clause 21, clause 22, clause 24, clause 25, clause 28, clause 31, clause 32, clause 33, clause 35, clause 36, clause 38, clause 39, clause 40, clause 41, clause 43, clause 44, clause 46, clause 47, clause 48, clause 49, clause 50, clause 51, clause 53, clause 54, clause 56, clause 57, clause 59, clause 61, clause 62, clause 64, clause 65, clause 66, clause 67, clause 68, clause 69, clause 74, clause 75, clauses 77, 81, 82, 83, 86, 89, 91, 92, 94, 97, 99, 104, 105, 107 and 108.

Question put and agreed to.

Bill committed to a committee of the whole Senate.

2.15 p.m.

Senate in committee.

Clauses 1 and 2 ordered to stand part of the Bill.

Clause 3.

Question proposed: That clause 3 stand part of the Bill.

Sen. Al-Rawi: Mr. Chairman, may I suggest that clause 3 be deferred towards the end? It is the definition section. It will be affected by some of the things that come later down.

Sen. Dr. Tewarie: Mr. Chairman, I will agree to that on the understanding that the only matters for consideration under clause 3, when we return, are substantive matters that are brought here individual item by individual item and nothing more.

Sen. Al-Rawi: Sure. Mr. Chairman, it could not be any other way than that, because you cannot just do it in general. I mean the Minister's hands—our purpose, if I could just explain, is simply to put on record certain observations. The Government will indicate its policy position and then the Senate can make its vote at the end of the day.

Clause 3 deferred.

Clause 4 ordered to stand part of the Bill.

Clause 5.

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

Sen. Cudjoe: Mr. Chairman, I am requesting that clause 5 be amended to say that this should be subject to the Tobago House of Assembly Act.

Sen. Dr. Tewarie: Mr. Chairman, while that seems attractive on the surface, the fact is that the THA is an Act that has been enacted by law, by legislative process, in this country and is part of the law of Trinidad and Tobago as required by the Constitution, and more than that, the THA is recognized in the Bill within the framework of the planning regime as the planning authority for Tobago.

Sen. Cudjoe: But Minister, through you Chairman, you are aware that the Tobago House of Assembly, under the Fifth Schedule, has responsibility for the planning function in Tobago, and whilst the intent and the spirit of the Tobago House of Assembly Act is for there to be a Tobago Planning Authority, its planning authority was pretty much pulled into, under the rubric of a planning authority, like the municipal corporations, and so on, and when you move on to certain other clauses where the Minister has responsibility for certain things, that would pretty much interfere with the authority and the autonomy of the Tobago House of Assembly.

Sen. Dr. Tewarie: No, it would not.

Sen. Lalla: Sen. Cudjoe, I hear what you are saying but one must remember the very specific wording of section 26 of the THA Act, which says that the matters over which the THA has authority, as assigned in the Fifth Schedule of the THA Act, are subject to section 75(1) of the Constitution, which gives the responsibility for the Government of the country to the Cabinet and by extension the Minister, who acts as the agent of Cabinet. So I see no problem with the clause as worded, respectfully.

Sen. Cudjoe: And that would be you. My opinion is that the Tobago House of Assembly Act, what it is pretty much calling for is consultation between the Assembly and the Minister for this and I do not understand why the Minister would be adverse to conversation on matters relating to the Tobago House of Assembly— a consultation.

Sen. Vieira: Senator, I do not know if it will be helpful but clause 7(1) says that:

“The principal functions of the National Planning Authority are to—

- (i) consider and determine applications for permission for the development of land...in respect of any matter that is not—
- (i) subject to the jurisdiction of the Tobago House of Assembly, by virtue of the Tobago House of Assembly Act;”

And I think that is—

Sen. Young: That is the NPA, that is not the Minister.

Sen. Al-Rawi: Sen. Vieira, this Bill provides three sources of authority: one to the Planning Authority, two to the National Planning Authority and three, to the Minister. The Minister is, as Sen. Lalla has put it quite properly, by virtue of Cabinet's authorization of his powers under section 75(1) of the Constitution, carrying out certain policies for Trinidad and Tobago.

The question is whether the Minister ought to be fettered in any way by the powers or resistance of the THA. That is a simple question. I guess it would ultimately be a matter for policy of the Government on the particular point.

Our position is that there ought to be fetter as it relates to the THA.

Sen. Prescott SC: Chair, before we close on that, may I just seek through you, if Sen. Lalla could tell us whether the language of section 25 does not say general administration, as opposed to specific.

Sen. Lalla: Subject to section 75.

Sen. Prescott SC: Yes, section 75 speaks to the powers of the Cabinet as to the general administration. Can you remember the precise language?

Sen. Lalla: No, I cannot.

Sen. Prescott SC: In which case, that may well affect how you look at it.

Sen. Al-Rawi: If I may, section 75(1) of the Constitution:

“There shall be a Cabinet for Trinidad and Tobago which shall have the general direction and control of the government of Trinidad and Tobago and shall be collectively responsible therefor...”

Sen. Prescott SC: General direction is what I meant, forgive me and that has to be distinguished from specific, so that in specific things, the THA might well have—

Sen. Dr. Tewarie: I think that you will see throughout the Bill that the Minister does not get into the picture unless a matter is referred to him by one of the authorities, either central, that is to say national, or sub-regional.

Sen. Ramlogan SC: I presume that the concern here is with section 7(i)(iii), is it?

Senators: No.

Sen. Al-Rawi: AG, hon. Minister, perhaps this may lend some clarity. It is that we are fine with fixing the administration responsibility with the Minister, so you have identified an individual? But that the Bill, as a whole, taken together, adequately insulates the THA from undue interference?

Sen. Dr. Tewarie: There is very little opportunity for interference at all and there also is every opportunity for a case to be heard in a situation in which there is a feeling that jurisdiction has been overridden.

Sen. Al-Rawi: So, hon. Minister the fetter that, perhaps we are looking at here if I dust off the idea a little better. In fixing the administration responsibility in clause 5, as we do, is there any room to include that, as it relates to Tobago matters, that the Minister shall consult with the THA? That would give the clarity inside of there in the architecture of the law.

Sen. Young: Similar Minister, if I may, in clause 7(2), where you have said that in the performance of the functions under paragraph—so that is dealing with the NPA under (b) to (e), the National Planning Authority shall consult with the Tobago House of Assembly. I guess it is looking for some sort of the language that when the Minister is administering the Act, anything to do with the Tobago House of Assembly.

Sen. Dr. Tewarie: What you all are looking for, or I have to say, what I interpret that you all are looking for, is some catch-all phrase that would lock the Tobago House of Assembly into its role as envisaged under the House of Assembly Act. It is not necessary, because the only time a Minister has the opportunity, really, to intervene, is if you look at 48(2):

“Where a decision is made by a planning authority or the National Planning Authority in breach of subsection (1) and those things are outlined here—“the decision shall be subject to review by the Minister.”

2.30 p.m.

I feel that that is reasonable and a reasonable approach to jurisdictional authority between a Cabinet responsible for the whole country, and agencies of State that are responsible for part of the country, okay?

Sen. Al-Rawi: Thank you, hon. Minister.

Question put and agreed to.

Clause 5 ordered to stand part of the Bill.

Clauses 6 and 7 ordered to stand part of the Bill.

Clause 8.

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

Sen. Al-Rawi: Mr. Chairman, we are fine with clause 8. So unless another Senator goes—

Question put and agreed to.

Clause 8 ordered to stand part of the Bill.

Clause 9 ordered to stand part of the Bill.

Clause 10.

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

Sen. Al-Rawi: Mr. Chairman, the question in respect of clause 10 that arises is the appointment of a committee as it sees fit. The thought that we are picking up in the debate was the inclusion of these persons in the Integrity in Public Life Act. Clause 10 should be looked at in conjunction with clause 13, I believe it is, and clause 13 of the Bill, we have the opportunity here. The idea is these executive officers at least the three persons involved, if not more, subject to what other Senators say, the Director of Planning, Chief Building Officer, the Chief Enforcement Officer, we have the option potentially subject to Government's policy, to include them by an amendment to the Fourth Schedule. I do not know if you want to take it in clause 10, or if you want to take it in clause 13 to include them as persons in public life. In the Fourth Schedule to the Bill, we set out which laws we are amending.

Sen. Dr. Tewarie: I understand what you are saying. I am not opposed in principle. I am trying to get clarity from the AG.

Sen. Ramlogan SC: We have asked for the schedule of the Integrity in Public Life Act, because I know that certain senior level public servants are already subject to the Integrity in Public Life Act. But I do not know—[*Interruption*]

Sen. Young: But we are creating a new—so we just want to make sure.

Sen. Ramlogan SC: Well, I do not know if it is necessary to create a new one.

Sen. Al-Rawi: Sure, it may be depending on that schedule.

Sen. Ramlogan SC: Depending on the level, they may already be covered.

Sen. Al-Rawi: So we were just marking the spot on clause 10 and clause 13 in that regard. If it is satisfied by the inspection of the Integrity, great. May we defer clause 10 until the answer is provided?

Sen. Young: If I may, Attorney General, just to mark the point that I—certainly in the debate what I was suggesting when we get to clause 13 and these particular offices, and officers that we are now creating the post for, what I was suggesting is that there is a full-scale—they are persons in public life and are not just the senior officials. So in other words, they will also have to fill out the Forms A and B, because recognizing that these positions that we are creating now, are ones that hold a lot, wield a lot of power in getting things processed and approvals done, et cetera. So we would want to see every year a declaration of their assets and income, and that is not—the senior public officials are not captured by that. It is the particular schedule which we are subject to that captures; every year we have to fill out our declaration and a statement of registrable interest, that is what I was suggesting we need to capture these offices under.

Sen. Vieira: And I support that position as well.

Sen. Ramlogan SC: I do not think there is any argument about it. The only question is whether it is necessary in light of the current provisions.

Sen. Al-Rawi: Okay, so we could move ahead.

Mr. Chairman: Are we deferring clause 10?

Sen. Al-Rawi: Minister, at 10(2)—[*Interruption*]

Sen. Ramlogan SC: We can do it in clause 13. So we can approve clause 10.

Sen. Al-Rawi: Yeah. Okay. We could do it in clause 13. We could approve clause 10, hon. Minister, through you, Mr. Chairman. If you look at 10(2), Sen. Tewarie, 10(2)?

Sen. Dr. Tewarie: Yeah, I am listening.

Sen. Al-Rawi: The remuneration by Minister, I just wanted to make sure that you were not capped by CPO or SRC in those circumstances. Is it the advice of Cabinet that works in that structure?

Sen. Dr. Tewarie: No, the Committee; that is Cabinet.

Sen. Al-Rawi: Yes? Thank you.

Sen. Ramlogan SC: I have got it here. The schedule to the Integrity in Public Life Act, I was correct. It says: Permanent Secretaries and Chief Technical Officers. So I do not know if the—[*Interruption*]

Sen. Young: You have to define them as Chief Technical Officers or—[*Interruption*]

Sen. Ramlogan SC:—well, I do not know in the scheme of things if they will already be considered, but we could not leave it to chance. So we can simply draft a simple provision to say that they are included. But I just want to point out that the scheme of the Integrity in Public Act is that they do not go below the level of a perm sec and a Chief Technical Officer. So that I do not know if it is that we would want to drill down deeper or whether we just leave it at the heads.

Sen. Vieira: Just for these because this is so important, and there are so many opportunities.

Sen. Ramlogan SC: Indeed. Indeed. So we leave it at the level of the heads, all right? So we will be consistent.

Sen. Al-Rawi: And we could do it in clause 13. So we could approve clause 10.

Sen. Ramlogan SC: We could do it in clause 13, and we will move on.

Question put and agreed to.

Clause 10 ordered to stand part of the Bill.

Clause 11.

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

Sen. Al-Rawi: Hon. Minister, the suggestion in clause 11 was 11(4), this is a recurrent theme which will take care of a number of clauses that we have identified. It is the advertisement of positions on the websites to be included. So we were suggesting as we have done in all modern approach legislations, to include the website into subclause (4).

Sen. Ramlogan SC: I do not think that is a matter to include in the substantive law. I mean, that is a matter of practical administration that will happen in the normal course of things, you know.

Sen. Al-Rawi: AG, the reason I raised it is that we have done it for securities, for insurance, for procurement, for every point.

Sen. Ramlogan SC: I know, but that is not a good reason to do it here. The point I am making is this, something—if you look to over legislate, to say that they have to advertise it in the newspapers, and then you have to advertise it in the *Gazette*, and you have to put it on a website. Where do you stop? Some people in this country listen to radio, but “dey doh” read papers. You follow?

Sen. Al-Rawi: AG, I catch you, but remember, I am suggesting this only in respect of very key, important holders for consistency, this is the control committee, the National Planning Authority, these are the persons who are going to be—the persons who the public needs to know are the persons with responsibility.

Sen. Ramlogan SC: You see the difficulty with these things—you know the difficulty—I think it is a little overkill. I will tell you why. In this day and age of the Internet, that website crashes, or you cannot find an IT person to hire. You know what happens? You are in breach of the law, and the very persons that you have there—*[Interruption]*

Sen. Young: Not once they have published it.

Sen. Ramlogan SC: Sorry?

Sen. Young: Not once they have published it, because all we are requiring them to do—*[Interruption]*

Sen. Ramlogan SC: No, no, no.

Sen. Young:—is to put the notice of it.

Sen. Ramlogan SC: No. The law is always speaking. It is a continuing duty.

Sen. Al-Rawi: AG, be careful about the argument, it means that you are arguing against your own policy—*[Interruption]*

Sen. Ramlogan SC: Of course.

Sen. Al-Rawi:—for securities, for insurance, for procurement, for everything else.

Sen. Ramlogan SC: Which is why I am saying, do not do it here. So we are content to leave it as is.

Question put and agreed to.

Clause 11 ordered to stand part of the Bill.

Sen. Al-Rawi: For the record, we think it should be there, but we are moving ahead.

Clause 12.

Question proposed: That clause 12 stand part of the Bill.

Sen. Vieira: I had an observation on clause 12. The way clause 12 is worded, my concern is, what happens if the disclosure of interest has not been made, and a person who is conflicted took part in the deliberations and wrongfully influenced the decision. Now, under clause 96(1)(i), it suggests that any person who:

“contravenes any provision of this Act for breach of which no other penalty is prescribed,”—is guilty of an offence.

But I am not so sure if it is clear. I think that failure to disclose should be an offence, and just as we had looked at in the procurement Bill, this should be grounds to set aside a perverted decision.

Sen. Ramlogan SC: Well, if I may Senator, in the ordinary course of public administrative law, if someone who is conflicted makes a decision, the common law already prescribes what will happen, and that is, the decision is vitiated because it is not competently made. I do not think it might be wise to legislate that into the Bill, because there is a whole array of consequences and remedies that can flow which is already dealt with—[*Interruption*]

Sen. Al-Rawi: You may be excluding the development of the law, the common law.

Sen. Ramlogan SC: Yeah, yeah, and then also it would have already—the Judicial Review Act addresses the question of remedies and, you know, whether or not it should be remitted to the tribunal, properly constituted, whether or not you should set it aside wholly, et cetera, et cetera. So I think that the consequences of that happening, you have identified the criminal law, and the consequences of that in terms of the criminal law, that is provided for in the Act. But I think deliberately, there is no civil component to say what should happen to the—you know, as a result of the infringement of the civil or public administrative law, and that is because it is covered already in the ordinary law.

Sen. Vieira: I hear you, and I am not going to debate the point, but in as much as we thought it fit to do that in the procurement legislation, and that was one of the remedies that was available to the procurement regulator. Now, here we are talking about land development, huge projects, things that could have very, very important consequences. I do not know whether or not we might want to shore up the powers here, just for an abundance of caution.

Sen. Ramlogan SC: You see, I am—[*Interruption*]

Sen. Al-Rawi: AG, just before you answer. We are not comparing apples with apples between the two laws, because we have also left out the conflict provisions in here, for instance, related parties which I will ask Sen. Young to deal with, and we have also diluted in clause 12(1) the requirement down to making it at a meeting. Our proposal is that it should be done as soon as it is practicable, and delete the words “at the first meeting of the National Planning Authority”. So it should be that you declare the nature of his interest as soon as it is practicable for him to—sorry, to the National Planning Authority or a committee as soon as it is practicable for him to do so. As opposed to just requiring it at the meeting. Then Sen. Young, if you could pick up on the conflict position of related parties.

Sen. Young: AG, you will recall that I had highlighted the—*[Interruption]*

Sen. Ramlogan SC: Which clause are you on?

Sen. Young: The same clause 12(1).

Sen. Ramlogan SC: So we are still on 12, right.

Sen. Young: 12(1) is the conflict of interest here. 12(1) is the conflict of interest where we are marking the conflict of interest, and just based on recent experiences we have had, for example, Clico and the FCB IPO, I just wanted us to consider the inclusion of after “of his interest”, some sort of related party definition. I know, I glanced on recently with the HCU Bill in the other place, you had included some related party definitions. I would like to suggest that we include a similar applicable provision here to capture related parties, because we know how these things pan out, and even though it may be captured by directly or indirectly.

Sen. Ramlogan SC: In terms of capturing the conflict of interest?

Sen. Young: Correct.

Sen. Ramlogan SC: Well, may I just say this? I mean, we have to be careful about not over legislating, and I will tell you the danger in it, eh. Everything you put in a law what you did not put, has a legal consequence, in that Parliament will be deemed to have deliberately excluded what you did not put in, because it did not want for it to be a part of the law. Now, the difficulty there is that there are always things that you do not think about when making law, and this point did, in fact, arise during the LRC, and the compromise we came up with was the words “directly or indirectly”.

Sen. Young: I figured you would say the “directly or indirectly”.

Sen. Ramlogan SC: So that if, for example, I mean, even if you leave out the words “directly or indirectly” in the ordinary course of public administrative law, if a man has, you know, a brother who has an application coming before them and he does not disclose that, that is a conflict of interest. It might be direct, it might be indirect, but you see, let me tell you the danger. You take the HCU legislation, for example, you put any related party and you define it to include your brother, your sister, your mother, your father, et cetera, “bam”, and then what happens to the girlfriend? What happens to the common-law spouse? What happens to your mistress?

Sen. Young: Well, those things should be included.

Sen. Ramlogan SC: Really? And where the [*Laughter*] no, no you cannot, and then where do you draw the line?

Sen. Young: So you would not include your common law?

Sen. Ramlogan SC: I am saying it is not necessary because it would be an obvious direct conflict of interest, and even if it is not your common law spouse, it would be an indirect conflict of interest.

Sen. Young: At the end of the day, I am marking the point. I am saying that I want us to consider, because I agree with what you started off by saying, that what you exclude, and what you include then widens what you have excluded, the category, and I understand that. So I am just saying that on my consideration of it, I would like to suggest, and at the end of it, it is your decision, the inclusion of a related party definition.

Sen. Ramlogan SC: Okay. I am saying that as a matter of policy, the Government does not want to attempt an exhaustive listing to define all of the potential conflict of interest situations that can arise. We think that indirectly or directly is sufficiently wide to capture any permutation that can occur.

Sen. Al-Rawi: AG, may we just ask for the—[*Interruption*]

Sen. Vieira: And are not looking to be obdurate or to be difficult, eh. I totally—[*Interruption*]

Sen. Ramlogan SC: Speak for yourself, Senator. Speak for yourself.

Sen. Vieira:—take on board about ejusdem generis rule and all of that, and the beauty of the common law. I just want us to keep in mind that what we are doing is, we are bringing in a whole new regime,; this changes how things were done in the past. So it really does behove us to take our time to—[*Interruption*]

Sen. Ramlogan SC: No, indeed, and I—but I am responding directly to the legitimate points that have been raised to put on the record the Government's position, because it is not that we disagree, it is just that we feel it is already dealt with, and I am asking you to bear in mind as well that you do have the Judicial Review Act which this Act will be subject to, all right?

Sen. Al-Rawi: Great. AG, we can just add it into the regulations we are prescribing an offence for that as well, so perhaps you could drill down on that aspect there.

Sen. Ramlogan SC: Sure, let us move on.

Question put and agreed to.

Clause 12 ordered to stand part of the Bill.

2.45 p.m.

Clause 13.

Question proposed: That clause 13 stand part of the Bill.

Sen. Al-Rawi: Clause 13 was for the proposal for the amendment to include the persons in public life, out of an abundance of caution. Perhaps a new subclause (3).

Sen. Dr. Tewarie: How are you including this?

Sen. Ramlogan SC: We will include a subsection (3) in 13 to say:

The Director of Planning, CBO and CEO shall be persons in public life for the purposes of the Integrity in Public Life Act.

Sen. Young: Or you can just say:

Shall be considered Chief Technical Officers for the purposes of the Integrity in Public Life Act.

Sen. Ramlogan SC: Yes, we can do it that way as well.

Sen. Young: Whichever way.

Sen. Al-Rawi: The former is better.

Sen. Ramlogan SC: The Chief Parliamentary Counsel has advised that my version is a lot better and preferable.

Mr. Chairman: AG, we need the words slowly, please.

Sen. Ramlogan SC: The Director of Planning, the Chief Building Officer and the Chief Enforcement Officer shall be persons in public life for the purpose of the Integrity in Public Life Act.

Sen. Al-Rawi: And you make the consequential amendment to the Fourth Schedule.

Sen. Ramlogan SC: We will deal with the amendment to the schedule in the consequential amendments.

Sen. Al-Rawi: It was referred to by reference to the Bill. Just to clarify for procedure, all the schedules are referred to by reference in the clauses. So the First Schedule, the Third Schedule, et cetera, if in terms of the report.

Sen. Vieira: The Integrity in Public Life Act means once you make them persons in public life that they are caught.

Sen. Ramlogan SC: There is a schedule to the Act, so you will have to add them to the schedule.

Sen. Young: The AG and I have done matters against each other on defining that Act.

Sen. Ramlogan SC: So we will deal with that consequential amendment to the schedule later on. We can move on there, Chair.

Sen. Prescott SC: Mr. Chairman, may I make an intervention in 13, please?

Sen. Ramlogan SC: Sen. Prescott wants to make a belated intervention.

Sen. Prescott SC: May I invite your attention to clause 13(2), all of it. The requirement that persons shall have qualifications contains some ambiguity that I do not think we should be guilty of at all. What do we mean? Should it be a level of accreditation that is acceptable to the national body that does accreditation? Is it qualifications at CXC or higher? In case that appears facetious, would a pre-graduate level—

Sen. Al-Rawi: I raised the same question twice.

Sen. Prescott SC: There is an answer?

Sen. Dr. Tewarie: Yes, all of it is in the—

Sen. Prescott SC: I would like us to consider making some specific requirements.

Sen. Dr. Tewarie: Oh God, they are all at the beginning of the Bill.

Sen. Prescott SC: They are to be found there?

Sen. Dr. Tewarie: Yes, defined.

Sen. Ramlogan SC: It is defined in a related Act.

Sen. Dr. Tewarie: Between “who shall have qualifications” and so on and so on.

Sen. Al-Rawi: Sen. Prescott, in discussing this issue—

Sen. Dr. Tewarie: The Board of Engineering Act and Planning—

Sen. Al-Rawi: Insofar as they are professional persons?

Sen. Dr. Tewarie: Urban and Regional Planners Act.

Sen. Al-Rawi: Insofar as they are professional persons—the answer given to me was: insofar as they are professional persons, the registration, the qualifications under their professional Acts; under the Acts which govern their professional qualifications would apply. So the Chief Engineer had to be an engineer. The Building Officer, I was not quite sure about, nor the Director of Planning only insofar as he is a—but that prescribes that he must be someone already with planning certification.

Sen. Prescott SC: The Enforcement Officer is what? The equivalent of a Corrections Officer?

Sen. Al-Rawi: Insofar as that had an alternative, I was not entirely satisfied.

Sen. Prescott SC: “Built environment” is a profession?

Sen. Al-Rawi: Correct. I had a concern with (c)(i).

Sen. Dr. Tewarie: It is a professional qualification in the built environment or legal qualifications.

Sen. Prescott SC: The “built environment” is an area of study?

Sen. Dr. Tewarie: That would be engineering, architecture, whatever.

Sen. Prescott SC: How is it different from (b) then?

Sen. Dr. Tewarie: Yes, one is engineering.

Sen. Prescott SC: I am just trying to get some specifics out of those people who know. Is (c) referring to somebody who has engineering qualifications—

Sen. Dr. Tewarie: Yes.

Sen. Prescott SC:—and, if so, should we not say that?

Sen. Ramlogan SC: No. You see, the “built environment” is a part of the jargon that they understand and recognize in terms of—

Sen. Prescott SC: It is an area of academia?

Sen. Ramlogan SC: Yes.

Sen. Prescott SC: Really. Let the record show that, but I doubt.

Sen. Ramlogan SC: It refers to architects, planners, engineers and surveyors.

Sen. Prescott SC: Is that right?

Sen. Ramlogan SC: And they compendiously form that composite expression, “built environment”. So let us build a better environment and move on.

Sen. Prescott SC: Sen. Small, I thought I had a view on it, but I would be happy to hear that it—

Question put and agreed to.

Clause 13, as amended, ordered to stand part of the Bill.

Clauses 14 to 20 ordered to stand part of the Bill.

Clause 21.

Question proposed: That clause 21 stand part of the Bill.

Sen. F. Al-Rawi: Mr. Chairman, just a quick question. I think the AG has an answer for it. Clause 21(5), the inclusion of publication on the Web.

Sen. Ramlogan SC: The same thing as before; that you know, we—

Sen. Al-Rawi: Put it on the record.

Sen. Ramlogan SC: I prefer personally that they advertise on radio and forgot about all this foolishness. The *Gazette*, nobody reads it. The newspapers nowadays, nobody reads the advertisements in the newspapers and if you really want to bring something to the notice of the world, do it on the radio, Aakash Vani in the morning that you listen to and call in so frequently and so on. [Laughter]

Sen. Al-Rawi: Appear on frequently; not only call in, appear on.

Sen. Dr. Tewarie: I want to say that (5) does say websites, by the way.

Sen. Al-Rawi: It does? That is my track change. It includes [*Inaudible*]. I would be happy if it did, but we could move on. That is your policy.

Question put and agreed to.

Clause 21 ordered to stand part of the Bill.

Clause 22.

Question proposed: That clause 22 stand part of the Bill.

Sen. Al-Rawi: The issue of the Web has been addressed from a policy point, so I will just leave it there at 22(1). Clause 22(4):

“Where the National Planning Authority is of the opinion that any land in a development should be subject to compulsory acquisition, the National Planning Authority shall refer the matter to the Minister.”

The Bill does not have a prescription for the Minister referring matters back when he is not of the opinion that it is for compulsory acquisition. What concerns me here is that many a time when one is applying for planning permission to Town and Country Planning, the area is identified as being potentially subject to compulsory acquisition and you get a serious hold-up of approvals there. So I was concerned that if there is an opinion expressed in the context of 22(4), that it should perhaps be published or some notice given to the person to that effect.

Sen. Ramlogan SC: That would be a matter of administration of the law itself. They have to communicate a decision to an aggrieved person who has an interest in the complaint or in the matter. I do not think we need to put that in the law. That is common sense, but obviously good public administration.

Sen. Al-Rawi: Should there be a reference to clause 24 here?

Sen. Dr. Tewarie: Is that the one with the five-year limitation? I think there is a five-year limitation on it, AG.

Sen. Ramlogan SC: I thought you were on 22(4).

Sen. Al-Rawi: I was wondering whether 22(4) ought to have said “subject to clause 24”.

Sen. Ramlogan SC: No, not really. That is fine. Let us move on, Chair.

Question put and agreed to.

Clause 22 ordered to stand part of the Bill.

Clause 23 ordered to stand part of the Bill.

Clause 24.

Question proposed: That clause 24 stand part of the Bill.

Sen. Al-Rawi: Clause 24(2) was the suggestion for the inclusion on the web and subsection (6) of that was the one of great concern to me.

Sen. Ramlogan SC: 24(6)?

Sen. Al-Rawi: Yes, 24(6):

Where any designated land has not been compulsorily acquired under the Land Acquisition Act at the expiry of five years from the date on which the plan was approved or...deemed to have been approved by Parliament, any owner...in the designated land may serve notice that such interest be acquired or the development be amended to rescind it and if within six months...

What concerned me is that: number one, it is stretching beyond the descriptive period of four years; two, that it puts the onus upon the owner of the land who is already encumbered by the compulsory acquisition potential to mind his business, whereas the State has no obligation at all other than to just be reminded and then consider whether it wants to buy. So, I was not happy with (6) reversing the burden, extending the statutory period from four years to five years.

Sen. Ramlogan SC: We advised that there was no time limit before. We have now introduced one of five years.

Sen. Al-Rawi: There was a time limit in section 16 of the TCPD Act.

Sen. Dr. Tewarie: That was just for planning permission, man; four years.

Sen. Al-Rawi: That was for any developmental aspects within four years. So the question is here—

Sen. Ramlogan SC: In any event, I understand the question. There is no—you use the term “prescriptive period”, increasing from four to five, I do not know that there is a prescription per se, so I will bypass that for the time being. But with respect to the other point, which is the reversal of the burden, I do not think it is accurate to say that it is a reversal of the “burden”. What it is really is allowing for the land owner and the developer to be vigilant about their own rights and not sleep on their own rights.

I would suspect though that even if you reverse this, the obvious person who would be keeping tabs on that would be the person who owns the land and they would be the ones who would want to pull the trigger on this to say—

Sen. Dr. Tewarie: They are the only ones.

Sen. Ramlogan SC: They are the ones, yes, so we are happy with this.

Sen. Al-Rawi: I have flagged it; it is a matter for your policy.

Sen. Young: If I may, I am just suggesting an amendment to the language, which I think makes clearer what is the intention of the legislation. So on that same—well, after 6(b):

...if within six months after the service of such notice, such interest has not been so acquired, the development plan shall be automatically amended to reflect that the designated land is not subject to compulsory acquisition.

So it is to add the words “be automatically amended to reflect that”; delete the words “have effect as if” and “was not designated as”.

Sen. Ramlogan SC: We will stick with “shall have effect as” and the reason is because the “automatically amended” will introduce some problems. It will introduce an administrative tear that the public service already, with the bureaucracy that is involved, does not need.

Sen. Young: Thank you.

Question put and agreed to.

Clause 24 ordered to stand part of the Bill.

Clause 25.

Question proposed: That clause 25 stand part of the Bill.

Sen. Al-Rawi: AG, skipping past 25(1), 25(4), 25(8)(a) and 25(11), all of which were for suggestions on the website and publication, if we focus on 25(8)(a), do we want, apart from *Gazette* to also have “circulation in two daily newspapers”, even if you are not going to the Web, for consistency with the rest of the Bill; and 25(8)(b)(ii), the inclusion of “reasons together with comments and recommendations to the Minister or National Planning Authority as the case may be”.

The reason is that provisional development plans may also be referred to by the Minister apart from the National Planning Authority. So I thought we had excluded the Minister’s reasons and positions there.

Sen. Ramlogan SC: I think, to deal with (b)(ii) first, comments and recommendations, I think the comments there would have an air of reason about it because you cannot comment in a vacuum. The comments must be linked to the recommendations so that is okay. It does not use the word “reason” but I think the comments and recommendations, the reason falls in between those two.

With respect to the first one about publishing it in the newspapers, I think this is just a provisional development plan. The person who is directly affected by this will be more or less—

Sen. Al-Rawi: AG, I just put it for consistency with the architecture. Everywhere else we have “*Gazette* and two newspapers”, so the question is for there.

3.00 p.m.

Sen. Ramlogan SC: I mean, we also have to be careful. If you look at the newspapers right now, I mean, they are getting thicker and thicker.

Sen. Al-Rawi: I accept what you are going to say, I am marking the spot for consistency.

Sen. Ramlogan SC: Yeah.

Sen. Al-Rawi: Secondly, the question is in (b)(ii), whether the Minister ought to be included in addition to the National Planning Authority.

Sen. Ramlogan SC: “Nah, leave the Minister out man.”

Sen. Al-Rawi: Well, he has the power to do this.

Sen. Ramlogan SC: Yeah, I know but, you know—[*Crosstalk*]

Sen. Prescott SC: Can you elaborate more on that?

Sen. Ramlogan SC: On which one? On which particular part? Well, first, we are going to go back to where he was, (b)(ii).

Sen. Al-Rawi: Yeah.

Sen. Ramlogan SC: Well we dealt with the reasons point. Yeah, you see, if you look at (8) itself, I mean, (8) speaks to the National Planning Authority.

Sen. Dr. Tewarie: That is their job.

Sen. Ramlogan SC: That is their job. You see, the Minister does not have a role in that. So, why would we want to put the Minister in it now?

Sen. Al-Rawi: Okay. Insofar as the NPA may take up the Minister’s point—is that what you are saying? So, the NPA may be speaking to the Minister having been directed for him.

Sen. Ramlogan SC: Quite possibly.

Sen. Prescott SC: In (8) and (9), if the Minister is having a role.

Sen. Ramlogan SC: (9) does not, (8) does not, except in (8)(c).

Sen. Prescott SC: Yes, (8)(c) and (9).

Sen. Ramlogan SC: Yeah—“...submit the provisional development...”—but, you see, it is a submission to the Minister.

Sen. Dr. Tewarie: Exactly.

Sen. Young: But (9) is approving.

Sen. Dr. Tewarie: After submission; after submission.

Sen. Ramlogan SC: Subclause (8), Sen. Prescott, does not involve a role for the Minister up to the point of the recommendations being made to the Minister. So that in (8)(b)(ii), I do not think the Minister, we could say, could be included there. Do you agree with me on that?

Hon. Senators: Yes.

Sen. Ramlogan SC: Right, good. So we come to (9) now: the Minister having received it “may in writing approve”, and that is it.

Sen. Dr. Tewarie: And could approve or not approve.

Sen. Al-Rawi: I am satisfied.

Sen. Ramlogan SC: Are you happy with that?

Sen. Prescott SC: Yes.

Sen. Ramlogan SC: Put that mike on when you are saying yes, next time please, Sir.

Sen. Cudjoe: I want to point your attention to 25(5)(a). I think that if you are serving notice to these parties they ought to be informed as to what time the hearing would be, because it just says date and place. I think time should be included there in 25(5)(a).

Sen. Ramlogan SC: In 25 where, sorry?

Sen. Young: I mean, you have to tell people the time.

Sen. Ramlogan SC: Which one?

Sen. Cudjoe: Clause 25(5)(a).

Sen. Ramlogan SC: 25(5)(a); date, time and place.

Sen. Cudjoe: It should be date, time and place.

Sen. Ramlogan SC: Yeah, that is fine.

Sen. Cudjoe: Okay. Thank you.

Sen. Dr. Tewarie: Could I make a point on this—*[Interruption]*

Sen. Ramlogan SC: Thank you, Sen. Cudjoe. Well done.

Sen. Dr. Tewarie:—business of acquisition. Remember, for the purpose of acquisition even under our law, the Minister has to bring the thing to Parliament. He has to give justification.

Sen. Al-Rawi: Hon. Minister, I accept that. It is the people who get caught in the limbo of the five-year process. That is where I am raising it from.

Sen. Ramlogan SC: Clause 98? *[Laughter]*

Sen. Al-Rawi: Clause 28 now.

Sen. Ramlogan SC: Clause 28, sorry.

Mr. Chairman: In 25(5)(a) insert “time”.

Sen. Al-Rawi: You could skip 28 if on your policy point.

Question put and agreed to.

Clause 25, as amended, ordered to stand part of the Bill.

Clauses 26 to 30 ordered to stand part of the Bill.

Clause 31.

Question proposed: That clause 31 stand part of the Bill.

Sen. Al-Rawi: I just have a question in terms of explanation for the record. In clause 31(1) and then 31(2). So, 31(1) says:

“Subject to section 33, the Minister may, by Order, provide for the grant of permission to develop land under this Part, and the Development Order may include provisions with respect to—

- (a) any development...
- (b) any class...
- (c) any land specified....”

Now 31(2) says:

“The permission referred to in subsection (1) may be granted by—

- (a) the National Planning Authority...”—or the Minister.

I was not quite sure about how those two work together.

Sen. Ramlogan SC: Your concern is that 31 speaks to the Minister.

Sen. Al-Rawi: Yes. Is it intended that the NPA can be a delegatee to act for the Minister?

Sen. Ramlogan SC: Well, (2)(a) would derogate from the powers of the Minister to the extent that it applies to, you know, the National Planning Authority. The specific would override the general, so that (2)(a) is an incursion in his powers, and that is how I read it.

Sen. Al-Rawi: You see, (2)(a) sort of says—(2)(a) says the Minister may do this.

Sen. Ramlogan SC: Yeah, I know. Your problem is that the NPA enters the picture in subclause (2)—[*Interruption*].

Sen. Al-Rawi: Exactly.

Sen. Ramlogan SC:—without being in the enabling section in (1).

Sen. Al-Rawi: Yes. [*Crosstalk*]

Sen. Ramlogan SC: Do you want to explain?

Sen. Dr. Tewarie: Yeah. The Minister will make a general development order, and under the power of that order the National Planning Authority shall.

Sen. Ramlogan SC: The explanation is that the Minister, by order, simply provides for the grant of the permission, and by virtue of that order that the Minister would make, the order itself will say that the powers are to be executed through from the National Planning Authority.

Sen. Al-Rawi: Right.

Sen. Ramlogan SC: So the legal order, when made, will say that.

Sen. Al-Rawi: So, in essence, the Minister has the prerogative to make provision by himself.

Sen. Ramlogan SC: Yes.

Sen. Al-Rawi: He can do that, but the NPA can do it as well.

Sen. Ramlogan SC: Yes.

Sen. Al-Rawi: So, we are crystalizing the fact that somebody can present an application directly to the Minister and the Minister can grant it?

Sen. Ramlogan SC: No, put it this way, he would be delegating his powers insofar as certain specific regions go to the respective planning authority.

Sen. Al-Rawi: Okay. Thank you.

Question put and agreed to.

Clause 31 ordered to stand part of the Bill.

Clause 32 ordered to stand part of the Bill.

Clause 33.

Question proposed: That clause 33 stand part of the Bill.

Sen. Al-Rawi: We could leave clause 33 out. The only concern that arose there was in 33(2), where the trigger was the advertisement as opposed to necessarily the notice, but I know it is a follow-on from the old TCPD laws, so I can skip past that.

Question put and agreed to.

Clause 33 ordered to stand part of the Bill.

Clause 34 ordered to stand part of the Bill.

Clause 35.

Question proposed: That clause 35 stand part of the Bill.

Sen. Young: Mr. Chairman, I had raised at 35(2)(g):

“Without restricting the generality of subsection (1)(g), the following considerations may be regarded as material:”

I was just suggesting the addition of the words “the existing, required or needed improvement of the infrastructure” as opposed to “the improvement of the infrastructure”. [*Crosstalk*] It cannot be the same thing.

Sen. Dr. Tewarie: What are you suggesting?

Sen. Young: Existing, of course, would be different improvement. I am suggesting the addition of the words “existing, required or needed improvement” so, existing, of course, would be different to required or needed improvement. So, you are saying the existing—[*Interruption*]

Sen. Dr. Tewarie: Okay, we accept that.

Mr. Chairman: Could you please give us the amendment?

Sen. Young: Sorry. It is at 35(2)(g), the addition of the words after the “existing, required or needed” and then also I have at subclause (3):

“In considering an application which relates to any subdivision of land, the National Planning Authority or the planning authority shall”—in addition to subsections 35(1) and 35(4) above—“have regard to the health, safety, convenience”. Sorry, Mr. Chair, you got (2)(g), right?

Mr. Chairman: Yes.

Sen. Young: So, I am now looking at (3), subsection (3). After the word “shall”, I am suggesting the addition of the words “in addition to subsections 35(1) and 35(4) above, have regard to...”

Sen. Dr. Tewarie: Why is he creating all these redundancies?

Sen. Al-Rawi: Just put the position on the record and we move on then.

Sen. Young: I am not insisting on it, I am just suggesting. I think it improves it because—it may be implied, but I prefer to express it.

Sen. Dr. Tewarie: There is no material improvement.

Sen. Young: Well, then move on.

Sen. Dr. Tewarie: Let us leave out that, “nah”. On the issue of existing, while I said we will accept it, when I look at it now, it says “the existing required or needed”, I do not think you need both “required” and “needed” there. All right? So “existing and required”. [*Crosstalk*]

Mr. Chairman: Or required, or and required? Which one?

Sen. Dr. Tewarie: And.

Mr. Chairman: And required.

Sen. Dr. Tewarie: Sorry, “existing or...”

Sen. Young: It is “existing or required improvement.” It is “the existing infrastructure or the required improvement.” Thank you.

Sen. Dr. Tewarie: And we will not accept the one you suggested in (3), okay.

Sen. Al-Rawi: Skip 36 and 38.

Mr. Chairman: Clause 35 is amended in “(g)” which includes “the existing or required improvement of infrastructure.”

Sen. Dr. Tewarie: No, Mr. Chairman, we did not get the amendment right. It was “the existing infrastructure or required improvement of infrastructure”, just for clarity.

Mr. Vice-Chairman: “the existing infrastructure and required—
[*Interruption*]

Sen. Dr. Tewarie: No, “or required”

Mr. Chairman: “or required”.

Sen. Dr. Tewarie: “improvement of infrastructure.”

Question put and agreed to.

Clause 35, as amended, ordered to stand part of the Bill.

Clause 36.

Question proposed: That clause 36 stand part of the Bill.

Sen. Cudjoe: Mr. Chairman, I would like to draw your attention to 36(2). I think that planning authorities should have the ability to interface and collaborate with the EMA also, and not just the National Planning Authority. [*Crosstalk*] Read 36(2).

Sen. Ramlogan SC: Well, it says, in fact, collaborate with the EMA.

Sen. Cudjoe: That is the National Planning Authority, but planning authorities should be able to do that too, because the whole idea was supposed to pass some of these responsibilities and so on—was for devolution, right?—to the municipal corporations and the other planning bodies, so they should be able to interact with the EMA too. I would say, in the case of the Tobago House of Assembly, but I would not just state the Tobago House of Assembly, but I think it would work out for the others too.

Sen. Dr. Tewarie: No, no, let me explain. There is no malevolence involved, right? Under the existing arrangement, under the law being proposed, simple applications will go down to the local authorities; complex applications will remain with the National Planning Authority. Okay? In the case of the Tobago House of Assembly, the Tobago House of Assembly has an existing memorandum of understanding. In other words, facilitating a working arrangement with the EMA. It already exists.

Sen. Cudjoe: Okay.

Sen. Dr. Tewarie: All right.

Mr. Chairman: Clause 36, sorry.

Sen. Cudjoe: But do you think the same would be beneficial to other municipal corporations and planning authorities for them to be able to interface?

Sen. Dr. Tewarie: It is only the complex applications that would need EMA requirements, you see.

Sen. Cudjoe: Okay.

Question put and agreed to.

Clause 36 ordered to stand part of the Bill.

3.15 p.m.

Clause 37 ordered to stand part of the Bill.

Clause 38 ordered to stand part of the Bill.

Clause 39.

Question proposed: That clause 39 stand part of the Bill.

Sen. Al-Rawi: This is a serious clause for us in clause 39. Clause 39(1) prescribes that:

“Subject to the provisions of this section, any permission to develop land granted or deemed to have been granted before the commencement of this Act shall, if development to which...was not commenced before”—the commencement of this Act—“be deemed to have been granted subject to a condition that development shall be commenced not later than five years after the commencement of this Act.”

This clause is particularly restrictive insofar as the permission may have been granted for a longer period and we are truncating it down to five years, and there may have been considerable expense. It particularly bites hard when we limit the costs and the compensation to persons who were denied approval for certain circumstances down to compensation only and exclude damages.

Sen. Dr. Tewarie: You note—*[Interruption]*

Sen. Al-Rawi: The extension provision in clause 40? Yeah.

Sen. Dr. Tewarie: Yeah.

Sen. Al-Rawi: So, “Subject to the provisions of this section”, “section” is intended to be broader so it is subject to section 40, correct? And that is the ability to obtain an extension of time in circumstances other than outline development approval, et cetera, et cetera. *[Crosstalk]*

Sen. Dr. Tewarie: You need to put a limitation, you know.

Sen. Al-Rawi: Yeah. Because 39 referred to section 39, specifically, I thought that it excluded 40, which caused me concern there.

Sen. Dr. Tewarie: Okay. Would that be the case, CPC?

Sen. Young: CPC, when you use the words “subject to the provisions of this section” as specific as “this section”, the section could only be referenced to 39, as you know when you are looking at legislation it is subject to this part, the use of the word “section” would be the specific clause or the specific section. Sen. Prescott, you do not agree with that?

Sen. Prescott SC: I am coming to that. [*Crosstalk*]

Sen. Dr. Tewarie: This has to do with permission granted before this Act comes into force, not so?

Dr. Mohammed: And after, so it carries both.

Sen. Dr. Tewarie: Okay. So it is a transition arrangement?

Mr. McIntyre SC: No, no, Minister.

Sen. Prescott SC: No, but 39 does not have any provisions of its own.

Sen. Dr. Tewarie: And after?

Mr. McIntyre SC: On or after 39(2).

Sen. Dr. Tewarie: Okay. All right. You comfortable now?

Mr. Chairman: It is okay?

Sen. Dr. Tewarie: Yes, Chair.

Sen. Al-Rawi: Sorry, could I just get the confirmation for the record. Sorry. Should it not be “subject to section 40”?

Sen. Dr. Tewarie: No, the CPC says we are okay here, that is my advice.

Sen. Al-Rawi: I think he is wrong.

Sen. Dr. Tewarie: Well, do not say that.

Sen. Al-Rawi: I do not mean that badly or pejoratively, I just think that he should look at it again. To me, if you look at 40, 40(2) says, “This section...”—applies—“to”, which is only 40 for extensions. So how could the section in 39 mean the Act and section in 40 mean only the section? [*Crosstalk*]

Sen. Dr. Tewarie: The CPC is saying that we can delete “Subject to the provision of this section” and just start “All permission”—

Sen. Al-Rawi: You see, 39 we did as an amendment in the committee stage; the point was to pick up the consequential aspect in—sorry, 40 is what we did. Yeah. It should be 40.

Sen. Dr. Tewarie: All right. Okay. On the advice of the—[*Crosstalk*] Which one you want to do? You want to delete?

Dr. Mohammed: (1) and (2).

Sen. Vieira: Yeah, I think that is correct.

Sen. Al-Rawi: I think so.

Sen. Ramlogan SC: Yeah.

Sen. Vieira: Because 40 references 39.

Sen. Ramlogan SC: Yes, that is correct. So we would change it to “subject to section 40”. In both subsections (1) and (2) we will change it to read that.

Sen. Dr. Tewarie: In clause 39(1) “Subject to the provision of section 40—
[*Interruption*]

Sen. Al-Rawi: Then you could break the (1) there: “(1) any permission to develop”, and then (2) could be “all permission to develop”.

Mr. McIntyre SC: No, we would just change it in (2).

Sen. Al-Rawi: Okay.

Sen. Dr. Tewarie: No, he just wants to change it, stylistically. In (2) it says, “Subject to the provisions of section 40, all permission to develop”, et cetera. Okay, Chair?

Mr. Chairman: The question is that clause 39 be amended to insert 40 in subsections (1) and (2).

Question put and agreed to.

Clause 39, as amended, ordered to stand part of the Bill.

Clause 40.

Question proposed: That clause 40 stand part of the Bill.

Sen. Al-Rawi: Clause 40(2), the exclusion of “outline development approval”, “permission to develop land”—under a—“Development Order”, et cetera; this clause, in our view, is restrictive. I accept that you may want to have a cut-off line at some point. I understand that you may have a strategy there, however, bearing in mind that the transitional provisions are limited to permissions being to one year for outline planning approvals. May I perhaps ask, are there circumstances where an outline planning approval in a developmental order, et cetera, may have been granted for more than that time?

Sen. Dr. Tewarie: I mean the whole purpose of these things is that you give outline planning permission so that they can proceed to do the detailed plan, okay? And why do you do this? Because the purpose is to facilitate development. When they do not do it they simply get an extension. That is normal.

Sen. Al-Rawi: So are there circumstances where an outline planning approval may last for longer than the period we are now prescribing? Are outline approvals always one year or two years?

Sen. Dr. Tewarie: Yes. It is lapse and renewal, really.

Sen. Al-Rawi: Do you know what the period is, through you, Mr. Chairman? One year?

Sen. Dr. Tewarie: It is usually one year, and there is a good reason for that, believe me, right? Put the onus and responsibility on the owner.

Sen. Al-Rawi: Okay. Just for the record, my concern is the cost and expense that people may have to go through for existing aspects.

Sen. Dr. Tewarie: No. That is their business.

Sen. Al-Rawi: Right.

Question put and agreed to.

Clause 40 ordered to stand part of the Bill.

Clause 41.

Question proposed: That clause 41 stand part of the Bill.

Sen. Young: At clause 41, it was at 41(3):

“A grant of an outline development approval does not permit commencement of any operations in, on, under or over land to which the grant relates and permission to develop land shall be...”

I think we have missed out the words “sought and granted before any development of the land is commenced”. So I am suggesting the inclusion of the words “sought and” before “granted”.

Sen. Dr. Tewarie: Yeah, we could live with it. We could live with the amendment, Mr. Chairman.

Sen. Young: Thank you. [*Crosstalk*]

Mr. Chairman: The question is that 41(3) be amended to insert “sought and granted before any development of land”.

Question put and agreed to.

Clause 41, as amended, ordered to stand part of the Bill.

Clause 42 ordered to stand part of the Bill.

Clause 43.

Question proposed: That clause 43 stand part of the Bill.

Sen. Al-Rawi: The issue that arose that concerned me in 43(3) and 43(4) was that we are now affecting title. My preference would have been that any agreements of this type should have gone through the usual registration requirements, pay stamp duty and register the agreement, so that notice of it could be found from a titling perspective.

Sen. Lalla: After a while, once the Act is up and running, it would be known that you have to check the National Planning Authority to see what applications there are.

Sen. Al-Rawi: I was looking at the issue between equitable and legal splitting of interests because of the consideration issues that may go into an agreement, so I was just trying to narrow it back down to where the law has shored up the tightest route, which is on the registration aspects.

Sen. Dr. Tewarie: Sen. Al-Rawi, Mr. Chairman, through you, you would remember that we introduced the notion of the register here because of your own suggestion.

Sen. Al-Rawi: Okay. Minister, I am just obliged to raise the points as I am going through. I accept that you have a point.

Sen. Ramlogan SC: Sure. You can check the registry. That is fine.

Sen. Al-Rawi: Okay. My concern there is the equitable legal split and then the dynamics that go down there.

Sen. Ramlogan SC: Well, we will ensure that they could legally and equitably check the register.

Sen. Al-Rawi: Not that, the rights on entitlements, AG.

Sen. Ramlogan SC: Well, we can ensure that beneficiaries who hold either legal or equitable interest can check the register.

Sen. Al-Rawi: I catch you, AG, you are relying on Government's policy and just marking the spot.

Sen. Ramlogan SC: Thank you very much.

Question put and agreed to.

Clause 43 ordered to stand part of the Bill.

Clause 44.

Question proposed: That clause 44 stand part of the Bill.

Sen. Al-Rawi: Two quick points on 44. The issue of whether you wanted to increase, broaden the aspect of beyond just a bond because there are other forms of securities, and the second aspect is that the language that is used in the Bill is, as may be prescribed, and not regulations. [*Crosstalk*]

Mr. Chairman: And you are removing “enforceable”?

Sen. Al-Rawi: In the places where “bond” applies. Right?

Sen. Ramlogan SC: Yeah.

Sen. Dr. Tewarie: Okay. All right.

Sen. Ramlogan SC: So in 44 after “bond” every time we put “or instrument”.

Mr. Chairman: “or other instrument”?

Sen. Dr. Tewarie: “or other instrument”.

Sen. Ramlogan SC: “or other instrument”. But does that really widen it? I was hearing you and I—[*Interruption*]

Sen. Vieira: I was just saying to make it simple, to limit it to “bond” or “instrument”, just say “where you require security for the performance of any agreement, the instrument shall be in such form contains”—[*Interruption*]

Sen. Ramlogan SC: Yeah, because “instrument” would include “bond”.

Sen. Al-Rawi: I would prefer that.

Sen. Ramlogan SC: Just change the word “bond” to “instrument”.

Sen. Al-Rawi: No, you would be striking, in the second line, the words, “a bond as”, so it would read “requires security for the performance of any agreement or any conditions subject to which...the instrument”; strike the word “bond”.

Sen. Vieira: And in the last sentence, “bond” again.

Sen. Al-Rawi: Yeah, “the instrument”.

Mr. Chairman: All right, let us get it now.

Sen. Ramlogan SC: Okay, slowly, Sen. Vieira.

Mr. Chairman:—“bond” you use “instrument”?

Sen. Al-Rawi: Mr. Vice-Chairman, in the second line after the word “require”, delete the words “a bond as”, just delete those three words. In the third line at the end, delete the word “bond” and substitute the word “instrument”, and—[*Interruption*]

Mr. Chairman: In both places?

Sen. Al-Rawi: It just appears once, Sir, on the third line. And then if you come down to the last line, “that the”, after the word “the”, strike the word “bond” and replace with the word “instrument”.

Mr. Chairman: The question is that 44, as amended, insert the word “instrument” in both places where “bond” is inserted.

Sen. Al-Rawi: No, Sir, I think we have it wrong there. It is delete the words “a bond as” in the second line and then insert the word “instrument”, in the other two places where the word “bond” appears.

Mr. Chairman: Okay. So, I would go over it again. Clause 44, as amended, that the word “a bond as” has been deleted, and where the two words “bond” is in the same clause 44, you include “instrument” in both places.

Sen. Al-Rawi: Yes, Sir, that is it. Substitute. Yes, Sir.

Question put and agreed to.

Clause 44, as amended, ordered to stand part of the Bill.

3.30 p.m.

Clause 45 ordered to stand part of the Bill.

Clause 46.

Question proposed: That clause 46 stand part of the Bill.

Sen. Al-Rawi: Suggestion in subclause (4), hon. Minister, through the Chairman, to replace the word “shall” in subclause (4) with “may”. I was looking at providing a discretion.

Sen. Dr. Tewarie: No.

Sen. Al-Rawi: Minister, you just need to give a little one-line explanation, and we will move on.

Sen. Dr. Tewarie: It is just a compliance order.

Sen. Al-Rawi: Okay. There is a reason for mentioning it. The reason is that later on there is a discretion provided in compliance aspects, so this allowed for a short-circuiting and a fast point in just and certain circumstances. So if you want to go through the long route every time, then I will accept that, but I thought that you should have a discretion to fast approach the position. As opposed to “shall”, use the word “may”; but if that is the position I will accept that.

Question put and agreed to.

Clause 46 ordered to stand part of the Bill.

Clause 47.

Question proposed: That clause 47 stand part of the Bill.

Sen. Al-Rawi: I withdraw my observation on 47.

Question put and agreed to.

Clause 47 ordered to stand part of the Bill.

Clause 48.

Question proposed: That clause 48 stand part of the Bill.

Sen. Al-Rawi: The question is, in clause 48(1)(b), “involves...more than local importance”. I thought that term was rather vague. I could understand national security; I think it is vague.

Sen. Dr. Tewarie: You think it is redundant? The idea is that people want to do something in a community, but when you think about it really, it has implications for more than that community, and you might want to take it into account.

Sen. Prescott SC: So “local” there means “local to the community”?

Sen. Dr. Tewarie: Yes. [*Crosstalk*] You see, this is the perpetual tension between national authority and national planning and community planning and community authority, and there will always be a tension. That is the source of the tension, for instance, in the United States, with the States and the Federal Government.

Sen. Prescott SC: May I ask, did you mean that there are issues which impact wider than the community?

Sen. Dr. Tewarie: Yes.

Sen. Prescott SC: Could you think of language along that line, that it involves issues which have a wider impact?

Sen. Dr. Tewarie: Not limited to—let us say that—not limited to.

Sen. Prescott SC: To the community?

Sen. Dr. Tewarie: Not limited to local importance.

Sen. Prescott SC: To the geographical area?

Sen. Dr. Tewarie: Not limited to local importance in the immediate geographical area. Are you all right with that? You understand?

Sen. Prescott SC: Coming closer.

Sen. Al-Rawi: I just raised it as being vague.

Sen. Dr. Tewarie: But you know that; it is a perpetual tension. It would always have things like that. Suppose the local authority gives permission to somebody to mash up a quarry somewhere in—

Sen. Al-Rawi: Minister, I am on board with you. It is the lawyer in me coming out in terms of precision and what it means, and whether it is vague or not.

Sen. George: All of us here care for precision; not lawyers alone. [*Crosstalk*]

Sen. Dr. Tewarie: So we have that?

Sen. Cudjoe: My concern is under 48(1)(g), the end—

Mr. Chairman: Please, Senator, could we get the first amendment that we could have it correct?

Sen. Cudjoe: No, no amendment. [*Crosstalk*]

Mr. Chairman: You have not yet—okay, go ahead.

Sen. Cudjoe: 48(1)(g), the statement that says, “involves such other issues as it thinks fit”. I think it is somewhat too vague and open ended.

Sen. Dr. Tewarie: What do you suggest?

Sen. Cudjoe: I am suggesting “other material consideration”.

Sen. Al-Rawi: That is fine.

Sen. Cudjoe: Something more substantial than “as it thinks fit”.

Sen. Ramlogan SC: No, but we cannot—

Sen. Cudjoe: The Minister has already agreed. [*Laughter*]

Sen. Dr. Tewarie: No, no; the Cabinet is always subject to the advice of the AG. [*Laughter*]

Sen. Ramlogan SC: No, the short point is that in law you cannot take nonmaterial considerations into account; it would invalidate the decision. So that, “involves such issues as it thinks fit”—

Sen. Cudjoe: As it thinks fit?

Sen. Ramlogan SC: But that is standard language; we use that in legislation all the time.

Sen. Cudjoe: I think it should say “other material considerations”. [*Crosstalk*]

Mr. Chairman: Is there any amendment?

Sen. Ramlogan SC: The CPC is happy with “as it thinks fit”, so we shall move on, on that basis.

Mr. Chairman: There were no amendments?

Sen. Dr. Tewarie: No.

Sen. Al-Rawi: AG, just the last point on 48, at the end, end, end: “to submit written representations”—did you want to include a right of hearing?

Sen. Ramlogan SC: No, I think that was there before, and we took it out. Once you introduce a right of hearing and so on, once they submit the representations—[*Interruption*] exactly, you are right. I am depriving myself of—[*Laughter*]

Mr. Chairman: The question is that clause 49 stand part of the Bill.

Sen. Cudjoe: Clause 49?

Mr. Chairman: Clause 49—49. We have now dealt with 48.

Sen. Cudjoe: We finished 48?

Sen. Al-Rawi: The question that 48 stand part of the Bill did not take the vote.

Question put and agreed to.

Clause 48 ordered to stand part of the Bill.

Mr. Chairman: Thank you, Sen. Al-Rawi. You are always there to assist me. [*Laughter*]

Clause 49.

Question proposed: That clause 49 stand part of the Bill.

Sen. Cudjoe: Mr. Chairman, I have some serious issues with clause 49. This speaks about the Minister being able to revoke and modify and so on, and I think that this infringes on the autonomy of the Tobago House of Assembly. I think that for matters relating to the Tobago House of Assembly, there should be some consultation. As much as Government—as Sen. Lalla said earlier, pulling out the Constitution that speaks about the Cabinet and all this—we are having conversations nationally about internal self-government, and more autonomy and so on for Tobago, so I do not understand what would make the Government or the Minister opposed to consulting with the Tobago House of Assembly on matters relating to Tobago, because we already have the responsibility for the planning functions. I would have discussed this with the Minister earlier.

Sen. Al-Rawi: Mr. Chairman, 49 causes great concern for me in terms of the limitation of rights to six months. The question as to whether—

Mr. Chairman: Could we deal with Sen. Cudjoe's concerns.

Sen. Al-Rawi: I thought the technocrats were considering the issue, sorry, while that was going on.

Mr. Chairman: Let us deal with that and then we will come to your concern.

Sen. Dr. Tewarie: What issue? Clause 49? [*Crosstalk*]

Mr. Chairman: Yes, 49; she speaks about consultation with the Tobago House of Assembly. [*Crosstalk*] Where that will be inserted we will want to know. [*Interruption*]

Sen. Dr. Tewarie: Mr. Chairman, 49, we are prepared to accept an amendment to 49(1) which would now read, if we took the amendment:

Subject to subsections (2) to (5), if in the opinion of the Minister, after consultation with the National Planning Authority and the relevant planning authority and having regard to considerations—et cetera.

Sen. Al-Rawi: Mr. Chairman, thank you for that. May I invite your attention to the limitation in subclause (3) to six months? I am concerned that we have a statement as to whether we are affecting the civil rights for any other period of prescription there. Secondly, in the limitation of the calculation of compensation in subclause (4) being confined to just what 4(a)(b) says, and then in (6) where we deduct what would be equivalent to damages from the value of the land, particularly in circumstances where it may not have been paid.

Sen. Young: So to make that point, at subclause (6) where you say, “where, pursuant to this section, compensation is payable” you want to deduct it, but it has not been paid. I could understand if it has been paid as expenditure, then you can deduct it when you are compulsorily acquiring land, but if it is just compensation that is payable, but has not yet been paid, why should it be deducted from your acquisition cost?

Sen. Al-Rawi: Also, why should the value of the land—

Sen. Dr. Tewarie: This comes from the TCPD.

Sen. Al-Rawi: I understand that, but the TCPD is 1938, and we are looking to better it, et cetera. The concept of damages has moved up, so people have been entitled to damages in court. What this new section in the law does is it says: you no longer have damages, you are confined only to compensation. You are only getting the value that you paid for—creation of plans, et cetera, and we are deducting it from the land when we buy it at market value.

Sen. Dr. Tewarie: When former Prime Minister Eric Williams presented the Bill, he raised the point that when you are managing land and you are making law to manage land as the State, on behalf of its citizens, you always are caught up between what you might call a benevolent despotism—he actually used that word—and the facilitation of the rights of the citizen. I think we have to understand that that is a reality.

Your former Minister of Planning, sitting next to you, would understand that in this contentious, very—what can I say—litigious society. You also have to protect the State as the custodian of the decision-making on land development in the country. So that is the balance that you have to—

Sen. Al-Rawi: Minister, I am fine with that. My problem is that we are now creating a new regime which limits and excludes damages. It alters the prescriptive period down to six months and it deducts the value of additional costs and damages, which somebody would have been otherwise entitled to, from the value of the land. We are affecting the property rights of the citizens, as opposed to protecting the State per se. So we are fettering the common law approach by this clause 49.

Sen. Vieira: You are also fettering the court.

Sen. Dr. Tewarie: No, you see, listen, we have to see what you are saying, which is to say, to ensure that the rights of the citizen and the options available to him or her under the law, are protected. You have to balance that against what this 49 is about, which is, the Minister here is acting in the public interest. I mean public interest does matter; somebody has to. And I think this is an important thing, and I really do not think you should open this to—

3.45 p.m.

Sen. Al-Rawi: Minister, I have no problems with what you are saying there, but I have a problem with the fact that when I am looking at the equality of arms, the State having the pocket. Somebody being dispossessed of land. Somebody being told that look, you have spent half a million dollars on developing permission for your land. You have spent valuation reports to go to the bank. You paid a commitment fee to the bank. None of that is included inside of here. You had to go to Raymond and Pierre, or whomever it is, and pay for their reports, et cetera—all out. Your attorneys' fees—all out. You then come down now to compulsorily acquire the land. You go to the government valuator who gives you the lowest valuation in some circumstances or maybe moderate, and then you tell him that \$25,000 or that \$100,000 which we were giving you as compensation, we are deducting it from the value of the land as well. Why? That does not fetter the fact that the Minister can still compulsorily acquire it, still stop the protection, et cetera. It is the adequacy of compensation I am looking at.

Sen. Young: Based on actions of the State when it is not protecting the State.

Sen. Ramlogan SC: But it says, “reasonable compensation”, does it not?

Sen. Al-Rawi: AG, read (4); read subclause (4)—

Sen. Ramlogan SC: Right.

Sen. Al-Rawi:—“...but no other compensation shall be paid under this section in respect of work carried out, prior to...” So (4) says.

Sen. Ramlogan SC: No. That says, “...work...prior to the grant of the permission...” That says, “...in respect of work carried out, prior...”—

Sen. Al-Rawi: So, AG, let us back up; (3): “Where permission to develop land...”—et cetera—“...is revoked...by an Order...on a claim made to the Minister within six months of making the Order, it is shown that any person interested in the land has incurred expenditure...”

No. I accept that you have not developed the land. I accept that it is prior to, but it is excluding other costs which may be incurred.

Sen. Dr. Tewarie: Yeah. The idea is to limit it to the material cost. I think that is reasonable.

Sen. Ramlogan SC: I think, you see, the idea here is the consequential loss is what you would be compensated for.

Sen. Dr. Tewarie: We cannot come and give you for loss of opportunity—

Sen. Ramlogan SC: So, in other words—

Sen. Dr. Tewarie:—and all “kinda thing”.

Sen. Ramlogan SC: Yeah.

Sen. Young: You are excluding “consequential costs”.

Sen. Al-Rawi: “Consequential losses” are gone. “Foreseeable damage” is gone. All of that gone—clean.

Sen. Young: But what you are doing is, you are actually limiting, to use the phrase—you are limiting “special damages”. Right. You are limiting the category of special damages because you are limiting it to “plans, specifications, studies or reports”. There are going to be in your developmental application—your application for your developmental approval, et cetera—you are going to incur certain other special costs. We are not arguing that you should include consequential cost or a loss of profit or a loss of use or anything like that. It is “hard costs” that are now being limited.

Sen. Ramlogan SC: If you deleted subsection (4) and left it at (3), reasonable compensation—what happens?

Sen. Al-Rawi: That would work because it at least gives a discretion and a justification aspect.

Mr. McIntyre SC: It will work, but if you took out (4), it means that the work that you would be compensated for, the work that you did before the approval.

Sen. Ramlogan SC: Yeah. You see, the advice is that it was meant to have some causation, [*Crosstalk*] some causal link with the—[*Crosstalk*] yeah—and a limitation on it. I mean, what you did before really, you know, it cannot be. So, we will rest on that as policy. We are not going to include, it is really for “consequential losses” arising out of the modification or the change—the revocation and modification. So, we will leave it at that.

Sen. Al-Rawi: At (6), not that I agree with you, but we are just moving on.

Sen. Ramlogan SC: No. No. Sure.

Sen. Al-Rawi: At subclause (6), where you are deducting it from the compulsory acquisition cost which is just a bare valuation of land.

Sen. Ramlogan SC: “Uh-hmm.”

Sen. Al-Rawi: I do not think that the person should be denied the benefit of that compensation which I think ought to be excluded from the value of the land. He ought to get both.

Sen. Young: It cannot be “compensation payable”. You can say, “compensation paid”. [*Crosstalk*] Not only of the tense, but also the fact that you cannot get—

Sen. Ramlogan SC: Yeah. You see, the way I read it is that it is a protection against double indemnity. You are really, having paid them—

Sen. Young: Having paid them—

Sen. Ramlogan SC: Right.

Sen. Young:—but compensation payable.

Sen. Ramlogan SC: Yes. Okay. So the question is “where compensation is paid”.

Sen. Young: Correct.

Sen. Ramlogan SC: So change “payable” to “paid”, and we will be all right.

Sen. Young: Correct. From my point of view, it is not double compensation.

Sen. Ramlogan SC: Change “payable” to “paid”. I agree with that. And we are fine then.

Sen. Young: Yes.

Sen. Ramlogan SC: So the change in subsection (6): “Where in pursuance to this section, compensation is paid...”. I agree with that.

Sometimes the State can take forever to actually pay people.

Sen. Young: Correct.

Sen. Ramlogan SC: All right. That girl not helping you or what?

Sen. Young: Special damages.

Sen. Dr. Tewarie: No. She is a good girl, man.

Mr. Chairman: No. We did the first of both of them. There is “payable” in (2) in the parts. No. In the first one; just the first. The other “paid”—

Sen. Ramlogan SC: Let me see. No. No. Both. Both. Sorry. Both. Both. Both.

Sen. Young: The second one has to be “any compensation paid”. So, “Where pursuant to this section, compensation is paid...” in respect of “expenditure”. So take out “...is payable or has been...”. So it reads, “compensation is paid in respect of expenditure incurred in carrying out any work on land and the State subsequently acquires the land, any compensation paid in respect...”—that is what it would be.

Mr. Chairman: So the last one “payable” remains the same? “...amount of compensation paid or payable in respect...”.

So “payable”— [*Crosstalk*]

Sen. Young: Take out “or payable”.

Mr. Chairman: Ah?

Sen. Young: Take out “or payable”.

Mr. Chairman: Take out “or payable”.

Sen. Young: What we are focusing on is what has actually been paid.

Mr. Chairman: Okay. And the second one is “paid”.

Sen. Young: “Or payable”. Right.

Mr. Chairman: “subsequently acquires such land, any compensation is paid...”. That is correct? Sen. Young?

Sen. Young: Yes, Chairman.

Mr. Chairman: Where you have said here, “any compensation is paid in respect of acquisition of land...”. So—

Sen. Young: That is correct.

Mr. Chairman:—“...is paid” there.

Sen. Young: Yes. Correct. Thank you, Sir.

Sen. Dr. Tewarie: Did you get that right? [*Crosstalk*]

Sen. Prescott SC: Chair, may I just ask a question of the Minister, please?

Mr. Chairman: Go ahead, Senator.

Sen. Prescott SC: If through him, he could ask the CPC, why are we now resorting to using abbreviations? Is it just a shortcut?

Sen. Al-Rawi: It was a defined term earlier on.

Sen. Prescott SC: I know. I have seen the definition, but I do not see that we are writing the legislation to make shortcuts at this point. Because we might as well say “the NPA” and all those kinds of things.

Hon. Senator: True.

Sen. Prescott SC: Why do we want to use a shortcut? Maybe the Minister could get the CPC to advise us.

Sen. Dr. Tewarie: What is that?

Sen. Prescott SC: Oh. Sorry. You were not hearing me. I wondered why we have now resorted to using an abbreviation in 7—

Sen. Al-Rawi: Section 84.

Sen. Prescott SC:—notwithstanding it is properly defined. Shortcuts are not necessary.

Sen. Dr. Tewarie: We can spell it. Yeah. We can spell it out—Environmental Commission.

Mr. Chairman: “Environmental Commission”?

Sen. Prescott SC: I do not like it.

Sen. Dr. Tewarie: “Environmental Commission”.

Sen. Al-Rawi: Well that should be throughout by way of a consequential amendment.

Sen. Dr. Tewarie: So, we will do that throughout.

Sen. Al-Rawi: You can take the vote for the record though. I do not agree with position, but—

Sen. Dr. Tewarie: You do not agree with what?

Sen. Al-Rawi:—the limitation of “special damages” and with the deduction from the value of the land in subclause (6).

Sen. Dr. Tewarie: I mean, I am still trying to see if you have a point that I need to concede, but I do not see it. Right. So I—

Sen. Al-Rawi: I am just marking the record, hon. Minister.

Mr. Chairman: Hon. Senators, clause 49, be amended in 49(1) after “Minister, after consultant with National Planning...”—

Sen. Dr. Tewarie: Consulting; “after consultation”. Yes.

Mr. Chairman:—“...after consultation with National Planning Authority and the relevant planning authority...”. Okay.

And then in clause (6), where you have “...acquires any such land, any compensation and is paid”—no, the first one.

“Where pursuant in the section, compensation is paid...”.

And then you have in the fourth line, “...any compensation is paid in respect of acquisition...”

And then you come and you have “compensation is paid”. [*Crosstalk*]

Sen. Young: No. I think what it is, is in the first line, “Where pursuant to this section, compensation is”—

Mr. Chairman: “is paid”.

Sen. Young: Yes. So you delete “payable” or “has been”—

Mr. Chairman: Then you have “amount of compensation”—

Sen. Young: Then in the third line you have “any compensation paid”, instead of “payable”. And then it goes on in the sixth line, “equal to the amount of compensation paid”, and you deduct “or payable”. [*Crosstalk*]

Sen. Dr. Tewarie: Listen, we hear the amendments. We considered them. We considered having one change at the end from “payable” to “paid”, but on reflection the CPC advises, and I have to go with this, which is that we keep it as is. Okay.

Sen. Al-Rawi: We mark the spot on our point, and we could go.

Mr. Chairman: So there is no change in (6)?

Sen. Dr. Tewarie: No change.

Mr. Chairman: Then we have a change in (7), which reads as follows:

“A person who is aggrieved by a decision relating to the payment of compensation under this section may appeal to the Environmental Commission...” delete “EC” and you spell out whole words.

Sen. Dr. Tewarie: Right. Yes, Sir.

Clause 49, as amended, ordered to stand part of the Bill.

Clause 50.

Sen. Al-Rawi: Just on clause 53. Are you satisfied with the one month of such service? I thought that that time frame was a little restrictive.

Sen. Ramlogan SC: It is duly noted.

Sen. Al-Rawi: Right.

Clause 50 ordered to stand part of the Bill.

Clause 51.

Question proposed: That clause 51 stand part of the Bill.

Sen. Al-Rawi: Clause 51 is a major cause of concern; 51(2) in particular which is where there is an attempt to revive section 16 of the TCPD Act which is the prescriptive period of four years. Having it in a subclause of 51 as opposed to a stand-alone section, concerned me, and I thought that we should have as one of the miscellaneous sections, that the limitation period of four years similar to section 16 of the TCPD should stand alone, and then make a reference to “subject to the provisions of this Act otherwise in 51”. So that is subclause (2), and then that really applies right throughout the rest of the Bill. Because the limitation operation works straight throughout the Bill.

Sen. Dr. Tewarie: No. I really do not—he is calling for a restructuring.

Sen. Al-Rawi: No. I am calling to take clause 2 out as a stand-alone clause in the miscellaneous sections with the same language or similar language to section 16 of the existing legislation. So that where anybody had any clause to be considered, the operationality of the limitation period would have to be factored in any decision. As it is here my fear is that buried in 51 that the limitation may be viewed to operate only within the confines of this particular clause 51.

Sen. Dr. Tewarie: No. Well then they are complementary. Ah?

Sen. Al-Rawi: If you look at clause 59, later on, discontinuance orders, where you are giving somebody an instruction to discontinue. Well, does 51(2) apply or not because it is an issue?

Sen. Dr. Tewarie: Could you answer that question for me? 51(2); does it apply? Now, this specifically has to do with enforcement, eh.

4.00 p.m.

Sen. Al-Rawi: Yes.

Sen. Dr. Tewarie: All right, and the question he is asking is whether this is limited to clause 51, having to do with enforcement.

Sen. Al-Rawi: Look at 65(2) again, Minister:

“No person shall occupy a new building or permit any new building to be occupied unless and until an occupancy certificate has been issued.”

Well, does 51(2) apply there? Suppose it is a new building, they did it in breach of the laws, four years have passed. Does it apply? That limitation period is a critical, critical cornerstone of our laws.

Hon. Senator: It is not the building. The building continues because of public safety issues with the building.

Sen. Al-Rawi: But entry into a building because of public safety issues, et cetera, is a different matter. We are talking about the fact that you are planning—somebody may well have, but for the diligence of the State, built something, four years have passed and the law still applies, you can put a discontinuance use.

Sen. Dr. Tewarie: I do not want to put a limitation on that.

Sen. Al-Rawi: Well, I have a serious problem with that. Serious problem.

Sen. Dr. Tewarie: You cannot build your thing and just continue indefinitely.

Sen. Al-Rawi: Well, it means that 12 years later—in every squatting community in Trinidad they built illegally, are we now going to say that the law allows us to go and bulldoze them?—because that is what the rest of the law permits. We can cause them to uncover works. There is the clause for uncovering works inside of here. You can send somebody who has covered up works, four years have passed, under this particular law you can say to them, “go and uncover the work, if you do not do it I will go and uncover the work. I am going to make the cost attached to your land, I am going to sell your land to pay for that cost.” And I could act four years later or five years later, or a squatting community 10 years later. There has to be a limitation period commensurate with existing law.

Sen. Lalla: This is a specific type of legislation, there is no reason why you should—

Sen. Al-Rawi: So, you are happy with the State having the power to go in 10 years later and—

Sen. Lalla: Yes.

Sen. Al-Rawi: Yes. That is the most dangerous thing I have heard. Ten years later? That is a section 34 waiting to happen. No, that is a serious, serious matter.

Sen. George: Yes, but you see the State is always slow to act, you know that. The public service moves slowly. Always!

Sen. Al-Rawi: Hon. Minister, the advice of CPC in the committee was that section 16 should be reintroduced into the Bill, eh. We had written advice from CPC saying that, so I am concerned that the advice of CPC in writing is that it should go in.

Sen. Dr. Tewarie: Here is the problem I have, right. Okay, permission for land is one thing, that is statute-barred after four years—so to speak—and you cannot enforce. But that does not relieve you of the responsibility to meet the requirements of compliance for the use of that building on the property, and ultimately for the safety and security of ordinary citizens. And to conform to some kind of permission requirements for the use of the land for the erection of the building, and I really feel that to take away that and to create the conditions for people to ease out of that is not right.

Sen. Al-Rawi: But, we are not creating it, hon. Minister. The law right now, pursuant to section 16 of the Act is that there is a limitation period. This law which is creating new law goes further, it allows the Government to go and bulldoze every squatting community in Trinidad and Tobago on the basis that—not that it may; I am just telling you technically. The law allows for the bulldozing of squatting communities, it can be deemed to be breach of planning regulations, four years may have passed and we are creating new law, uncovering works affecting the title, the right to sell property, it is going to affect mortgages and the demanding of a clearance certificate or an occupation certificate. It cannot be.

Sen. Dr. Tewarie: Let me hear what the CPC says. Does CPC have any issue?

Parliamentary Counsel: No, that is fine. That is standard.

Sen. Dr. Tewarie: You would leave it as it is? All right, we have argued but let us go on now. I think I am right on this one, eh, in the public interest.

Question put and agreed to.

Clause 51 ordered to stand part of the Bill.

Clause 53 ordered to stand part of the Bill.

Clause 53.

Question proposed: That clause 53 stand part of the Bill.

Sen. Al-Rawi: Sorry, on 51(10) I wondered whether the compliance notice or immediate compliance notice should have been affixed to the land, and that is because you can serve it upon a squatter, per se. Just noting that.

Sen. Cudjoe: I have a question, in 53 and all the other clauses after that, are we going to continue saying “EC”?

Sen. Dr. Tewarie: No, no, we changed all of that.

Sen. Cudjoe: Very well, okay.

Sen. Al-Rawi: In 53(2), Mr. Chairman:

“No person who is referred to in subsection (1) or whose predecessor in title was entitled to appeal to the E.C. under section 51(8) but failed to do so shall be entitled, in proceedings under subsection (1) to dispute the validity of the action...”

So, it is an ouster clause that I thought was dangerously wide.

Minister, on 51, just for clarity, is it your view that having included that prescription period in 51(2), that that is to apply to the whole of the Act, all other circumstances?

Sen. Dr. Tewarie: The four-year limitation?

Sen. Al-Rawi: Yes.

Sen. Dr. Tewarie: No.

Sen. Al-Rawi: So, for clarity’s sake, 51(2):

“Where the National Planning Authority or a planning authority is satisfied that a breach of planning control has occurred...”

I understand, but I want—

Sen. G. Singh: It is not on the record, Faris.

Sen. Al-Rawi: I would tell you why. Because it arises in many other clauses after, the applicability of 51(2). I will be able to let it go and just—

Mr. Vice-Chairman: Go on 53, please.

Sen. Al-Rawi: So, is it that it is only in those limited circumstances there? Just yes or no, I will move on after that.

Sen. Dr. Tewarie: Yes.

Parliamentary Counsel: The limitation is the next, if the breach of planning authority, apparently the building continues.

Sen. Dr. Tewarie: You heard that?

Sen. Al-Rawi: So, if there is a breach of any building use there is no limitation period?

Sen. Dr. Tewarie: No.

Sen. Al-Rawi: Okay, thanks.

Mr. Vice-Chairman: We have removed “E.C.”. Where there is amendment where E.C. is, insert the entire words, “Environmental Commission”. It does not make a difference.

Sen. Al-Rawi: Is there any view on 53(2), hon. Minister?

Sen. Dr. Tewarie: I did not read it carefully.

Sen. Al-Rawi: The ouster of persons who have not acted.

Sen. Dr. Tewarie: I mean—remember, this is really requiring people to conform to the legal requirement.

Sen. Al-Rawi: I understand the general policy, specific language. So, a predecessor in title, sells the property, a compliance notice is served on a squatter or somebody who is just walking past the land, that is adequate under the law. We do not affix it to the land, we do not advertise it, they deem it to be adequate, somebody buys the property, rolls up the very next day, we are now affecting him and we are saying, “your predecessor in title should have told you and you are okay with it”.

Sen. Dr. Tewarie: In the purchase they would require—

Sen. Ramlogan SC: “Let the buyer beware”.

Sen. Dr. Tewarie: Yes, exactly. That is important, you know when you sell a property they go through everything and you have to—

Sen. Al-Rawi: I am just marking the spot, hon. Minister, you put your point forward.

Question put and agreed to.

Clause 53 ordered to stand part of the Bill.

Clause 54 to 56 ordered to stand part of the Bill.

Clause 57.

Question proposed: That clause 57 stand part of the Bill.

Sen. Dr. Tewarie: Are you flagging this issue of the National Planning Authority? This 57(5), are you flagging that?

Sen. Al-Rawi: Hon. Minister, 57(5)? Yes, Sir.

Sen. Dr. Tewarie: Okay. All right.

“The National Planning Authority or a planning authority is not required to provide opportunity to any person to make representations before making a development repair order.”

You see, that is not, again, something I want to concede. I mean, if people are violating the law and they are doing the wrong thing, I feel the power of the State should be brought to bear on them.

Sen. Al-Rawi: Thank you.

Question put and agreed to.

Sen. Dr. Tewarie: Chair, I just want to make a point. Do not forget though that they have the opportunity to appear after the order.

Sen. Al-Rawi: Sure. Hon. Minister, you have noted my concern and in subclause (6), I am still of the view that there should be an affixation onto the land to provide better notice. So, I know that you have noted my concerns.

Clause 57 ordered to stand part of the Bill.

Clause 59.

Question proposed: That clause 59 stand part of the Bill.

Sen. Al-Rawi: Clause 59 says:

“Where...the National Planning Authority or a planning authority...”

Sen. Lalla: Where are you?

Sen. Al-Rawi: Clause 59, top, (1), at the beginning:

“Where it appears to the National Planning Authority or a planning authority that—

- (a) the use of land should be discontinued, or that any conditions should be imposed on the...or
- (b) a building or works should be altered or removed, in the interest of proper planning of an area...”—you may issue an order.

Now that we have no limitation period, 12 years later you roll up and you are giving the authority the power to bulldoze a community, conduct repairs, deal with everything by removing the limitation period. The courts are going to say, “Parliament in its wisdom in repealing the Town and Country Planning Act which had a specific limitation of four years”, and with the hon. Minister’s words on record a little while ago, “gave the authority permission to bulldoze”.

Sen. Dr. Tewarie: Clause 59(1), I am not sure if I caught what you were saying.

Sen. Al-Rawi: I am saying that 51(2) does not apply to 59(1).

Sen. Dr. Tewarie: “A discontinuance order may grant permission for development of the land to which the order relates, subject to any conditions...”

Sen. Al-Rawi: Alteration or removal of any building, works, et cetera. Beyond your four years, we have removed the four-year limitation period from the old law, we have repealed the old law.

Sen. Dr. Tewarie: Yes, that is what I told you.

Sen. Al-Rawi: None, bulldoze it. “Twelve years later, doh like dat building, bulldoze it”. Dangerous, very dangerous. Your own supporters are going to have a problem with this. Every businessman, every house owner, every landowner, everybody has a problem with this.

Sen. Maharaj: You are assuming all those are not your supporters?

Sen. Al-Rawi: Yes, I am just telling you. I am telling you. Go ahead and make bold law.

Sen. Maharaj: You assume that the State could be so mischievous and so vindictive?

Sen. Al-Rawi: Less has happened. Pineapple Trace, bulldozed lands, squatting communities, bulldoze them, because it is in the context of the repeal, Sen. Maharaj, having repealed a specific law, we now open the floodgates.

Sen. Maharaj: The applicant has the laws and the Judiciary at its disposal if it feels aggrieved.

Sen. Al-Rawi: Yes, yes, see if that makes people sleep good at night.

Sen. Maharaj: The Pineapple issue was addressed. [*Interruption*]

Sen. Al-Rawi: It is in the context of an interpretation provision, hon. Minister.

Sen. Dr. Tewarie: I am writing. I am listening to you and checking.

Sen. Al-Rawi: Yeah, yeah.

Sen. Ramlogan SC: Faris, repeat the point?

Sen. Al-Rawi: Because 51(2), which is the limitation period in a limited circumstance—

Sen. Ramlogan SC: Hold on, hold on; 51(2), yes.

Sen. Al-Rawi: So, 51(2) comes after 51(1).

Sen. Ramlogan SC: Clause 51(2) says, “within four years of the breach”.

Sen. Al-Rawi: Right. So:

“Where...the National Planning Authority or a planning authority is satisfied that a breach of planning control has occurred...”—right, it may act “except after four years”.

Sen. Ramlogan SC: Right.

Sen. Al-Rawi: Right. Now, planning control is not the subject of 59. Clause 59:

“Where it appears to the National Planning Authority...that—

(a) the use of land...or

(b) a building or works should be altered or removed,...”

Sen. Ramlogan SC: Yeah.

4.15 p.m.

Sen. Al-Rawi: Look at 59(1)(b):

“...in the interest of proper planning of an area”—it—“may issue...(...‘a discontinuance order’)—it may—“alteration or removal of any building or works as may be specified in the discontinuance order.”

It is not made subject to any prescriptive point to 51(2).

Sen. Ramlogan SC: You mean the four years’ limitation.

Sen. Al-Rawi: Correct. And you see my point is—*[Interruption]*

Sen. Ramlogan SC: But that has always been the case, though.

Sen. Al-Rawi: No, no, not in—you saw section 16 of the TCPD Act?

Sen. Ramlogan SC: Yeah, but there has never been a limitation for this, you know.

Sen. Al-Rawi: There is a limitation of four years.

Sen. Ramlogan SC: I will let the Minister deal with that.

Sen. Dr. Tewarie: No, first of all there has—in the TCPD, we had no limitation on that, and we have limited the four-year restriction to enforcement matters, okay? Remember here now, 51—*[Interruption]*

Sen. Al-Rawi: Hon. Minister, section 16(1) of the TCPD Act:

“Where it appears to the Minister that any development of land...”

And development is broad: building, erection, construction, alteration, demolition.

“has been carried out after the appointed day without the grant of permission required in that behalf under this Part, or that any conditions subject to which the permission was granted”—et cetera, et cetera—“have not been complied with, then the Minister may within four years of the development”—development being broad—“being carried out”—et cetera.

Sen. Dr. Tewarie: Yeah, but this is different. What we are dealing with is the discontinuance of use, all right? You have permission to have a pig farm somewhere—

Sen. Al-Rawi: Correct.

Sen. Dr. Tewarie:—communities develop around it; it becomes a nuisance; you have to take a decision in the public interest. You give somebody permission to set up an industrial site, let us say a chemical plant or whatever it is, and conditions change, environmental conditions become important, community interest becomes important, you have to always, as a Government in the process of governance, take people’s and communities’ interest into account, and this of course makes for the community interest to be heard in this thing. Then you cannot put a limitation on that, you cannot tell me because there is a four-year limitation I am going ahead with the plant, and then you “cyah tell me nutten”—*[Interruption]*

Sen. Al-Rawi: There are other ways to deal with that, hon. Minister. You can compulsorily acquire in the public interest.

Sen. Dr. Tewarie: Yeah, there are provisions for it.

Sen. Al-Rawi: But that—*[Interruption]*

Sen. Dr. Tewarie: You can be heard.

Sen. Al-Rawi: Hon. Minister, if we look at 59(1):

“Where it appears to the National Planning Authority or a planning authority that—”

Jump to (b) directly:

“a building or works should be altered or removed...”—then, et cetera.

So let us forget “use”. Clause 59(1)(b)—skip “use”, you could just go—I do not like the building in public authority.

Sen. Dr. Tewarie: Yeah, there are conditions, you know, it is conditions. But I want to get to the rights of the individual. Would you show me that section? They have the right to present their case.

Hon. Senator: Subclause (4).

Sen. Dr. Tewarie: Under subclause (4):

“When the National Planning Authority or a planning authority submits a discontinuance...”

Sen. Young: Actually it is subsection (5)(b), because it says:

“the person may, within six months after he...”—has received it—

Sen. Dr. Tewarie: Right, so there are adequate provisions for the individual to be heard. And more than that, justice may be done.

Sen. Al-Rawi: Hon. Minister—[*Interruption*]

Sen. Dr. Tewarie: And there is also provision here for compensation.

Sen. Ramlogan SC: So Faris, I want to ask you a question.

Sen. Al-Rawi: Yeah.

Sen. Ramlogan SC: Is it that you are proposing that if someone builds in breach of the law, that the State must not have the power to regulate it?

Sen. Al-Rawi: After four years.

Sen. Ramlogan SC: After four years? No, but that is—[*Interruption*]

Sen. Al-Rawi: I mean, by way of destructive works with limited position. AG, what I am looking at is the current law. There are other mechanisms to cause compliance. I can compulsorily acquire, I can use the EMA—[*Interruption*]

Sen. Ramlogan SC: Hold on, let me ask you this. So, I deliberately build my 10-storey building two feet away from the boundary, knowing full well that the law requires that there be a set-back reserve of 10 feet. I ignore the law that is known to everybody and I build one foot away from the boundary line, the 10-storey building goes up and I rent it out and I am making plenty money.

Sen. Al-Rawi: “Yep.”

Sen. Ramlogan SC: You are saying the State must not have the power to go and alter it?

Sen. Al-Rawi: Exactly.

Sen. Ramlogan SC: “Nah, we saying”—well then we disagree with that on the matter of policy.

Sen. Al-Rawi: And I am saying that because the building may have existed for 15 years, 12 years or 10 years.

Sen. Dr. Balgobin: Mr. Chairman, may I just make an intervention here? This matter did come up in the committee and it exercised our minds for quite some time now, where I thought we had arrived at here was an understanding that there is a principal requirement for the State to act in good time—*[Interruption]*

Sen. Ramlogan SC: Yes.

Sen. Dr. Balgobin: And the idea was that we did not want somebody coming by “vaps” and penalizing somebody for a building that is out of scope or something—*[Interruption]*

Sen. Ramlogan SC: Yeah, sure.

Sen. Dr. Balgobin:—long after the fact. And so I thought that where we had got to was to adjust the time frame—*[Interruption]*

Hon. Senator: This has no time frame.

Sen. Dr. Balgobin:—to something that—*[Interruption]*

Sen. Ramlogan SC: What did the joint select committee agree by way of a time frame then?

Sen. Al-Rawi: The select committee took the advice of Lorraine John, acting as CPC, who agreed that the removal of the four-year limitation period was unjust. She put a note into writing, saying that section 16 or its equivalent should be reintroduced into the Bill. It is now being reintroduced in a limited way in clause 51(2) only, where the Minister has specifically said that it is very limited in its operation. So we have gone against the advice of CPC in the select committee.

Sen. Lalla: Hon. Senators, if I may, I understand the point that you are making, Sen. Al-Rawi. But when one looks at subclause (5) and subclause (6), one sees that a balance is struck between the right of the State and the right of the individual. The compensation that you are entitled to, subclause (5) and subclause (6) is very, very wide. If one looks—*[Interruption]*

Sen. Al-Rawi: Sen. Lalla, now a person is looking at any point in time.

Sen. Lalla: Please, please, let me finish. If you look at the provisions, subclause (5)(b)(i), (ii) and (iii)—[*Interruption*]

Sen. Al-Rawi: Sure.

Sen. Lalla: “depreciation in the value”—of—“the land; disturbance of his enjoyment of the land...”

That is very, very wide. You and I know that under the Constitution, when you go to court and you see compensation for disturbance of your enjoyment of your property, it is very wide. It can take into account any productive activity that you are doing on the land. But my point is, a balance has to be struck between the right of the State to propagate organized planning—[*Interruption*]

Sen. Al-Rawi: Sure.

Sen. Lalla:—of the country and the right of the individual to be compensated for the disturbance that is caused to him and his enjoyment of property.

Sen. Al-Rawi: Sure, thank you, Sen. Lalla. May I point out that the compensation under constitutional limitation—constitutional circumstances is very limited. Secondly, damages may not be an adequate remedy. It is not damages, because it is compensation and it is limited compensation—and what about state buildings that are breaching the law?

Sen. Lalla: The provisions are very wide.

Sen. Dr. Tewarie: Chair, with your permission I would like to say this and with the help of the—[*Desk thumping*]
—with your permission I would like to say this, and with the help of the Opposition, I would like to move forward. We must make the distinction as this Bill does, between discontinuance and breach, and what we are talking about here is the issue of discontinuance. And discontinuance can be for a number of reasons which are defined. In response to a decision having to do with discontinuance, the citizen has the right to appeal, present his case and be compensated, all right. There is no violation of the rights of the citizen. My own feeling is that the State must have that right, and I feel that I would like to go with this as it is.

Sen. Al-Rawi: Hon. Minister, thank you. My concern is that it must be an onus on the State to act, and if it has passed a particular period it should no longer have the privilege of causing the citizen loss. It cannot have the power indefinitely.

Sen. Dr. Balgobin: I do not think the question was—*[Interruption]*

Sen. Dr. Tewarie: If you look at 51(2), all right, in response to what Sen. Dr. Balgobin was saying:

“Where the National Planning Authority or a planning authority is satisfied that a breach of planning control has occurred, the National Planning Authority or a planning authority may, within four years of the breach and in addition to any other remedy provided under this Act, cause—

(a) a compliance notice...”—et cetera, et cetera.

So they are forced to act within the limitations of the four years, okay?

Sen. Al-Rawi: Hon. Minister, you just said the opposite of that. When I asked you—

Sen. Dr. Tewarie: I said there is a difference between a breach and a discontinuance. There is no limitation on the discontinuance because the environmental conditions can change.

Sen. Al-Rawi: Hon. Minister, I am not arguing to be difficult. I am genuinely concerned that in repealing the Town and Country Planning Act and lifting the fetter against the State to act within four years, and opening the floodgate to the state for mischief, notwithstanding compensation, I am concerned that we are making a mistake.

Sen. Dr. Tewarie: I am just showing you that we did not, and I am also showing you that it is not true to say that we did not take the advice of the representative from the Chief Parliamentary Counsel’s office. I am also saying that we did not violate the issues that Sen. Dr. Balgobin said were raised in the committee. But there is a distinction between breach and discontinuance and we want to hold the position on discontinuance.

Sen. Al-Rawi: Hon. Minister, section 51(1):

“In this section, the steps required to be taken in order to prevent or remedy a breach of planning control...”—*[Interruption]*

Sen. Dr. Tewarie: Chair, look, I have—with all due respect, I have been very reasonable in this matter and all the Standing Orders relating to what we are doing now are being violated—*[Interruption]*

Sen. Al-Rawi: How?

Sen. Dr. Tewarie:—by the manner in which Sen. Al-Rawi is proceeding. I would like to proceed according to the letter of the law from this clause on.

Sen. Al-Rawi: Sure, Mr. Chairman, may I ask for your guidance, if the hon. Minister has the privilege to refer to clause 51(2) and read it out, how on earth am I breaching the Standing Orders when he is doing the same thing?

Sen. Dr. Tewarie: Because I was trying to accommodate you, Chair.

Mr. Chairman: Senators, let us be reasonable, could we now say that clause—*[Interruption]*

Sen. Robinson-Regis: There is a concern still.

Mr. Chairman: There is still a concern?

Sen. Robinson-Regis: Yes.

Sen. Dr. Balgobin: So you are holding on to the idea of—so you are holding on to discontinuance.

Sen. Dr. Tewarie: Yes.

Sen. Dr. Balgobin: So just explain that now, play that out for me.

Sen. Dr. Tewarie: In the case of enforcement, the limitation is four years. In the case of a breach, the State is forced to act within the limitation of four years. In the case of discontinuance, there is no limitation.

Sen. Dr. Balgobin: And you are defining discontinuance as—

Sen. Dr. Tewarie: Discontinuance is a situation in which—and it is defined here in many ways, but I will say the two main ways are when conditions change that require you to discontinue the use of land for the purposes for which permission had been granted. And there is opportunity there for compensation and for the person to present their case, or when there are questions having to do with safety, security, et cetera, that you have to deal with it.

Sen. Ramlogan SC: You see the point, Dr. Balgobin, the point here is that if you hold firm and rigid to the four-year limitation, what the technocrats are advising is that, for example, San Fernando by the Supreme Court of Justice and the Police Headquarters, you have a residential area just like Woodbrook and Ariapita Avenue, residential area that has morphed and evolved into semi commercial, and to the point where it is now fully commercial.

Planning and Facilitation Bill, 2013
[SEN. THE HON. A. RAMLOGAN SC]

Tuesday, June 24, 2014

So, you have the Police Administrative Headquarters in San Fernando, the San Fernando Supreme Court and the San Fernando Magistrates' Court, but you have a situation where every lawyer is forced to rent from somebody's garage downstairs their house, because all of the surrounding streets are residential and the Town and Country Planning Division has refused to do a character review of the neighbourhood, such that it can allow for people to put up some tall buildings so you could have law firms and so on and so forth.

Now, some people get it. For example, you have Hobsons law firm and you have others, but generally speaking you have a mishmash and a hodgepodge of things taking place. Now, what I understand them to be saying here is this: if there is a character review and a commercial community has emerged or conversely a residential community has emerged, and a man has a building there for 20 years, but the interest of the amenity to quote the legislation here, in the interest of proper planning of an area including the interest of amenity or public health or safety. So, for example, if the building is leaning, it is in those situations I think that this provision is triggered that they would intervene. It is not in the breach, the breach is covered with the four-year period. This is a different thing. It is discontinuance.

Sen. Lalla: To protect the wider public.

Sen. Ramlogan SC: It is not to protect the wider public interest. That is how I understand it and that is what we have been advised.

Sen. Al-Rawi: You read 59(1)(b)?

Sen. Ramlogan SC: Yes, we did.

Mr. Chairman: Are we okay now?

Sen. Al-Rawi: No, we are not, but you can go ahead.

4.30 p.m.

Sen. Dr. Balgobin: Hold on, "nah man". We are not okay. Why are we okay?

Mr. Chairman: All right. Well, go ahead.

Sen. Dr. Balgobin: Let me just make sure I understand this. The use of land should be discontinued. How are we making a distinction between that and a breach?

Sen. Ramlogan SC: And the breach, that is the issue.

Sen. Dr. Balgobin: So what you meant to say is, use of land should be discontinued for any reason other than a breach of some prior permission that you had given?

Sen. Dr. Tewarie: A breach occurs when you have permission and you violate the terms and conditions.

Sen. Dr. Balgobin: Fine. So the planning authority has given permission, you went and did something different. That is a breach. You have four years—

Sen. Dr. Tewarie: Right. And you have four years to deal with that.

Sen. Dr. Balgobin: Right. The use of land should be discontinued—

Sen. Ramlogan SC: That is where you have permission. You build in accordance with the permission, but subsequently—

Sen. Dr. Balgobin: But you have come and changed the—

Sen. Ramlogan SC:—the character of the neighbourhood has changed; the building, having been built in conformity with the permission granted, the building is structurally unsound. For example—

Sen. Dr. Balgobin: It is not for structurally unsound, it is you change your decision based on a policy decision—

Sen. Ramlogan SC: No, but also if you look at “including the interest of amenity or public health or safety”.

Sen. Robinson-Regis: Yes, but AG, if I may, if I am reading it correctly, it may not be that you had planning permission in the first place and then you may have built—

Sen. Dr. Tewarie: May or may not.

Sen. Robinson-Regis: It may or may not be.

Sen. Ramlogan SC: Sure.

Sen. Robinson-Regis: And what has happened, in reality, is that the Government, or the State, has recognized that this area should be used for a certain purpose and you have already built in that area and, consequently, the planning authority is saying, “We have to bulldoze your building”, or “We have to move your building because we are now going to use it for a certain purpose”. Is that not what the thinking is?

Sen. Dr. Tewarie: That is correct.

Sen. Ramlogan SC: Sure.

Sen. Robinson-Regis: So I would not like you to make that as your reference point.

Hon. Member: It is a wider area of concern.

Sen. Robinson-Regis: Yes, it is a wider area of concern, not that.

Sen. Ramlogan SC: That is fine. Chair, let us put it. We are okay now.

Sen. Dr. Balgobin: No, I am still not okay. I am almost okay, but I am not—just to understand. So when you bulldoze my building, is it that I get compensated for it?

Sen. Ramlogan SC: Yeah, yeah, yeah.

Sen. Dr. Balgobin: So why would we do that, as opposed to do a compulsory acquisition? Why would you come and “mash” down my thing and then pay me for it? Why do you not just acquire it and then do what you want?

Sen. Ramlogan SC: You do not want the land. You do not want to acquire the land.

Sen. Al-Rawi: Worse yet, AG. “Yuh doh want de land”, development happens, you are affected. This is a section 4 and 5 Bill, property rights. You are telling me that it is okay for us to put in a new law—because this did not exist before—that repeals the old law. Why not go through the land acquisition? Look at South Quay when the Government bought all of the properties to do the development for the Rapid Rail position. They had to buy those properties. They could not just say, “Well, the planning use change, we are putting a Rapid Rail station here and bulldoze people’s building, and pay them compensation automatically”. It had to be dealt with civilly.

Sen. Dr. Balgobin: That is the concern that I would have, eh, AG, that the tyranny of the State could really “advantage” the individual property holder, who has a legitimate right to enjoy his property and pass it on to his children.

Sen. Dr. Tewarie: No, you will not cease to enjoy your property, but the use to which you can subject it and the approvals that you will get may be different. If you look at, is it—

Sen. Ramlogan SC: You see, the illustrations that come to mind here—because you do not want the land. I think the Rapid Rail is not an apposite example.

Sen. Dr. Tewarie: That is an acquisition issue.

Sen. Ramlogan SC: That is an acquisition issue. They acquired those lands. This here is like, take for example, a set of schools or a set of churches and temples and mosques emerge in a particular area, and you have the biggest rum shop right in the middle; you have a kindergarten and an early childhood care centre, et cetera, or you have an abandoned building that becomes a den of iniquity for drug addicts and so on, and you have the school right next door, and the owner of the building is not doing anything as the case may be. Public health and safety, and the environment itself, requires that you discontinue the use. If you discontinue the use, you will have to remove the building, or you might have to structure it, or alter it. Now, you can then change the use. You can build an early childhood care centre; you could build a church and rent it out.

Sen. Dr. Balgobin: That is where it gets a little sticky for me. The thing is, if you broke down my building, fine, in the interest of public policy. Public policy has changed to—

Sen. Ramlogan SC: No, but remember, that is the last resort. There are options, eh. You could, for example, cease to use it for a rum shop purpose and you could use it for some other purpose. The building does not have to be broken down. It is the use to which—

Sen. Al-Rawi: But we have existing laws to deal with that, AG.

Sen. Ramlogan SC:—the use to which it is put.

Sen. Al-Rawi: Liquor licence may be revoked, municipal corporations have to go and bulldoze any derelict building and charge it as a title to the land. We have existing laws for all of those examples that you just raised. My concern is that we are creating a new law that allows the State a very mighty power in the context of 59(1)(b) alone, which deals—forget use. It deals with a building. You could say, “I do not like that building”.

Sen. Cummings: Chairman, using the same example that the AG mentioned, about the buildings in San Fernando surrounding the courthouse and the police station, where these buildings are now being used for offices, if the State then decides to change the use in that area, is it then that the State would be allowed to move into San Fernando around the police station and bulldoze all those properties? [*Crosstalk*] I am not getting any answer to that—[*Crosstalk*]

Mr. Chairman: Senators, hello. Please, please. The Senator has asked a question there and—

Sen. Robinson-Regis: Yeah, and there is no answer forthcoming from the other side.

Mr. Chairman: Yeah, he needs to be answered. Could you please repeat the question?

Sen. Cummings: I have asked, using the same example put forward by the Attorney General in relation to the use of buildings surrounding the courthouse and the police station in San Fernando, based on what I am reading here, is it then that the State, having—if the State chooses to change the use for that area, that under this clause the State would be able to move in and bulldoze all the residential properties surrounding—

Sen. Dr. Tewarie: No, not in that—

Sen. Ramlogan SC: No, I think that will be a power that will be invoked in an appropriate case. That would not be an appropriate case for that.

Sen. Cummings: But who will determine whether it is appropriate or not?

Sen. Ramlogan SC: Well, the law would determine that. The law determines that. But can I just say this? I think the issue here is 1(b). 1(b) seems to be the problem here because of the way it is drafted, 1(b) is not linked to the use of the land.

Sen. Dr. Balgobin: Correct.

Sen. Ramlogan SC: It reads to say:

“Where it appears to the National Planning Authority or a planning authority that –

(b) a building or works should be altered or removed, in the interest of”—et cetera.

And I think that, really, seems to be the crux of the problem.

Sen. Drayton: But is that not a matter of regulations in terms of how you would go about doing that?

Sen. Ramlogan SC: It could be.

Sen. Dr. Balgobin: Hear my difficulty, eh—just to say this. Sorry, Chairman—

Mr. Chairman: Please, go ahead.

Sen. Dr. Balgobin: It is important. I have received permission from the State. I go and I build my thing. I am using my land for whatever purpose. I am minding chickens, goats. Subsequent developments occur and 20 years hence my—

Sen. Ramlogan SC: The approved use is revoked.

Sen. Dr. Balgobin: Yes. The smell of the goats, or whatever, disturbs the people now because it has become a residential area, or whatever. So out of the blue, my descendant—I, presumably, am no longer around—is served discontinuance and he is going to be—you are not acquiring the lands, so the compensation is not going to be the same.

Sen. Dr. Tewarie: No, but you also have the option of having a change of use to whatever the use is.

Sen. Dr. Balgobin: Right. But that is all he knows to do because we are working the land, or you are using the building on the land to—whether it is to run a school or a bar or a barber shop. That is his trade.

Sen. Ramlogan SC: Let me flip the coin on you, Rolph, and use a real-life example. You give people the right, for example, to do, as you say, livestock—rear livestock, and this is a problem in Trinidad right now. So you get permission, you are rearing livestock, and the thing mushrooms and you set up about 10 large-scale farms, but in the meantime, over the course of that 20 years people have built in and around the area, so it has now become a community. The stench has become unbearable and there is no proper management of the waste and the effluent and so on, and in those circumstances the planning authority has to treat with the fact that the entire neighbourhood is now affected by this pig farm, as the case may be, or whatever. Now, in those circumstances, there has to be a change of use.

Sen. Dr. Balgobin: Now, you see, that is exactly my point. If I am running a business and it is making money, it might be cheaper for you to acquire the lands and let me go somewhere else, than to tell me to discontinue and pay me compensation for stopping—

Sen. Ramlogan SC: No, but the State does not wish to acquire the land. If the State acquires the land, what is it going to do with it?

Sen. Dr. Balgobin: No, but if you have to pay me, to compensate me for stopping doing what I am doing there, it is probably going to amount to more than if you acquire the lands. No?

Sen. Dr. Tewarie: Well, I do not know. I think we should leave the options.

Sen. Drayton: What I cannot understand in this discussion, going through the Bill, this is about planning, this is about monitoring, this is about development, this is about assigning areas for specific use—

Sen. Dr. Tewarie: That is right.

Sen. Drayton: So why after 20 years the State would have allowed it to get to that? Where is the State in the context of monitoring to avoid such a situation developing? Because this is what you have now. You allow people to squat, or you allow people to vend. They have developed their businesses; they have developed their homes; they have children going to school, and 10 years later, after everything has happened, the State now comes and says, “Well, this should not be so”. But where has been the State all the time in terms of monitoring its own policies and its own laws to see that that does not occur in the first place?

Sen. Dr. Tewarie: Because the world is not perfect and this is how we got here.

Sen. Drayton: Well, then, why do we want to take the same path?

Sen. Dr. Tewarie: No, we do not want to take the same path, we want to be able now to regulate and monitor and manage.

Sen. Drayton: Okay. Well, then, to me, the gap here, the big gap in this, is that—

Sen. Dr. Tewarie: No, because under this Bill there may be the necessity for intervention. The other thing that is required here is that, what you are doing is trying to bring all of this authority under a single jurisdiction because right now that is why you cannot do anything because local government has some authority, EMA has some authority, et cetera, and what you are trying to do is to bring all of this in the same jurisdiction so you can deal with it.

Sen. Drayton: Okay. So I understand all that, but I also understand what Sen. Balgobin is saying, because what I am reading from this discussion is that the State, in fact, would have been lax in monitoring its own laws and then I am going to have to pay a price for the State’s negligence.

Sen. Dr. Tewarie: No, I do not think that is quite fair.

Sen. Ramlogan SC: Well, it may not only be lax in monitoring. I hear you on that point, and the reality is, yes, that can occur and it will, in fact, occur sometimes. But the other point I had in mind—because, I mean, let us be frank. I mean, realistically, enforcement of laws is a problem on the whole, across the board.

Sen. Dr. Tewarie: That is right.

Sen. Ramlogan SC: But the other point is this. You may not be lax in monitoring and enforcing, but if you use the example I gave, of the pig farm, it is that you are granted permission properly, but it is just in the development of the neighbourhood, when it reaches a stage now, where it becomes a community, at that stage you have to intervene.

Sen. Drayton: So this is why I am saying, somehow the whole issue of regulations here—because, I just want to give a live situation where you have, along the Western Main Road—you have a main thoroughfare; you have a business that has started as a tyre shop—this is right on a main road—and the next thing, it has expanded into a whole car-something place, and you have this big, ugly eyesore right in the middle of an entire community and on the main thoroughfare. And, in effect, what you are telling me here is that even though we are going through all this exercise and doing all this wonderful planning, that, in fact, that would continue to be a reality and all we are doing here is—

Sen. Dr. Tewarie: No, it will not. It may not, after you start to administer the law. But in order to fix the system you may have to intervene, and that is what, when Sen. Vieira made his—or it might have been Sen. Mahabir—when he made his contribution, he talked about the fact that people were building these—I do not know if you said—garages and so on, in the community. Now, if you want to begin now to apply the law—the new regime—and enforce the law—because you have to admit that as you begin to establish the new regime you have to show people that, look, you really mean business and you need to do something. At the same time, you cannot come arbitrarily and do this without giving them an opportunity to justify their existence, so to speak, and you cannot, if you take a decision that is not in their favour, not compensate them. But you may not want to acquire their land, but you may be willing to give them the use for something else. And this is what this is about.

Sen. Drayton: This is why I believe this appears to me to be a matter to be fleshed out in detail under regulation. You might need to put in some line here, but I do not see—unless you go through a whole lengthy explanation as a process in the primary law. It seems to me to be applicable to your regulations.

4.45 p.m.

Sen. Dr. Balgobin: I can see now why you would not want the four-year limitation.

Sen. Dr. Tewarie: Yes, exactly.

Sen. Dr. Balgobin: You want the flexibility almost ad infinitum to redefine the use of land and so on in different spaces. You know, one can see the logic and the wisdom of that. I think Attorney General, 59(1)(b) is offensive.

Sen. Ramlogan SC: Well, that is what I said. Look, I said that earlier and my proposal is to move on.

Sen. Dr. Balgobin: You may wish to take that out.

Sen. Ramlogan SC: I think we should delete 59(1)(b) and let us move on, guys. All right? So we delete 59(1)(b) and we move on, Chair.

Sen. Al-Rawi: If you are considering that, AG, there are consequential words at the tail end of the clause, just before subclause (2), and also in subclause (5) at the end of it as well.

Mr. Chairman: What is the other—*[Interruption]*

Sen. G. Singh: The amendment will be submitted to the Chair, Mr. Chairman.

Sen. Al-Rawi: Yes, if they clean it up and we could come back to it— AG, if you want to clean it up and come back to it and we could—*[Interruption]*

Sen. Ramlogan SC: Well, no, it is relatively simple. There will be no need for (a) now as a separate (a). It will be worked into 59(1).

Sen. Al-Rawi: And you delete (b), but look at the words at the tail end on the second page “for the alteration or removal of any building or works as may be specified in the discontinuance order”, that would have to go. And then, if you look at subclause (5), at the end of subclause (5) after the word activity, “or the removal or alteration of any structure lawfully existing on the land”.

Sen. Ramlogan SC: Look, let us skip 59 and we will come back to it. The wordsmith will clean up 59 and we will come back.

Mr. Chairman: We will defer it until our return?

Sen. Al-Rawi: Yes, we defer 59. We will come back to it.

Mr. Chairman: Hon. Senators, 59 has been deferred until we return and I will now propose that we take the break for tea and we will be back at five—*[Interruption]*

Sen. Al-Rawi: Mr. Chairman, you could skip clause 61 which was identified next.

Mr. Chairman: We will return at 5.20 p.m. We propose a break and we will return at 5.20 p.m.

Hon. Senator: 5.25 p.m.

Mr. Chairman: 5.25 p.m.? 5.25 p.m.

4.47 p.m.: *Committee suspended.*

5.25 p.m.: *Committee resumed.*

Mr. Chairman: Hon. Senators, we are now about to resume. When we broke we were on clause 59.

Sen. Dr. Mahabir: Mr. Chairman, may I be permitted to speak on clause 59?

Mr. Chairman: Yes, that is why you are here.

Sen. Dr. Mahabir: Thank you very much, Mr. Chairman. I have heard the deliberations with respect to removing 59(1)(b), but I thoroughly understand the need of the State, the planning authority, in the public interest to really have the kinds of powers that are contemplated in 59(1)(b). The concern is that the State should have the power to be able to dictate to a property owner that he must alter the use of his property without, in my mind, making appropriate means of compensation, and I would just like to put to the Government the following so that we would be fair to the citizens as well as understanding the need of the State to act in a public interest.

So, hon. Minister, through you Mr. Chairman, what I am proposing is under 59(1)(b) where we are looking at the very last line, we are saying that “in the interest of proper planning of an area”, we go down:

“(... a discontinuance order) requiring the discontinuance of such use, or imposing such conditions on its continuance or requiring such steps to be taken for the alteration or removal of any building or works as may be specified in the discontinuance order”.

I would like to recommend to the Government to continue this particular sentence “or may acquire the entire property in the public interest” in the understanding that the State will have an option also to acquire the property with proper compensation to take into account just the kind of issues raised by my colleague, Sen. Dr. Balgobin, where the pig farmer may have no other means of earning an income. So if he cannot use the land to rear pigs, he ought to be, in my mind, compensated as an option on the State. He could sell, but he ought to be compensated by the State so he can go and establish that business elsewhere.

So if we can introduce here—I understand from other Senators that that provision exists in other law. But since this is going to be substantial law, I think we should put into this law the fact that the State has the power to also acquire, in addition to engaging the owner in altering his change of use, and once we can simply compensate as well I think we would be solving most of the problems which are arising.

Sen. Ramlogan SC: We have no objection to that, save and except that the question of compulsory acquisition is always a live one. That is an option that is open to the State. In other words, whether we put it in here or not, if the State wishes to compulsorily acquire a property it can. But if it is that putting it—are you saying keep (b) and put in your—*[Interruption]*

Sen. Dr. Mahabir: Yes, just continue to clarify and to reinforce in the law that the State also has that option. So the State has many options and this is widening the option of the State. In the public interest it can tell you to move, it can tell you to change the use, or it can tell you if you do not like what we are telling you to do we will acquire the land via some acquisition process.

Sen. Ramlogan SC: Well, insofar as it is being phrased disjunctively with the word “or”, I do not see a difficulty with putting it in because it does not—*[Interruption]*

Sen. Dr. Mahabir: It is “or”.

Sen. Ramlogan SC: Yeah. It does not compel the State to do that, but it provides an additional bullet in its arsenal.

Sen. Dr. Mahabir: Yes.

Sen. Ramlogan SC: So we can insert that, Chair.

Mr. Chairman: What is the word inserted?

Sen. Ramlogan SC: If you can just dictate again.

Sen. Dr. Mahabir: Hon. AG, all I am saying is that we remove the full stop after “order” and we say “or may acquire the entire property in the public interest”.

Sen. Ramlogan SC: We do not want to say the word “entire”. “or may acquire the property”.

Sen. Dr. Mahabir: “may acquire the property”.

Sen. Dr. Tewarie: “in the public interest”.

Mr. Chairman: So (b) will still be deleted?

Sen. Dr. Mahabir: No, no. I am saying—*[Interruption]*

Mr. Chairman: You are saying to leave (b)?

Sen. Dr. Mahabir: To leave (b) and simply add a few words.

Sen. George: Add at the end of (b), “or—[*Interruption*]

Sen. Dr. Mahabir: “or may acquire the property”.

Sen. George: At the end of the line.

Sen. Young: That is a new (b)?

Sen. George: No, no, no. We are just adding—[*Interruption*]

Sen. Dr. Mahabir: 59(1)(b), I am simply adding a few words at the end.

Sen. Young: [*Inaudible*] to remove (b) you will be adding a new (c).

Sen. Dr. Mahabir: I am not adding any (c). I am adding a few words to expand the powers of the State and to be fairer to the citizenry.

Sen. Young: Sorry. Just before we go down that route, if I could just understand it. It is being suggested and is being accepted that at 59(1), whereas before the break there was an agreement from the hon. Minister to delete (b), we are now keeping (b) and introducing further language to (b)?

Sen. Dr. Mahabir: That is what I am recommending.

Sen. Ramlogan SC: I will still delete (b)—[*Interruption*]

Sen. Young: I think you still need to delete (b).

Sen. Ramlogan SC:—but I will add in that option.

Sen. Young: Okay. Thank you.

Mr. Chairman: So you are deleting (b) and you are adding at the end where “order”—[*Interruption*]

Sen. Al-Rawi: AG, if you are looking at the acquisition aspect, it may be better in subclause (5), “where a discontinuance order is confirmed by the Minister” that is where the person claims compensation, et cetera. You may probably be looking for, make a request for, that the property be compulsorily acquired or acquired by the State.

Sen. Ramlogan SC: No. But you see compulsory acquisition is the right of the State.

Sen. Al-Rawi: Sorry, treaty. It will be acquired by treaty.

Sen. Dr. Tewarie: No, no. Leave it there. Just leave the option. I want the word “or” and the word “may”.

Mr. Chairman: “Or may acquire”.

Sen. Ramlogan SC: We are just tweaking the wording, but we have—*[Interruption]*—The idea here is that we can put a new subclause (7). The CPC is suggesting we put it as a new subclause (7) which will read—we will insert a new subclause (7) which will read:—which means you have to write—

“Nothing in this section affects the right of the State to compulsorily acquire land under the Land Acquisition Act.”

Sen. Dr. Balgobin: You are putting in nuisance and public health and all those things?

Sen. Al-Rawi: No.

Sen. Prescott SC: Mr. Chairman, may I just ask the AG—

Sen. Ramlogan SC: Sorry.

Sen. Prescott SC: Look at 59. So I was saying 59(5) does not need therefore to be—the question of acquisition does not need to be addressed under 59(5)? The subclause says the “discontinuance order is confirmed” and the order really says we are going to acquire. Should that person not—*[Interruption]*

Sen. Ramlogan SC: You see, the reason I did not want to put it in there is, it is not a remedy. A remedy suggests—the way Sen. Al-Rawi is putting it is that, you know, you have a right to apply and so on. I am saying the right to compulsorily acquire is a prerogative of the State.

Sen. Prescott SC: And I am thinking that maybe the disgruntled owner could trigger that action if you give him access to it by 59(b).

Sen. Ramlogan SC: No, you see if he is allowed to trigger that then—the existing law is that the State is the one that has the right to trigger that and we will want to keep that.

Sen. Dr. Mahabir: You see, AG, what Sen. Prescott is saying is exactly where I am driving at. We are giving the owner an option to trigger an action.

Sen. Ramlogan SC: No. I met you halfway by saying we will give the State the option.

Sen. Dr. Mahabir: Okay.

Sen. Ramlogan SC: Because the question is—the mischief you are trying to deal with and the concern is really the adequate compensation for the owner and that will now be an option that the State can consider in meeting that. All right? Okay, let us move on.

Sen. Cudjoe: I have a question. Is it possible for the National Planning Authority to request a discontinuance order against a local planning authority? Let us say, for instance, the Couva Regional Corporation is building a market and the National Planning Authority wants to issue a discontinuance order, can they go ahead and do that?

5.35 p.m.

Sen. Dr. Tewarie: I mean, in theory, yes.

Sen. Cudjoe: Right. So, in theory, yes, where is that provided for in the legislation?

Sen. Dr. Tewarie: Well, you do not have to provide for everything.

Sen. Prescott SC: Minister, you want to think that a bit through again because I do not see it under the functions and powers of the National Planning Authority. If you could give it some more thought. It may not be within the power of the National Planning Authority to reverse an order of the planning authority.

Sen. Dr. Tewarie: But, I mean, Chair, I would rather proceed with the Bill clause by clause.

Sen. Prescott SC: But try and see if you could give it some consideration.

Sen. Ramlogan SC: We will give it some consideration. [*Laughter*]

Sen. Dr. Tewarie: I really do not want to deal with no theoretical construct right now.

Sen. Dr. Balgobin: Minister, may I ask in terms of the conditions for discontinuance, would it have been something you would consider to say that those conditions really should relate to nuisance, public health, safety or environment?

Sen. Ramlogan SC: You are at 59(1)?

Sen. Dr. Balgobin: Yes.

Sen. Ramlogan SC: “in the interest of proper planning of an area (including...)”

Sen. Dr. Balgobin: Because really—it is that you are seeking to address as opposed to gentrification or the displacement by the poor of the wealthy or something like that? It is not really that? Is what I understood your—

Sen. Dr. Tewarie: I do not have an objection to adding environment and public nuisance or whatever it is. Okay?

Sen. Dr. Balgobin: So it is just those four conditions, three of which are covered by existing legislation and nuisance gives you the freedom to catch everything.

Sen. Dr. Tewarie: We could include that. And on the issue of discrimination which you raised, we put in a clause here which actually deals with that. Okay? No, the clause is there already saying how the entity is to conduct its business with fairness, objectivity, et cetera, and that clause, I think, was suggested by the—

Sen. Ramlogan SC: All right, but Dr. Balgobin, you are suggesting nuisance and—

Sen. Dr. Balgobin: Nuisance, public health—*[Interruption]*

Sen. Dr. Tewarie: We have public health already.

Sen. Dr. Balgobin: OSHA, which is safety and environment.

Sen. Ramlogan SC: We have “amenity or public health or safety”, you want to add nuisance. That is the only one you want to add in?

Sen. Dr. Balgobin: But you may wish to add in that; you may wish to add nuisance.

Sen. Dr. Tewarie: Just put the “environment, public health, safety or the abatement of nuisance”.

Sen. Dr. Balgobin: Because environment will help you if it is effluent or discharge smells or other things that—

Sen. Dr. Tewarie: No, environment is important. This country is not anywhere near where it needs to be on those issues.

Sen. Coudray: Chair, abatement of nuisance is public health.

Sen. Ramlogan SC: Yeah, what we will do is we will take:

“(including the interest of...”—the environment, public health, safety or the abatement of nuisance.

Is that all right, Dr. Balgobin?

Sen. Dr. Balgobin: I think Sen. Coudray said something is repetitive there.

Sen. Coudray: No, I am saying it is repetitive. Public health deals with the abatement of nuisances.

Sen. Dr. Tewarie: All right, well, take it out.

Sen. Dr. Balgobin: Okay, then that is fine.

Sen. Ramlogan SC: I was trying to explain that earlier, you know, but you “eh” listening.

Sen. Prescott SC: You could have used that language.

Sen. Ramlogan SC: But we have that here.

Sen. Dr. Tewarie: Just put environment and done with that.

Sen. Dr. Balgobin: Well, all right, thank you, we got through eventually.

Sen. Vieira: But not all nuisance relates to public health. You could have nuisance that deals with noise, you could have nuisance that may deal with strip clubs or people loitering, so I think the original thing was—

Sen. Ramlogan SC: I am not too sure I agree with you that strip clubs could be a nuisance but we will—*[Laughter]*

Sen. Dr. Balgobin: I left it as a catch-all for you, Attorney General, for flexibility.

Sen. Ramlogan SC: All right.

Mr. Chairman: Could we now recall all the amendments that have been made in clause 59, if we have it right? So, clause 59 be amended by deleting 1(b). Am I correct?

Sen. Dr. Tewarie: That is correct.

Mr. Chairman: And then you are deleting:

“...steps to be taken for alterations or removal of any building or works or may be specified in the discontinuance order.”

That is deleted?

Hon. Senator: Yes, Sir. Or requiring steps.

Sen. Al-Rawi: After the word “taken”. Is it not?

Hon. Senator: No, after discontinuance.

Mr. Chairman: After discontinuance of the order.

Sen. Al-Rawi: From the word “or”.

Mr. Chairman: “or requiring for such steps to be taken”. Okay? And then you delete:

“...insofar as the order relates to discontinuance of any lawful use or activity or the removal...”

We are deleting:

“...or the removal or alteration of any structure lawfully existing on the land.”

Am I correct?

Sen. Al-Rawi: Yes, Sir.

Mr. Chairman: And then you added a new subclause (7) that reads:

Nothing in this section affects the rights of the State to compulsorily acquire under the Land Acquisition Act.

Is that what we—[*Interruption*]

Sen. Al-Rawi: To acquire land under the Land Acquisition Act.

Mr. Chairman: And the inserted part after “amenity”, you put the environment. You delete “amenity” and put “the environment, public health, safety or the abatement of nuisance”.

Question put and agreed to.

Clause 59, as amended, ordered to stand part of the Bill.

Clauses 60 and 61 ordered to stand part of the Bill.

Clause 62.

Question proposed: That clause 62 stand part of the Bill.

Sen. Al-Rawi: Quick question, clause 62(2), should this be something that you would prefer to have in the regulations as opposed to the Chief Building Officer in 62(2)?

Sen. Ramlogan SC: No, we want it in the substantive law. “We good there, Chair. Come fast, before the man talk again.”

Question put and agreed to.

Clause 62 ordered to stand part of the Bill.

Clause 63 ordered to stand part of the Bill.

Clause 64.

Question proposed: That clause 64 stand part of the Bill.

Sen. Al-Rawi: Yes, Mr. Chairman, clause 64(2). Clause 64(2) currently requires that you keep all your actual documents, your original permissions, on the property, which is not practical and unfortunate. Should it be “shall keep”—some mechanism of wording you wish to find? Such documents or such copies as—

Sen. Ramlogan SC: Yeah, I think I agree with that, yeah, you cannot keep all those originals there. It is a construction site with mud and dirt and thing.

Sen. Dr. Tewarie: I agree.

Sen. Ramlogan SC: All right, so we will just say:

“...shall keep copies of all such documents...”

Sen. Al-Rawi: Right. So, insert after the word “keep”, “copies of” into subclause (2).

Mr. Chairman: So, clause 64 be amended to insert “copies of” after “keep”.

Sen. Al-Rawi: Clause 64(3), Chairman, hon. Minister, I propose the addition of the word “materially” before the word “false” in (3)(a).

Sen. Dr. Tewarie: I do not have any understanding of what—

Mr. Chairman: I thought we were on clause 64.

Sen. Al-Rawi: Clause 64(3).

Mr. Chairman: You want to have an—

Sen. Al-Rawi: Insert the word “materially” before the word “false”.

Sen. Dr. Tewarie: Yeah, I would have no objection.

Mr. Chairman: “materially” added, Minister?

Sen. Ramlogan SC: Yeah, add it in, “materially”. That is fine.

Mr. Chairman: Clause 64 to be amended where it says:

“...shall at all times keep copies of all such documents and other prescribed records at the construction or demolition site...”

—and so forth, and then in (3), add “materially” before “false”. Is that correct?

Sen. Ramlogan SC: Yes.

Question put and agreed to.

Clause 64, as amended, ordered to stand part of the Bill.

Clause 65.

Question proposed: That clause 65 stand part of the Bill.

Sen. Al-Rawi: Clause 65, Mr. Chairman, just to note for the record, my concern that 51(2), which is the exception of the four-year limitation period, may not apply to this instance.

Sen. Dr. Tewarie: 64 what?

Sen. Al-Rawi: 65.

Sen. Dr. Tewarie: All right, okay.

Question put and agreed to.

Clause 65 ordered to stand part of the Bill.

Clause 66.

Question proposed: That clause 66 stand part of the Bill.

Sen. Al-Rawi: Mr. Chairman, 66(1):

“Where any person has contravened any provision of this Part or of the building regulations, an inspector may issue...notice...requiring compliance...”

—et cetera and then that goes further down. I am concerned that the equivalent of section 16 of the TCPD Act, which is being repealed, which is the issuance of an enforcement notice in similar circumstances can only act within four years. So I am concerned that there ought to be a prescriptive period on this part. [*Crosstalk*]

[*Minister confers with Parliamentary Counsel*]

Sen. Al-Rawi: I am concerned that section 16 which is the enforcement of planning controls in the TCPD Act have been struck out and no replacement of it fully— [*Interruption*]

Sen. Dr. Tewarie: No, we will go ahead with this.

Question put and agreed to.

Clause 66 ordered to stand part of the Bill.

Clause 67.

Question proposed: That clause 67 stand part of the Bill.

Sen. Al-Rawi: Mr. Chairman, clause 67(2), if you have any reason to believe that any part of a building is not constructed in compliance with this part, there being no limitation period, you can then require—the Chief Building Officer can require you to uncover the works at your cost and then tack it on to the land, so 16 years later, there being no prescriptive period of four years again, it being removed, not being replaced, 51(2) being narrow, you are now providing the authority for the inspector to come and knock on your door and open it.

5.50 p.m.

Sen. Young: But not only that, I think it is important to look at the last few words of that clause:

“for the purpose of inspection. . .”

So this is an inspector asking you to do all those things for his purpose of inspection. I mean, I find that a little—

Sen. Dr. Tewarie: Basically, this is too draconian. Are they correct or not?

Sen. Ramlogan SC: This is going to operate not retroactively, prospectively.

Sen. Al-Rawi: I accept it. AG, my concern is where the State sits on its hands, does nothing, things just run ahead and then one morning somebody gets up capriciously, a building inspector and says: “you know what, take an enforcement notice. Uncover the works. Start breaking it so I could inspect it.”

Sen. Coudray: It says contrary to an order of the inspector. So, this is while the work is in progress.

Sen. Al-Rawi: I could tell you it has happened in my experience and I have been to court. So maybe you and I did not meet each other in the same place.

Sen. Ramlogan SC: It is a new paradigm that we are trying to introduce in the country, because the fact of the matter is Town and Country Planning laws have been observed more in breach than in actual practice. This is not going to operate retroactively but it is a potent deterrent to anyone building after this becomes law, to know that this is the risk and consequence you will face if it is you build contrary to the law. If we remove this, then everyone will—look, the Town and Country Planning Division cannot police everybody in this country.

Sen. Al-Rawi: AG, I am good. I understand your point.

Sen. Ramlogan SC: In the rural areas and so on “man build up all kinda, yuh know”, structures, then what happens?

Sen. Al-Rawi: I am just noting again my concern on limitation period. I accept that the Government has a point, I just have a different point of view.

Sen. Ramlogan SC: Well okay, “leh meh help yuh”. Your concern about the limitation period, about the whole Act is noted.

Sen. Al-Rawi: Great, good, and so I will point it out in dangerous areas.

Question put and agreed to.

Clause 67, as amended, ordered to part of the Bill.

Clause 68.

Question proposed: That clause 68 stand part of the Bill.

Sen. Al-Rawi: Mr. Chairman, I am concerned that the right to enter a property cannot be justified in circumstances without a warrant or an ex parte order obtained.

Sen. Ramlogan SC: They must have the right to enter.

Sen. Dr. Tewarie: This is during working hours.

Sen. Ramlogan SC: During normal working hours.

Sen. Dr. Tewarie: It is just to walk in and see.

Sen. Ramlogan SC: But they have that right already.

Sen. Al-Rawi: Well, the right goes on in subclause (4).

Sen. Ramlogan SC: Marlene, do they not have a right already?

Sen. Coudray: Yeah. They do not need a warrant. They have the precept to enter. They have precepts.

Sen. Al-Rawi: Well this one is an inspector.

Sen. Dr. Tewarie: Yes, but look at the following sentences or parts of sentences—imminent danger, threat, safety. I means, you have to go to a judge to ask somebody to do that.

Sen. Ramlogan SC: By the time you go to a judge—do you know what happens in this country—I mean, we all know—the legal process is used to create a window of opportunity so that you could complete the illegal structure. We all know that. So let us be reasonable. That is why we are bringing tough laws to stop that kind of abuse.

Sen. Al-Rawi: AG, you have noted my concern.

Sen. Ramlogan SC: Yes. We may be hard-pressed as lawyers after all of this to find new work, but I mean.

Question put and agreed to.

Clause 68 ordered to stand the part of the Bill.

Clause 69.

Question proposed: That clause 69 stand part of the Bill.

Sen. Al-Rawi: I am concerned in clause 69(1)(b) that you may inspect and make copies or extracts of documents relevant to land, building, work, operation.

Mr. Chairman: May I just take the opportunity to ask, at the Joint Select Committee, most of the things that are being said, were they discussed?

Sen. Dr. Tewarie: Yes.

Sen. Al-Rawi: Unfortunately the meetings were truncated and some of them—*[Interruption]*

Sen. Dr. Tewarie: No, that is not true! I object strenuously! *[Interruption and crosstalk]*

Sen. Al-Rawi: Let me finish.

Mr. Chairman: Please, Senators allow Sen. Al-Rawi.

Sen. Al-Rawi: Unfortunately they were truncated by a serious pace and I could not attend every meeting. Sen. Balgobin himself was in the same predicament and I was in the same predicament.

Sen. Coudray: Your attendance was truncated.

Sen. Al-Rawi: So, unfortunately not all of the comments could have been included.

Mr. Chairman: Well the Government now is responding. So you could respond now.

Sen. Al-Rawi: We are moving along, you know.

Sen. Ramlogan SC: We are moving along. Come on. Clause 69.

Sen. Dr. Tewarie: This whole thing was discussed.

Sen. Al-Rawi: I am concerned about making the copies.

In clause 69(3):

“An inspector shall not enter any building or part thereof in actual use...without the consent of the occupier, except under...warrant...”

That is fine.

In subclause (4) however, we are prescribing a magistrate to be used here where the rest of the Act uses the EC. So I did not know if you wanted to have two concurrent jurisdictional usages.

The rest of the Act says you go and you get an ex parte order or a warrant from the EC. And this one says the magistrate.

Sen. Young: On that note, Mr. Chairman, through you, Minister, I intend to raise, when we get down to the injunction provision, a difficulty I have with the— apart from the ex parte process, using the EC to grant these types of injunctions. So I would like you all to think carefully about whether we go to the EC with this.

Sen. Ramlogan SC: The role of the Environmental Commission does not extend to the granting of issuing a warrant for these purposes, so it is actually a discreet provision.

Sen. Al-Rawi: Okay, fine, sure, great. Last point on this point, subclause (6), the use of the words “if so required”.

“An inspector authorised under subsection (5) to enter any building or part thereof shall, if so required, produce evidence of his authority...”

I think that is an escape clause for him to say well nobody asked me to produce it.

Sen. Ramlogan SC: No, but even if you take that off he could still say well nobody asked him to produce it.

Sen. Al-Rawi: Yeah, but, “if so required”, I thought could have been struck.

Sen. Ramlogan SC: “Nah”.

Sen. Al-Rawi: I have made my observation, AG, it is up to you.

Sen. Ramlogan SC: We want to leave that. There are people who may not be able to ask if they could get away.

Question put and agreed to.

Clause 69 ordered to stand part of the Bill.

Clauses 70 to 73 ordered to stand part of the Bill.

Clause 74.

Question proposed: That clause 74 stand part of the Bill.

Sen. Al-Rawi: AG, I was concerned under this part in particular about how we were balancing the State’s professionals, in terms of payment of professional fees, liabilities, bonds at the behest of the chief engineer at the Ministry of Works or whatever the capacity of the person who is entering, to the attorneys who are acting. I was concerned that the State is covering those costs, or has some mechanism to deal with those things.

Sen. Ramlogan SC: This is clause 74?

Sen. Al-Rawi: Across in the part in general, clause 74 itself, I wondered about the language in clause 74(1), second line:

“Except for simple development applications, all applications for building approved submissions...”

Is that correct, “building approved submissions”?

Sen. Ramlogan SC: “Except for simple development applications, all applications for building approved submissions...”

Sen. Young: It should be “expect all applications for building approvals shall be...”

Sen. Ramlogan SC: It should be “all applications for approvals shall be...”

Sen. Dr. Tewarie: Except simple developments.

Sen. Ramlogan SC: “All applications for approvals except simple development plans...”

Sen. Al-Rawi: I think you should leave the words “or other development”. You should leave that there. It starts with:

“Except for simple development applications...” And then you have

“(except simple development plans)”

Sen. Ramlogan SC: Okay, delete the words in brackets “(except simple development...)”

Mr. Chairman: What about building? Are you deleting building?

Sen. Ramlogan SC: No, all we are deleting is “(except simple development plans)”

Sen. Al-Rawi: Just read it the way it should be, AG. Just read the clause the way it should be.

Sen. Ramlogan SC: So it would now read:

“Except for simple development applications, all applications for approvals or other development shall be—”

Sen. Dr. Tewarie: And the question he is asking, AG, has to do with state indemnification of these professionals who are involved in the process and our answer is no, because that is their professional responsibility and obligation and they must look after their own business.

Sen. Al-Rawi: Okay, I raised it in the context of the situation we had with the state attorneys and the Law Association fees and dues, et cetera. So I have got the Government's perspective.

Sen. Ramlogan SC: Okay.

Sen. Al-Rawi: That was it on clause 74 for me, Mr. Chairman.

Mr. Chairman: Clause 74, do you want it to be read?

Sen. Al-Rawi: No, Sir, I got it.

Mr. Chairman: Clause 74 is amended by deleting "building" and inserting "approval" and you delete "submissions or other development" ; "(except simple development plans)" is also deleted. So you have it clear now?

Sen. Ramlogan SC: One second, could you just repeat that slowly?

Mr. Chairman: I would read the entire paragraph.

Sen. Ramlogan SC: Yeah.

Mr. Chairman: "Except for simple development applications, all applications for approvals or other development shall be—"

Sen. Al-Rawi: That is correct.

Sen. Ramlogan SC: One second, Sir. You can take off "or other development".

Sen. Robinson-Regis: Yes, please, because it makes no sense.

Sen. Ramlogan SC: It makes no sense. Take off "other development".

Mr. Chairman: I would read over the clause. Clause 74(1):

"Except for simple development applications, all applications for approvals shall be—"

Sen. Robinson-Regis: Sorry, Mr. Chairman. Just to be consistent, in clause 74(1) we said "approvals" and in 74(2) we have "approval submissions". I think we should put "approvals" again in clause 74(2), rather than "approval submissions". It is just a matter of being consistent.

Sen. Dr. Tewarie: No, it will have to be "approvals". No, submission is correct there or it would have to be approval request or something like that. It is correct there. If you look at it carefully:

"...and like material submitted in support of approval submissions"

It is what you submit for approval, or you could say “approval requests”. Okay.

Sen. Robinson-Regis: “Submissions” might be better.

Sen. Dr. Tewarie: Would you prefer “applications for approval”? That would be more straightforward.

Sen. Robinson-Regis: I prefer that, yes.

Sen. Dr. Tewarie: Okay, support of “applications for approval shall be...”

Mr. Chairman: Applications for approval—

Sen. Dr. Tewarie: Shall be stamped, et cetera.

Question put and agreed to.

Clause 74, as amended, ordered to stand part of the Bill.

Clause 75.

Question proposed: That clause 75 stand part of the Bill.

Sen. Al-Rawi: Quick question on clause 75. What happens if they do not establish the regulations?

Sen. Dr. Tewarie: What is the question on clause 75?

Sen. Al-Rawi: “A professional governing body shall establish...”

What happens if they do not establish? Is there a provision in default? Where an entity is in transition, or has not done it, is there going to be something else to this that is going to be guiding this?

Sen. Dr. Tewarie: Well, remember the State establishes the minimum standards and it is up to the professional body to handle their own business. If they do not do it, that is a responsibility outside of the State.

Sen. Al-Rawi: Yeah, but we are making it prescriptively compulsory. Is there a sanction in the event that they do not do it and if they do not, do we use some minimum guidance factors?

Sen. Dr. Tewarie: That is why the State is establishing minimum guidance.

Sen. Al-Rawi: I see.

Sen. Dr. Tewarie: So that will be—because this will take some time, right?

Sen. Al-Rawi: Okay, thank you. That satisfies the question I have.

Sen. Dr. Tewarie: It may not take time for planning but it might take time for land surveying.

Sen. Al-Rawi: Okay, thank you.

Question put and agreed to.

Clause 75 ordered to stand part of the Bill.

6.05 p.m.

Sen. Dr. Tewarie: Chair, if you would indulge me and go back to clause 74.

Clause 74 recommitted.

Question again proposed: That clause 74 stand part of the Bill.

Sen. Dr. Tewarie: We made a modification for approval submission, you know, in the interest of clarity, but the CPC has just advised that there is a definition of approval submission.

Sen. Al-Rawi: So there is one?

Sen. Dr. Tewarie: Yes.

Sen. Al-Rawi: Okay. So it is in clause 3?

Sen. Dr. Tewarie: Yes.

Sen. Al-Rawi: Right, okay. Well, in those circumstances then I do not think it needs to be—then you would need the language as it originally was.

Sen. Dr. Tewarie: We would need the language, yeah.

Mr. Chairman: As is?

Sen. Dr. Tewarie: As is.

Sen. Al-Rawi: Where is it? Where is the definition?

Mr. Macintyre SC: In clause 73.

Sen. Al-Rawi: In clause 73. [*Crosstalk*]

Mr. Macintyre SC: Approval submission.

Sen. Al-Rawi: Okay. So “building approved submissions”—[*Interruption*]

Mr. Macintyre SC: It should be “approval submissions”.

Sen. Al-Rawi: So it should be “approval submissions”, and not “building approved submissions”?

Sen. Dr. Tewarie: Yeah, so “building” is deleted and “approved” is “approval”, okay. Chair, do you have that? I am sorry to be so confusing.

Mr. Chairman: So clause 74(1):

“Except for simple development applications, all applications for building approval”—[*Interruption*]

Sen. Al-Rawi: No. For approval submissions.

Sen. Dr. Tewarie: For approval submissions.

Mr. Chairman: “all applications for approval submissions or”—[*Interruption*]

Sen. Al-Rawi: Or other development.

Sen. Dr. Tewarie: No, we took that off.

Sen. Al-Rawi: We took that off?

Sen. Dr. Tewarie: Yeah, we took that off.

Sen. Al-Rawi: Oh, I see. I got you.

Mr. Chairman:—“shall be—”

Question put and agreed to.

Clause 74, as amended, again ordered to stand part of the Bill.

Sen. Al-Rawi: You can skip clause 77.

Mr. Chairman: You said skip clause 77?

Sen. Al-Rawi: Yes Sir, if that is okay with you?

Sen. Dr. Tewarie: Chair, one more thing, in 74(2) we have the same problem in (2), where “approval submission” was the correct thing, and we made a modification. So we want to go back to the original, “approval submission”, okay.

Sen. Al-Rawi: Okay. So the question is that clause 72, we have to re-read it again? Clause 74? Okay, so long as it is understood.

Clauses 74 to 81 ordered to stand part of the Bill.

Clause 82.

Question proposed: That clause 82 stand part of the Bill.

Sen. Al-Rawi: Mr. Chairman, I was just concerned in relation to suspension, cases of suspension. So:

“All rights, privileges or benefits granted a listed professional under this Part are terminated upon—”—written request, death.

(c) decision, lapse. Because we have not waited for appeals to happen, is it correct to go so far as a termination immediately. Obviously there is termination for death.

Sen. Young: Notice the rights and privileges, being terminated, a decision from his body. [*Crosstalk*]

Sen. Dr. Tewarie: So which one is your concern?

Sen. Al-Rawi: You see, my concern happened in clause 81(c). So:

“A decision of the professional governing body referred to in the paragraph (a), after notice and hearing, that the listed professional....”

I do not know if hearing includes up to an appeal. So pending an appeal, he could be suspended, but I did not know that he had to be terminated automatically, because then that impacts his professional reputation, et cetera, et cetera. So the real concern in using “terminated” in clause 81 in the context of a professional governing body, just having a hearing which yet is to go to court, or to an appeal hearing, a final hearing.

Sen. Young: Just add the word “final” before “hearing”, and that will encompass the whole appellate process.

Sen. Al-Rawi: Yeah, yeah that could do it.

Sen. Young: So you say “after notice and final hearing”. Final hearing would encompass whatever is the appellate process.

Sen. Dr. Tewarie: Yes, I would have no objection to that, okay.?

Sen. Al-Rawi: Thank you.

Mr. Chairman: So that is okay?

Sen. Dr. Tewarie: Yeah, that is fine.

Mr. Chairman: We have just observed here in our documents, when we mentioned clause 81, but what Sen. Al-Rawi had made mention of was really clause 82 on our—[*Interruption*]

Sen. Al-Rawi: There was a renumbering Sir, in the draft, of the Bill.

Mr. Chairman: You are supposed to be looking at the original, what is being renumbered.

Sen. Al-Rawi: Oh, I see. Well, actually, that started way back, Sir. That started at clause 76 which went to clause 75 and clause 76.

Mr. Chairman: It is only now we get the change. We were on par all the time. We only now get to the change.

Sen. Al-Rawi: No, well the change, oh, I see. I see. The first pick-up. Right, I understand. Well, that is why in my track-change version, I flagged all the changes in the numbers.

Sen. Young: Because what happened, you deleted the original clause 75, and then you did not automatically renumber.

Question put and agreed to.

Clause 82, as amended, ordered to stand part of the Bill.

Sen. Al-Rawi: And to make the amendments—well, Mr. Chairman, would it be simple at this point to just simply use clause 81 where we are making no amendments, clause 81 as circulated stand part of the Bill, as amended as circulated. So that all the consequential amendments where you struck clauses 80 to 79 and clauses 79 to 78, all of that takes up. I do not know.

Sen. Dr. Tewarie: Well, except that you would have to include the final—
[*Interruption*]

Sen. Al-Rawi: Yes, and as further amended, right? So that for clarity's sake when *Hansard* is doing it, they are using the circulated version which went with the Bill.

Sen. Dr. Tewarie: No.

Sen. Al-Rawi: Okay, I am in your hands.

Mr. Chairman: How should we treat with that?

Sen. Dr. Tewarie: It is the Clerk of the House.

[Mr. Chairman confers with the Clerk of the Senate]

Clerk: It is clause 83, original clause 83.

Sen. Al-Rawi: Right, clause 83 is where we are now.

Clause 83.

Question proposed: That clause 83 stand part of the Bill.

Sen. Al-Rawi: Mr. Chairman, I just had a question on the—so where a listed professional fails to do something or any other proper cause exists:

“and the National Planning Authority considers it appropriate to terminate the approved submission privileges”—according to clause 83—“ to the listed professional...shall by written complaint request the relevant professional governing body to remove the name of the listed professional from the list mentioned...”—et cetera.

My concern inside of here is, did we provide for providing notice to the person who will be affected? So here is where the National Planning Authority, if we take the circumstance where the fellow in (c), has had his—he is put upon a charge, a professional is put upon a charge, and the National Planning Authority—he, as a listed professional, fails to comply with a mandatory requirement. He fails to honour an obligation, but those are just allegations at some point. The National Planning Authority considers it appropriate to terminate the approved submission, that may write to the listed professional—*[Interruption]*

Sen. Dr. Tewarie: No, no, but that is in keeping with the clause before, which we included final hearing. So the matter is settled by the professional body. So all the National Planning Authority is doing is asking the professional body to delist him as one of the members that it approved for submission.

Sen. Al-Rawi: Perhaps you could just look at the issue of—it prescribes here would become clause 83, right? The one that we dealt with before was clause 81 as renumbered. So is that numbering correct? Is it 83 and 79?

Sen. Dr. Tewarie: No, well, I mean, you lost me there with the numbers.

Sen. Al-Rawi: All right. I accept you were giving me the justification to say, look, the termination happened because the appellate process is done, the guy did not do what he was supposed to do, but this—*[Interruption]*

Sen. Dr. Tewarie: The State has no responsibility to the individual, okay?

Sen. Al-Rawi: Hon. Minister, I am not on that. I am just on making sure that we have the correct reference to the law. So in this clause here, all I am wondering is, is the reference in the subparagraph here after (a) and (b) in what—in old clause 83, which is now new clause 82(1) after (a) and (b), are we making the correct references to “section 83” and “section 79”?—that is what I am asking.

Sen. Dr. Tewarie: Well, I mean, I have to be honest with you, I do not know because of the numbering difficulty.

Sen. Al-Rawi: Okay. If I could, through you, put it to CPC then? [*Crosstalk*]

Sen. Dr. Tewarie: I know that the clause we are referring to is clause 81 in the amended version (c), right? So that is the one. We need to get then the right number for that, because that is the clause, and the other one is clause 79, which has to do with the professional governing body, et cetera, no?

Sen. Al-Rawi: Right. So in the version that we are proposing to stand part of the Bill, we are making a reference to 83, which is where you are saying: the National Planning Authority may allow the listed professional to distribute things. So that is probably wrong.

Sen. Dr. Tewarie: Is it 82?

Sen. Al-Rawi: Or, the new 81? You have to have an eye for detail, CPC.

[*Sen. Dr. Tewarie confers with his advisors*]

Sen. Al-Rawi: Just to make sure, is 83 correct? Is it that you want to preserve the power for him to distribute? Is that what you intended?

Parliamentary Counsel: The old 84 and the old 79. The old clause 80 and the old 84.

Mr. Chairman: Is clause 83 correct, Sen. Al-Rawi?

Sen. Al-Rawi: Yes, Sir. My only request is that the hon. Minister consider in 82, is that apart from writing to the—by written complaint to the professional governing body, that we should at least write to the person who is affected, to the professional himself.

Sen. Dr. Tewarie: You see, I think that that is the job of the professional body, you understand what I mean?

Sen. Al-Rawi: Yeah. My only concern is that, this is the entity that has made the decision, not the professional. You are notifying the professional body.

Sen. Dr. Tewarie: No, this was what I raised before. The entity will only make the decision after the professional body has pronounced, okay? So all the entity is asking of the professional body is to delist this person from the list of persons you have approved.

Sen. Al-Rawi: Hon. Minister, I understand what you are saying, but the language of that clause does not say that alone, that is the problem. The language of the clause does not say it alone.

Sen. Dr. Tewarie: What is the suggestion for amendment?

Sen. Al-Rawi: So “considers it...to terminate”, et cetera, so the—

“...shall by written complaint, request the relevant professional body to remove the name of the listed professional from the list mentioned...or from such part”—
[*Interruption*]

Sen. Dr. Tewarie: Should it be “complaint” or “notice”?

Sen. Al-Rawi: Well, that is where—[*Interruption*]

Sen. Dr. Tewarie: Shall by written notice—[*Interruption*]

Sen. Al-Rawi: What I am concerned is that the professional has notice of something going on, he himself.

Sen. Young: Hon. Minister, through you, Mr. Chair, this seems to me to be the move not, as you are saying by the professional body, because you are saying:

“Where a listed professional fails—

to comply with any prescribed mandatory requirement...”

So it is him or her failing to comply with what are the requirements under this Act. So this is not after the professional body has dealt with him or her, and we now know they have been delisted.

Sen. Dr. Tewarie: Okay, I mean, personally, I cannot see any reason not to copy the individual.

Sen. Al-Rawi: It is due process.

Sen. Lalla: It says the National Planning Authority shall on notice to the listed professional.

Sen. Dr. Tewarie: We will leave “complaint”.

Sen. Al-Rawi: I think the written complaint is there, right? Because the complaint kicks into subclause (2). So it is just to find the correct wording to say that you are sending the man a copy; that is all.

Mr. Chairman: So what are we amending?

Sen. Dr. Tewarie: “Request the relevant professional”.

Mr. Chairman: Request the relevant professional to what?

Sen. Lalla: Where a submission shall be given.

Sen. Al-Rawi: Do you want to say “notice of which shall be given to the listed

professional”?

Sen. Lalla: Correct. Or, by written complaint, notice of’—[*Interruption*]

Sen. Al-Rawi: Or copied? Or by written complaint copied to the listed professional. Maybe that could work.

Sen. Lalla: Correct, that could work.

Sen. Dr. Tewarie: Copy to the listed professional. Yeah, that is okay.

Sen. Al-Rawi: Thank you, Mr. Chairman.

Sen. G. Singh: Mr. Chairman, I seek your indulgence to deal with the Procedural Motion and for the resumption of the Senate for that purpose.

Senate resumed.

6.20 p.m.

PROCEDURAL MOTION

The Minister of the Environment and Water Resources (Sen. The Hon. Ganga Singh): Mr. Vice-President, in accordance with Standing Order 9(8), I beg to move that we continue with the business at hand, the Nurses and Midwives Registration (Amdt.) Bill and also we will seek to start the debate on the retiring allowances and the judicial legislation.

Question put and agreed to.

PLANNING AND FACILITATION OF DEVELOPMENT BILL, 2013 [Second Day]

Committee resumed.

Hon. Senator: Where were we?

Mr. Chairman: We are on clause 83 still.

Question put and agreed to.

Clause 83, as amended, ordered to stand part of the Bill.

Clauses 84 and 85 ordered to stand part of the Bill.

Clause 86.

Question proposed: That clause 86 stand part of the Bill.

Sen. Al-Rawi: That was raised before? We can skip that?

Question put and agreed to.

Clause 86 ordered to stand part of the Bill.

Clauses 87 to 89 ordered to stand part of the Bill.

Sen. Al-Rawi: Mr. Chairman, when I gave you those numbers there, what happened was that I was referring to the amended numbers, not the original Bill numbers.

Sen. Lalla: Now, we are on the new 87.

Sen. Al-Rawi: What happened is, from this list here—

Sen. Dr. Tewarie: So now we go to 89.

Sen. Al-Rawi: So, 89 was the original 90.

Mr. Chairman: So it will be dealt with as 90.

Clause 90.

Question proposed: That clause 90 stand part of the Bill.

Sen. Al-Rawi: Just a quick question to you, hon. Minister? Are we satisfied with the 28-day period for an appeal?

Sen. Dr. Tewarie: Yes, I thought about it. I mean, that is a fairly long time.

Sen. Al-Rawi: Not in law. It is usually 42 days for an appeal.

Sen. Lalla: We have a lot of things to wait on and prepare. Twenty-eight days should be reasonable.

Sen. Al-Rawi: Okay, thank you. Let us move ahead.

Sen. Dr. Tewarie: We also need to make the system expeditious, eh.

Question put and agreed to.

Clause 90 ordered to stand part of the Bill.

Clauses 91 ordered to stand part of the Bill.

Clause 92.

Question proposed: That clause 92 stand part of the Bill.

Sen. Al-Rawi: Mr. Chairman, the question on clause 92 is in subparagraph (4):

“On the hearing of an appeal by the E.C., except with leave of the E.C., an appellant is not entitled to challenge any portion of the order, notice decision or determination appealed against nor to rely on any ground not stated in the

notice of appeal.”

That sort of runs afoul with the fact that the EC is not a court with inherent jurisdiction, I am concerned about the fetter on the grounds of appeal approach in something which may be just in the circumstances for the EC to consider.

Sen. Young: I would join with Sen. Al-Rawi on that. Even under the existing rules in the High Court and the Court of Appeal, they still give the Court of Appeal the jurisdiction that if something should come up that they want to hear, they can hear it and this is really fettering the EC in circumstances that I do not think are justified.

Sen. Dr. Tewarie: How does this fetter the EC?

Sen. Young: Because if you do not raise something in your notice of appeal but during the course of argument it comes up and something becomes apparent, this does not allow them to hear the appeal on that and that is something that happens very frequently in practice.

Sen. Vieira: So are you not going to get leave of the commission?

Sen. Al-Rawi: Well, you cannot, not with this. There is a bar.

Sen. Vieira: So the commission can give you leave. [*Crosstalk*]

Sen. Al-Rawi: Sen. Vieira, I am just concerned about the inherent jurisdiction limitation on this point. Are you satisfied with that?

Sen. Vieira: Yes, because I think that we are talking about a planning process. You should pretty much know what your ground of appeal is, what your objection is.

Sen. Al-Rawi: Not if you are a layman, acting.

Question put and agreed to.

Clause 92 ordered to stand part of the Bill.

Sen. Al-Rawi: On (5) just a quick question: “may order a stay upon appropriate terms”. Did you want to at least have some other interlocutory relief available other than a stay?

Sen. Dr. Tewarie: Not on this.

Sen. Al-Rawi: Thank you, Mr. Chairman.

Clause 93.

Question proposed: That clause 93 stand part of the Bill.

Sen. Al-Rawi: The question here arises in subclause (1).

“The E.C., shall not order the payment of damages to any appellant...”

In light of clause 43(3), where you are giving the State the ability to do a whole host of things—levy damages, any cost, any expense, put it at the cost of the owner—I thought that the limitation on damages was disproportionate.

Sen. Dr. Tewarie: You open a can of worms here, if you have to make a judgment on damages.

Sen. Young: They can assess damages earlier on. The clause referred to earlier on 43(3), is a clause specifically giving them, if I remember correctly, the power to assess damages.

Sen. Dr. Tewarie: It is not reasonable for an entity to have the power to intervene, who has intervened and, under the appeal, is found to have intervened wrongly. I do not think you want to—

Sen. Al-Rawi: What I was looking at, hon. Minister, in 43(3), we say, in an agreement, if you breach an agreement, the State can claim specific performance, damages, mandatory injunctive relief, require respondent to comply with covenants, positive, negative, notwithstanding the absence of any dominant tenement under agreement. That is the State’s rights. Take the kitchen sink, everything, your first-born child.

Flip over now, if you are not as fortunate as Sen. Hadeed, to clause 93 of the Bill and you see here, “the E.C., shall not order the payment of damages”. This is an applicant going to EC to say, “Well, look, the State has caused me something.” Why should the State have all that power to claim everything against the individual and then no balance back?

Sen. Lalla: The EC is not a court. Senator, in all fairness, you have to read the entire thing.

“...the EC may order payment of such compensation as it thinks fit.”

That gives the E.C. very wide discretion which one would expect and it would be obliged in law to exercise that discretion in a reasonable manner. That would take care of your concern.

Sen. Al-Rawi: So Sen. Lalla, you are saying in answer to my question as to the exclusion of that damages: do not worry, they have compensation.

Sen. Lalla: In the discretion of the court, which must be reasonably exercised.

Sen. Al-Rawi: Are you saying that the court may then hold compensation tantamount to damages?

Sen. Lalla: It might.

Sen. Al-Rawi: Well, if so, why exclude it?

Sen. Young: It cannot. I quite respectfully disagree. We are excluding their power to order the payment of damages, so in their exercise of any compensatory power, it cannot include the payment of damages. We are specifically excluding it.

Sen. Al-Rawi: And you are excluding specific, general, aggravated and exemplary. All of the various categories of damages cannot possibly be equal to compensation.

Sen. Dr. Tewarie: This really has to do with the jurisdictional authority of the EC, all these clauses here. Do they have a legitimate case or not? Should we allow damages? I mean, this is not a court of law, eh.

Sen. Al-Rawi: Exactly, so you are giving them the functions, but because they are not a court of law and they do not have inherent jurisdiction, they cannot come up with an equitable remedy to match the situation. That is what my fear is.

Sen. Dr. Tewarie: So, do we want to leave out the word “damages” then? [*Consults*] The payment is in consideration—look at this subclause (2):

“In considering whether compensation ought to be paid, the”—
Environmental Commission—“shall determine...”

Sen. Young: With the greatest of respect, Mr. Minister, that is their exercise of jurisdiction to order compensation. That is not what compensation they can award. It is saying when you are going to exercise your discretion to compensate, these are the things you must bear in mind. These are the things you must think about. It is not their power to order compensation, which is a different point.

Sen. Dr. Tewarie: Can I have advice on this? The issue is whether we include the word “damages” or keep the clause as it is. As I see here, a lot of discretionary power is being given to the Environmental Commission and I think that is how it should be. The question is whether it is legitimate to include damages if you give them the authority and the power and the guidance to determine compensation.

CPC?

Sen. Vieira: Minister, I tend to agree with Senators Young and Al-Rawi because we already have precedent in the Industrial Court, which would be like the Environmental Commission where they can have power to award damages. But, you see, because this is special law, they would not be able to award damages if the law does not provide for it. And, particularly now, since we are saying this is the court you have to go to, you are pre-empting them from going to other courts, so I think we are safer with having the damages allowed. [Consultation]

Sen. Robinson-Regis: Can I ask the Minister a question, please?

Sen. Vieira: Damages go beyond compensation because you may have to have in a certain situation punitive damages. You may want to make example of the party.

Sen. Dr. Tewarie: Is this because it is taken from the environmental law?

Sen. Robinson-Regis: Can I ask a question? Was there a reason damages were specifically excluded?

Sen. Vieira: Bear in mind the Environmental Commission, is lawyers, you know—Zainool Hosein, Sandra Paul—so you are not dealing with laypeople.

Sen. Robinson-Regis: Not all are lawyers.

Sen. Young: I have appeared before the Environmental Commission. It is made up of engineers; it is made up of—Correct!

Hon. Senator: The chairman is a lawyer. [Crosstalk]

Sen. Prescott SC: Mr. Chairman, a question has been raised about whether—

Mr. Chairman: Sen. Prescott, one minute.

6.35 p.m.

Sen. Prescott SC: Chair, I was attempting a response to Sen. Robinson-Regis' enquiry about why exclude damages, and I thought that the new section 93, the one which reads:

“In assessing the amount of any compensation...”

tells us what the policy was intended to address.

Sen. Dr. Tewarie: Yes, I did point out that.

Sen. Prescott SC: And it seems to me that if that is the policy decision of the Government they ought to stick with it because damages open a much larger jurisdiction, if you like. It opens the gate to a number of other considerations which may not be suited to an environmental commission in this circumstance to me. I think that 93 provides all of the elements that ought to—*[Interruption]*

Sen. Dr. Tewarie: Properly taken into account. Well, all right then. So, let us not include it.

Sen. Al-Rawi: Mr. Chairman, just bear in mind this. So, my concern is, remember we are removing a host of protections.

Sen. Dr. Tewarie: “Nah, nah”, I think about it now—*[Interruption]*

Sen. Al-Rawi: Hold on; hold on.

Sen. Dr. Tewarie: I am thinking on reflection of what Sen. Prescott said, and I would tell you why, but go ahead.

Sen. Al-Rawi: Just quickly I would put it across. One, we are removing certain protections that existed in the old law; two, we are increasing the State’s power; three, because we may be entitled to dispossess people, et cetera—cause them to do certain things, et cetera—we are now limiting it to certain costs. The costs are to be done in accordance with the Civil Proceeding Rules. I have looked at the Environmental Commission rules, and we are saying to them, no damages. Because it is not a court of inherent jurisdiction, I am concerned that we have fettered the right of the individual a little too far. There is still the protection for the State, because somebody must decide that they are entitled to the damages, but remember we are removing their approach to the High Court, and we are sending them to this Environmental Commission. So, I am concerned about that balance.

Sen. Dr. Tewarie: I am thinking that even with all the power that this court has, when they have to face the reality that they may have to address the question of damages, it would fetter their power.

Sen. Al-Rawi: Sorry, I do not follow that. You mean that they may not have the capacity to deal with it.

Sen. Dr. Tewarie: I am thinking with all the perceived power that this court has, when you have to take into account that ultimately the State is going to have to pay damages, and there is the likelihood of that, it is going to fetter their power and, therefore, the ability to act on matters that they should be acting upon, that is to say, the

planning side.

Sen. Al-Rawi: I am sorry Minister, I just do not follow the argument. Because this is such an awesome power, they may be afraid to use it. Is that what you are saying?

Sen. Dr. Tewarie: No, because they are going to find themselves in a situation where a challenge that may yield, in fact, damages could be very costly.

Sen. Al-Rawi: I see. But, hon. Minister, the State should be subject to the full brunt of the law—*[Interruption]*

Sen. Dr. Tewarie: Yes, they are.

Sen. Al-Rawi:—and take the bounce. It has the deepest pocket in the equation.

Sen. Dr. Tewarie: That is not true. *[Crosstalk]*

Sen. Al-Rawi: There is the right of appeal on points of law, hon. Minister, from the EC to the Court of Appeal.

Sen. Dr. Tewarie: “Listen eh”, this is a complex issue, I want to concede, and it really has to do with the balance of power and the balance of rights. I do agree with that, and I concede that, which is why, I mean, I engage the argument in this way, because I want to do the right thing, but when I think about it now on reflection, and given the circumscription of 92(2), my own feeling is that we should go in the direction of not including damages in it, okay,? And I feel that that would be in keeping with the intent and the policy. All right?

Sen. Vieira: Minister, I hear you, and I respect your views, but I just want to remind you that under 89, the EC is the only body exercising jurisdiction, right?—*[Interruption]*

Sen. Dr. Tewarie: That is true.

Sen. Vieira:—and all appeals are subject to be filed, heard and determined in accordance with the EMA. Now, this is a jurisdiction that I anticipate is going to build up a level of expertise; it is going to build up a level of jurisprudence. I am confident enough in our judges and tribunals that they would do the right thing but, in any event, they will be kept honest by the Court of Appeal. I feel if we are going to err, given what is involved here, we should give the commission more rather than less power. That is just my take on it.

Sen. Al-Rawi: I agree.

Sen. Young: I agree with that. It is your policy decisions.

Sen. Vieira: It is a balancing exercise.

Sen. Dr. Tewarie: Yeah, I know it is a balancing exercise, but the question is which side of the balance you come down.

Sen. Al-Rawi: The discretion, you give it to the court. Remember, the appeal to the Court of Appeal is only on points of law. We cannot deal with any factual issues as to whether damages should have been adequate or compensation. *[Interruption]* Yeah, we could do that.

Sen. Dr. Tewarie: Could we come back to this then?

Sen. Al-Rawi: Sure.

Question put and agreed to.

Clause 93 deferred.

Clause 94 ordered to stand part of the Bill.

Clause 95.

Question proposed: That clause 95 stand part of the Bill.

Sen. Al-Rawi: We could skip that insofar as—well, hon. Minister, in old 95 new 94(2):

“The Minister shall lay the report in Parliament within six weeks of receipt of the report...”

Is it not the more conventional language these days, “as soon as is practicable” in both Houses of the Parliament?

Sen. Dr. Tewarie: Well, yes, but what you do not want is to have a situation where they are not time bound. I mean, you are really insisting on accountability here.

Sen. Al-Rawi: Sure. I raised it in the context of the recent amendments we did in the other laws that we just did law last week. Thank you, Mr. Chairman.

Sen. Dr. Tewarie: I would have no objection. Could I ask CPC? You see, you want the system to be effective, efficient and transparent.

Sen. Al-Rawi: I have to problem with it, hon. Minister, it is just that CPC, the department brings Bills with different versions on a week to week basis. I just want to know which way we are going, that is all.

Sen. Dr. Tewarie: All right.

Mr. Chairman: The question is that clause—*[Interruption]*

Sen. Dr. Tewarie: Just one second, Sir. Okay, “as soon as is practicable”, we will make the amendment.

Mr. Chairman: That is okay now?

Sen. Dr. Tewarie: After “receipt”. And the only reason I am changing this is because of the fact that you may find yourself with “a six weeks” and Parliament is in recess, and you would not be able to make it.

Sen. Al-Rawi: Well, I know Parliament has come up with a way of getting around that practically. I was just looking at it from a consistency of drafting point of view from Bill to Bill, that is all.

Sen. Dr. Tewarie: Okay.

Mr. Chairman: What is the amendment? We want to get it; “as soon as practicable”?

Sen. Dr. Tewarie: Yes.

Mr. Chairman: Clause 95 is amended to insert “as soon as practical”?

Sen. Dr. Tewarie: After “the receipt of the report”.

Sen. Al-Rawi: So, delete “within six weeks” and insert instead the words “as soon as is practicable”.

Mr. Chairman: “As soon as is practicable”. So, we are deleting “within six weeks” and we have “as soon as is practicable”.

Sen. Al-Rawi: After.

Question put and agreed to.

Clause 95, as amended, ordered to stand part of the Bill.

Clauses 96 and 97 ordered to stand part of the Bill.

Clause 98.

Question proposed: That clause 98 stand part of the Bill.

Sen. Al-Rawi: That is correct. So, Mr. Chairman, in the original 98, new 97, my question arose as to the operation of the limitation period. Again, in subclause 2(a), nothing in this section prevents the National Planning Authority from proceeding at any time to secure compliance under 51(6). So, 51(6) was compensation payable under this section. Is that right? No, that is 59, sorry.

Sen. Dr. Tewarie: 51(6), let us see. I cannot remember what that is.

Sen. Al-Rawi: An immediate compliance order. So 51(6) is:

“An immediate compliance order...”

Sen. Dr. Tewarie: Yeah.

Sen. Al-Rawi: And you have stated your position on the policy, so we could skip that one, having made the observation.

Question put and agreed to.

Clause 98 ordered to stand part to have Bill.

Clause 99.

Question proposed: That clause 99 stand part of the Bill.

Sen. Young: Through you, Mr. Chairman, looking at subclause (1), we are allowing a person once authorized in writing by the Minister, the NPA or an inspector or the Chief Building Officer—so to start with, we are giving a variety of people the power to authorize. This person, to now enter upon anyone’s land for the purpose of inspecting, surveying, et cetera, without giving any prior notice to the people. I think that what this should be, as happens now whenever you have a land dispute, you have to give notice. Any surveyor going onto the land has to give, I think, a certain period of days’ notice, and it should be an applicable principle applying here that we should make sure that they give notice. We are not against the surveyor or the inspector or the person being authorized going upon the property, but there should be sufficient notice given. [*Crosstalk*]

Sen. Dr. Tewarie: Okay, does it help that (2) says 48 hours’ notice?

Sen. Al-Rawi: Well, they are getting the power to enter any land any time, anybody.

Sen. Dr. Tewarie: Do we have a problem here?

Sen. Al-Rawi: And if you wilfully obstruct, take an offence.

Sen. Young: And I am coming to the wilful obstruction, et cetera. [*Crosstalk*]

Sen. Al-Rawi: And the notice is not even written notice.

Sen. Ramlogan SC: The notice period is sufficient. I think this is reasonable as is, because the 48 hours advance notice is important, and also you would want really to have the power to enter at any time, you know, and I would tell you why. Most of the times when you receive a show cause notice right now, what you do is you shut down business in the day and you put up “lil” lights inside the building and you operate in the night. That is how everybody “does compete”; you work from inside out. That is what happens. Most of these large buildings, you see, I mean, that is how it is done.

Sen. Al-Rawi: And the notice is not written notice in this law, you know, AG.

Sen. Ramlogan SC: Well, it does not matter whether it is written or oral, the point is your spotlight is focused not on the notice. The notification is not the issue; the issue is the power of entry at any time.

Sen. Al-Rawi: Just so, without notice.

Sen. Ramlogan SC: You have to give 48 hours' notice.

Sen. Young: You should give written notice.

Sen. Ramlogan SC: You mean, in terms of the notice, the notice is not written?

Sen. Young: AG, as you know, being a litigator, it just says oral, so, it should be written, so there is a record of it being written but, certainly, 48 hours where in normal circumstances where you are going to survey lands, et cetera, you give seven days, I would suggest that we increase from 48 hours to a period of the more than—*[Interruption]*

Sen. Ramlogan SC: Listen, listen, there are people in Westmoorings and so on who reclaimed the whole sea in 48 hours “and ting”, you know—man backfilled land in 24 hours and so on. Let us be reasonable. The longer the notification period, the greater the window of opportunity.

6.50 p.m.

Sen. Al-Rawi: AG, can I just raise this to you? This clause, clause (1), allows you the power, anybody basically authorized can enter at any reasonable time, any land for the purpose—

Sen. Ramlogan SC: Where are you reading from?

Sen. Al-Rawi: Subclause (1).

Sen. Ramlogan SC: Right. Okay.

Sen. Al-Rawi: So:

“Any person...authorised...by the Minister or...National Planning Authority”—or—“any inspector or the Chief Building Officer exercising powers under section 67 or 70 may, at any reasonable time, enter upon any land for the purpose of inspecting or surveying such land...”

Let us stop there. We have under another section, the right to enter anywhere because it is emergency basis. Right? So it is not that section we are dealing with,

it is a new section now.

Sen. Ramlogan SC: Sure.

Sen. Al-Rawi: So you have the power to enter to inspect or survey such land, or estimate value.

Sen. Ramlogan SC: Yeah, because it could be worth more in the night than in the day.

Sen. Al-Rawi: No problems. If you are backfilling land in the sea, that land becomes the property of the State. You have to get a licence to reclaim, you have to pay them the market value of it; all of those things could be dealt with by money. Damages are adequately remedied.

Sen. Young: But also, to add to it, AG, when you look at (a) to (e), what we are giving this power in connection with, it is none of the circumstances you are referring to. This is for them in preparation of approval, amendment of a development plan, so these are non-emergency-type circumstances. This is the process that we are dealing with. This is the procedure. This is the application procedure or based on a proposal, or claim for compensation.

Sen. Ramlogan SC: But what are you all proposing? What are you all proposing?

Sen. Young: Just that you increase the notice period because this is not a period where you need an emergency and, as you just said a short while ago, you agreed to the addition that it has to be a written notice.

Sen. Dr. Tewarie: We agree to the amendment of putting in the written. I agree that is reasonable.

Sen. Ramlogan SC: But nothing else?

Sen. Dr. Tewarie: Yeah.

Sen. Al-Rawi: Mr. Chairman, just look at the architecture, right, in subclause (3):

“Any person who wilfully obstructs a person acting in the exercise of the powers conferred by this section is liable on summary conviction to a fine of ten thousand dollars”

Is there a caveat in here where somebody can say, “Look, I am not letting you into this land, go and get a warrant”?

Sen. Ramlogan SC: No.

Sen. Al-Rawi: Why?

Sen. Ramlogan SC: No. No. No. Hold on. Listen, let us be reasonable about this.

Sen. Dr. Tewarie: This matter was exhausted at committee.

Sen. Ramlogan SC: Yeah. You see, there is a presumption of regularity on the part of public officials. You cannot reverse the presumption and legislate. If you reverse that presumption and legislate, then we should be putting caveat in every single law—I mean, from food inspectors come up the road. I mean, food inspectors should be in all the restaurants and so on, checking out every day. [Crosstalk] But I think, Faris, if they give you the advance notice 48 hours in advance, you can do something about it if you so desire. [Crosstalk]

Sen. Young: Go to court and get an injunction—[Inaudible]

Sen. Ramlogan SC: Yes. That is right. So I am saying in subclause (2), “unless 48 hours advance written notice”, and that is all we are conceding with.

Sen. Young: Correct.

Sen. Ramlogan SC: Nothing else.

Sen. Young: And then (3) and (4), we have gone with \$10,000 and \$20,000; in subclause (3), \$10,000 and subclause (4), \$20,000. I would suggest, Minister, considering increasing that because, I mean, when you are dealing with these hundred-million dollar projects they will just consider that a mitigating cost, you know, and they would take a \$10,000. [Crosstalk] I mean, that will have to be a policy decision by you all.

Sen. Ramlogan SC: Well 99(2) is the only amendment, Mr. Chairman, and it will read in the penultimate line, that is the second to last line, “demand admission to any land that is occupied unless 48 hours”, you include after “48 hours” the words “advance written”. The CPC just said he likes the use of the word “advance”. [Laughter] So “advance written notice”. I told him it is superfluous but he insisted on including it. We would put it in, that is fine.

Question put and agreed to.

Clause 99, as amended, ordered to stand part of the Bill.

Clause 100 to 103 ordered to stand part of the Bill.

Clause 104.

Question proposed: That clause 104 stand part of the Bill.

Sen. Al-Rawi: So original 106, is the inspection of documents:

‘For the purpose of carrying out any functions required or permitted to be performed...the Minister...may, at any reasonable time subject to subsection (2), inspect any document, plan or...record...

- (2) The Minister...Planning...shall...not less than seven days’ notice in writing to the person in possession of...document...
- (3) Any person who was given notice pursuant to subsection (2), and, without reasonable cause, fails to produce...”

I see. So, AG, is it intended that your reasonable cause here gives you your legitimacy and due process?

Sen. Ramlogan SC: Yeah, that is the due process. Yeah.

Sen. Al-Rawi: Okay. All right. Well then I withdraw my concern there.

Sen. Ramlogan SC: Excellent.

Sen. Dr. Mahabir: Mr. Chairman, before we go on, I was just wondering whether we would want to request copies of the document as opposed to “make copies”. Are we assuming in 106(1), original, that the inspectors are going to really ask for originals, go to the office or make them somewhere? Should they not request copies as opposed to make copies?

Sen. Al-Rawi: The “make copy” comes from the general law which says that you could physically make it. When you request it there is a procedure to go through; you have to wait for it, somebody may doctor it, et cetera. When you say “make copies” it implies, and the courts have done this under discovery, that you have the power to take it away under supervision and copy the thing to be sure.

Sen. Ramlogan SC: No, we will leave it as “make copies”. “Man go leave out one page every day to make sure that he delay yuh.” The part that I am violating, I will leave out that page and copy everything else and give you it, and you will come back and I will do it again, you know.

Sen. Al-Rawi: The AG sounds very familiar with this technique, you know.

Sen. Dr. Mahabir: I just thought, AG, it was the onus of all the property owners out there to have originals and have copies at the same time.

Sen. Ramlogan SC: Yeah. Yeah. Yeah. I am in this business a long time, if you ask them for it, this is what they do.

Question put and agreed to.

Clause 104 ordered to stand part of the Bill.

Clause 105.

Question proposed: That clause 105 stand part of the Bill.

Sen. Al-Rawi: Mr. Chairman, I had a concern about the fact that 105 could be open to abuse. I could understand the fact of the ministerial promotion of certain issues, but I had a concern about it just in general. I could just flag it and leave it right there that the clause may be open to abuse.

Sen. Dr. Le Gall: Mr. Chairman, excuse me; on the original 107, now amended 105, I wish to suggest, through you, to the hon. Minister that where it states that, “The Minister may make grants to any organization or body”, we could include language to suggest that such bodies may be of at least five years’ standing or four years’ standing. There must be some level of longevity. [*Crosstalk*]

Sen. Al-Rawi: Hon. Minister, my problem with that suggestion is that you may have a very legitimate entity with a long-term existence elsewhere. Let us say a company that exists abroad, an NGO registers itself here as a not-for-profit company, has two days’ existence but it is comprised of an entity with 100 years’ existence behind it—the fetter in terms of time causes some difficulty from that perspective. I have done a lot of 501(c)(3) status—that is where the IRS gives you the tax benefit breaks for companies, so I have seen circumstances like that cause a fetter. So I am just throwing in a little two cents there, Sen. Le Gall, I hope you do not mind.

Sen. Dr. Le Gall: No, I do not mind at all.

Sen. Dr. Tewarie: I understand the suggestion; it is to bring legitimacy to depoliticize, in a way, the process. Could we add a clause which says “with a track record of performance”, or something like that?

Sen. Al-Rawi: But, Minister, the question is this, why would you want to put the Minister with an open-funnel power in here to just give money? Surely, he could do that in some other way.

Sen. Dr. Tewarie: Because the nature of governance today is that governments alone do not govern and, therefore, part of the responsibility of governance is to support organizations and institutions that are dedicated to the public good, and to allow them to do their business.

Sen. Al-Rawi: Agreed. But why give it power in the Bill to do this? Are there no other mechanisms to do it?

Sen. Ramlogan SC: No. There is no other way in Trinidad and Tobago to give money except through this section here, and I take the point that Sen. Le Gall is

making, but it is a concern I share because you could have fly-by-night organizations being formed to access the funding. But the issue here is really—Sen. Al-Rawi has a point in terms of the issue. What you have, for example: many organizations have splinter factions, so that you might have an organization, like say, for example, the Highway Re-route Movement, it forms in response to a particular cause, and it may or may not acquire legitimacy as the case may be, could you deny them funding because it is not five years old? You see what I mean? And five years is a long time. So I think we would leave it to the Minister's discretion, but it is a concern that is on the record, and I will say that I share that concern. I mean, I thought, for example, we could meet it by saying, "the Minister may make grants to any recognized organization or body", but, you know, once you put the years on it you would run into trouble.

Sen. Dr. Mahabir: AG, there must be a track record of performance.

Sen. Ramlogan SC: But if it is a new organization—

Sen. Dr. Mahabir: Right. If it is a new organization you do not know whether they are bona fide or whether they are conmen. You yourself have said that there are many schemers out there who will doctor documents.

Sen. Ramlogan SC: I never said that. I never said "out there", I said "in here".

Sen. Dr. Mahabir: You said in here. [*Laughter*] All right. And if there are conmen who will doctor a document, a photocopy, I think there are people who will incorporate NGOs and all these things simply to get ministerial money. I endorse my colleagues' concern that there must be a record. The onus is upon them, AG, not on the Minister to build them, they must build themselves and then get ministerial money. So let there be a track record that is suitable to the Minister which will allow them to obtain the legitimacy that they want.

Sen. Al-Rawi: AG, before you answer.

Sen. Ramlogan SC: Yeah, sure.

Sen. Al-Rawi: The children's fund that we set up in 2010, right—

Hon. Senator: Which you had no contribution to.

Sen. Al-Rawi: Which some of us have contributed handsomely to, and some of us have not as well. Question! That piece of legislation, which is a benevolent purpose, does not give power to give money like this. I have never seen a clause like this in a piece of law in four years sitting here and in 16 years practising law, 18 years going on. I am just uncomfortable with this clause.

Sen. Dr. Tewarie: No, no, but that may be true, but I mean if you look at this law—I mean claiming no credit whatsoever—this is a law that is very enlightened future thinking, and it is about changing the business of governing and managing land,

environment, sustainability, et cetera, and it is reasonable that a clause like this would be here, and the fact that it is legitimately here, legally here in the law, says something about how we intend to proceed with business.

Sen. Al-Rawi: Where is the Ministry of Finance and the Economy's supervision? [*Crosstalk*]

Sen. Prescott SC: Chair, may I make an intervention?

Sen. Ramlogan SC: Let us hear Sen. Prescott. [*Interruption*] Sorry.

Sen. Robinson-Regis: Mr. Chairman, could I ask a question? Given the fact that the Minister is saying that the objective really is to change the thinking and change the way people deal with things, would you consider, instead of giving grants, giving people the ability by enhancing their skills rather than a grant, that the Ministry would set up maybe a group that enhances the skills of people, because I think the giving of a grant, it lends itself to being abused. So the real objective, if I read you correctly, is really to develop people's skills in the built environment and in the environment otherwise.

Sen. Dr. Tewarie: Well not really skills, it is skills and knowledge and to change mindset.

Sen. Robinson-Regis: But the grant is not the only way.

Sen. Dr. Tewarie: Listen, I only mentioned "mindset" at the end of the presentation that I made today, but you know that is the biggest problem we have. This Bill cannot go anywhere without a change of mindset, all right? And it cannot be done by some ministerial official preaching to the population. It has to be done by the integration of non-governmental organizations, citizens' organizations, et cetera, who have a belief in this. One of the things that we have found in the preparation of this Bill and the spatial strategy is the fact that there are many groups out there, that there are many people—individuals, organizations—that are truly interested in this, and would do this for nothing because they believe in it, but in order to help the process you need to get them involved. It is a way of empowering organizations. You realize it is no big set of millions of dollars involved, you know.

Mr. Chairman: Sen. Prescott.

Sen. Prescott SC: Thank you very much. I am recommending to the Minister he should give consideration to two things. One of them is whether these organizations should not be located in Trinidad and Tobago and, secondly, instead of being "concerned with encouraging" be "actively engaged in".

Sen. Ramlogan SC: That is a good idea.

Sen. Dr. Tewarie: Okay. That amendment is not a problem at all, “actively engaged in”.

Sen. Prescott SC: I have not given you the language but there are two changes that I would recommend, that we must make it clear that we are talking about locally organized bodies, and that they are “actively engaged in encouraging”.

Sen. Ramlogan SC: And we can say “the Minister may make grants to any local organization or body”—

Sen. Prescott SC: If local is the word that you advised.

Sen. Ramlogan SC: Yeah, “local organization or body that appears to him to be actively engaged in”. Right?

Sen. Dr. Tewarie: Yes.

Sen. Prescott SC: Yes.

Sen. Robinson-Regis: Could we suggest a limit?

Sen. Al-Rawi: Yeah, AG, there is no limit. There is no fetter.

Sen. Ramlogan SC: Listen, one would expect that regulations would have to be made for this and that there would be some kind of committee set up to advise the Minister. It is not that the Minister would do this personally himself. It has to be done on advice of some committee.

7.05 p.m.

Sen. Al-Rawi: Well you would have to say “as is prescribed by the regulations”.

Sen. Ramlogan SC: No, there is a general regulations power-making in the law, to make regulations for anything.

Sen. Al-Rawi: AG, this is a dangerous clause.

Sen. Ramlogan SC: I do not see it as being dangerous, you know; no, no, no.

Sen. Dr. Tewarie: It is not, because it is so transparent. It is not dangerous at all. What is dangerous is when you do not have these things in here and you do it anyway.

Sen. Ramlogan SC: I understand Sen. Al-Rawi’s concern. You see, things like the scholarship slush fund comes to mind, [*Laughter*] but the truth of the

matter is you really want a committee in place that will evaluate, that kind of thing.

Sen. Dr. Tewarie: Would a reporting requirement satisfy you? [*Crosstalk*]

Sen. Robinson-Regis: The LifeSport programme. What also comes to mind is the \$10 million that you all were proposing that MPs get. I would really like to hear the Minister of Finance and the Economy, if he has a position on this.

Sen. Al-Rawi: There is no Minister of Finance and Economy approval.

Sen. Robinson-Regis: You have to have some kind of mechanism for regulating this. I am really concerned about that.

Sen. Dr. Tewarie: Would you be comfortable with a reporting requirement? [*Crosstalk*]

Sen. Ramlogan SC: No, no. Those things will be in the regulations. Listen, can I just say for the record, in the interest of time, this is not a matter that can be looked at in a vacuum. A regulatory framework will have to be designed in support of this, to facilitate it, but we cannot put it in substantive law. Chair, that is our position. [*Crosstalk*]

Mr. Chairman: So there will be no amendment?

Sen. Dr. Tewarie: No, no amendment—well, yes, there are two amendments.

Sen. Ramlogan SC: Yes, two amendments by Sen. Prescott.

Sen. Dr. Tewarie: “local” between “any” and “organization” and “actively engaged” replacing “concerned with” encouraging.

Sen. Ramlogan SC: That might also take care of—Sen. Le Gall’s point might be met in some small measure by that, to some extent.

Sen. Lalla: “actively engaged in”, replacing “concerned with”—principally concerned. [*Interruption*] [*Crosstalk*]

Mr. Chairman: So we are removing “principally”. Deleting “principally”.

Sen. Dr. Le Gall: In addition, Chair, in subsection (2) where it states that:

“The Minister may, as a condition of making any grant under subsection (1), require”—the following:

including preparation of a proposal and a budget—

Maybe it should read “shall”; make it a mandatory condition that a proposal and a

budget be prepared in order to access the funds.

Sen. Prescott SC: Yes.

Sen. Dr. Tewarie: I have no problem with it.

Mr. Chairman: “To prepare a proposal and a budget”—

Sen. Lalla: “The Minister shall”.

Mr. Chairman: That is it?

Sen. Dr. Tewarie: Yes, “shall” instead of “may”. That is fine; let us go.

Mr. Chairman: So could we read it as follows that we could understand? Clause 107, as amended, will read as follows:

The Minister may make grants—do we insert “shall” where we have “may” up here, or we leave “may grant”? We leave that “may”.

Hon. Senators: Yes.

Mr. Chairman: “may make grants to any local organization actively engaged in”—that is correct?

Sen. Prescott SC: We will maintain the words “or body”.

Mr. Chairman: Okay, we are keeping “or body that appears to him”. We are leaving that whole section, and then we go on to (2) and say: “The Minister shall”. [*Interruption*]

Sen. Prescott SC: Very well.

Mr. Chairman: I will come back to you, Senator. I am just taking Sen. Le Gall’s point:

“(2) The Minister shall, as a condition of making”—so we delete “may” and insert “shall”. Sen. Prescott, help me.

Sen. Prescott SC: I assume that you had overlooked it. In line two of subsection (1) it should now read, “appears to him to be actively engaged in”. You had not read it before, so I thought you had gone on.

Mr. Chairman: It is in:

“The Minister may make grants to any local organization or body that appears to him to be actively engaged in encouraging”—and we go along with the rest.

Sen. Prescott SC: Encouraging, yes.

Sen. Vieira: I was just wondering whether we need at 2(b) to have the word “agree”, because if you are getting the grant, I think the same way I am requiring you as a condition to do—you will submit accounts regardless.

Sen. Prescott SC: You should agree to, instead of agree—

Sen. Ramlogan SC: I think it is kind of superfluous.

Sen. Vieira: I agree you do not need it. So it will just read: “to receive the grant, to submit accounts”. Somebody also mentioned, besides accounts, maybe to do a report, we had to throw that out.

Mr. Chairman: So you are deleting the words “agree to”, and submit accounts with that—

Sen. Ramlogan SC: So we agree to delete “agree to”.

Question put and agreed to.

Clause 107, as amended, ordered to stand part of the Bill.

Clause 108.

Question proposed: That clause 108 stand part of the Bill.

Sen. Al-Rawi: Hon. Minister, I thought that your fine of \$20,000 for a breach of the regulations was too low. You probably wanted to go up considerably on that because there are a lot of prescriptive aspects to deal with. I mean, you are fettered to just \$20,000.

Sen. Vieira: Put a higher limit, and then on the regulations you could—

Sen. Al-Rawi: On the regulations you could prescribe lower, but you do not want to come back to Parliament and find that it is too low.

Sen. Dr. Tewarie: That makes sense, you know. Where is it?

Sen. Young: Subclause (2). Remember this is the maximum, so put for yourself a maximum there and you could then decide in the regulations for each and every— [*Crosstalk*]

Mr. Chairman: What are we amending it to?

Sen. Ramlogan SC: We will put \$1 million.

Mr. Chairman: What is the amendment?

Sen. Ramlogan SC: \$1 million.

Sen. Dr. Tewarie: I do not see how it fits.

Sen. Al-Rawi: You do not want \$500,000, AG?

Sen. Ramlogan SC: How much?

Sen. Al-Rawi: That is like plucking something out of the ether. We have this traditional problem in terms of a matrix as to how fines are done in the Parliament. I did not want to just pluck a figure out of the air like that.

Sen. Ramlogan SC: No, we did not; we studied this thing.

Sen. Al-Rawi: I am glad that you have.

Hon. Senators: You planned for it.

Sen. Ramlogan SC: No, we planned for this thing. In anticipation of the amendment, we studied this and we realized that given the size of buildings that are going up in violation of the law, you need to have the fine-making power to have a ceiling of up to \$1 million—

Sen. Al-Rawi: Just pointing out, AG—

Sen. Ramlogan SC:—and if you backpedal that in devising the number of bricks you could buy, you would see why we chose that figure.

Sen. Al-Rawi: Nowhere in the Bill and substantive law is any offence as high as \$1 million. I am just pointing that out to you.

Sen. Ramlogan SC: But this is a planning Bill. Sen. Young does not seem to have a problem with it.

Sen. Dr. Mahabir: But, AG, we are levelling a fine of a quarter million dollars for an officer who is taking a bribe. Could we not just double that for someone who is violating the regulations at a maximum?

Sen. Ramlogan SC: So what do you suggest, \$500,000?

Sen. Dr. Mahabir: Yes, I would say \$500,000, because, you see, it is in relation to the officer who is taking a bribe. It is a quarter of a million; that is the maximum we are going to levy on him. So if we were to then double that to say that is the maximum fine we are going to have for the breach of the regulations, I think that would appear to have some justification.

Sen. Al-Rawi: AG, we used \$500,000 in the insurance legislation, in the

securities legislation, et cetera.

Sen. Ramlogan SC: Look, we wanted to go hard on people who violate the law. If you all want to go a little softer, we will accommodate you all. [*Laughter*]

Sen. Dr. Balgobin: I like the \$1 million—

Sen. Ramlogan SC: You like \$1 million?

Sen. Dr. Balgobin:—because some of the projects we are seeing now are substantial, and bribes are paid that can very well exceed a quarter million dollars. [*Crosstalk*]

Sen. Ramlogan SC: It is up to \$1 million.

Sen. Dr. Tewarie: We could do that and then say \$30,000.

Sen. Ramlogan SC: We will go with \$1 million.

Sen. Al-Rawi: And in subclause (3): Regulations made under this Act are subject to negative resolution of Parliament. We have not seen—well, we have seen the regulations; the Minister has kindly published those, but I am concerned that the regulations—because they are so prescriptive and so heavy—that they should be subject to affirmative resolution.

Sen. Dr. Tewarie: Oh God man, Faris.

Sen. Ramlogan SC: We note that concern.

Sen. Vieira: I agree with Sen. Al-Rawi, and again for the same reasons we have in the procurement. There are different types of subordinate legislation. This is not regulations where we are talking about scheduling of fees. We are talking about powers being conferred, complex matters being dealt with. This needs scrutiny.

Sen. Al-Rawi: And tested too.

Sen. Vieira: So I think when you are talking about significant exercises of power and this type of regulatory regime, affirmative.

Sen. Dr. Tewarie: All right. What is the preference for a negative resolution? The preference for a negative resolution is that you put it forward and if a debate is called for, it will be debated. If there is no necessity, we do not have to debate it. When you have a positive resolution, whatever the situation, you have to have a full debate on the thing.

Sen. Al-Rawi: Exactly, by simple majority, and you have the debate. You see,

the negative resolution runs afoul—when you lay something just before Parliament prorogues, Parliament prorogues, as we will for instance in August, they do not count the number of days—the 42 days over the entire vacation—it falls off people’s memory. You do not know. The time limit passes; you forget to move the Motion. I am concerned that negative resolution has loopholes to it in terms of attention to the prospect.

Sen. Ramlogan SC: Listen, we take the point and we would love to have that, but the reality is the Parliament’s time is already strained and stressed. The legislative agenda of the Government already cannot be accommodated, even by two sittings a week. And on this particular matter, as a matter of policy, we would prefer to leave it as is. We do not want to get into the practice of every Bill we bring to this Parliament, we have to concede and say, “Well, look, we will do it by way of affirmative resolution.” We understand the concern on that particular point but, you know.

Sen. Dr. Balgobin: It does raise the question, Attorney General, that perhaps it is something that one of the committees that look at Standing Orders or the way that we conduct our business, might concern itself with, because I do not think it is anything to do with this piece of legislation in particular. The issue of negative resolution really arises because it passes you so fast, like a ship in the night. It may be that in the way the Senate reviews how it conducts its business, that we find a more transparent and explicit way to bring forward things that are—

Sen. Ramlogan SC: I agree.

Sen. Dr. Balgobin: So that everybody is aware when the time is here and when the time is going, and everything like that. So it may not be that we have to remedy this in the legislation necessarily. I am not saying for this particular one, but just generally.

Sen. Vieira: I appreciate the delay and the difficulties involved in coming to Parliament, but we are going to be talking about the amended nurses and midwives Bill here, regulations made subject to affirmative resolution of Parliament. I mean, there is an inconsistency.

Sen. Ramlogan SC: You see, and that is the problem. When you make that concession for nurses and midwives, then you hold on it, by example, to hold us to ransom for everything else.

Sen. Vieira: This should be negative.

Sen. Ramlogan SC: I am glad you say it because I am coming to argue we should change that when we come to it just now. So I am grateful that I will have your support there. Listen, the substantive law is being debated and passed, but we cannot in all circumstances agree to have it subject to affirmative resolution. So that is the policy position, and we rest on that, Chair.

Sen. Dr. Tewarie: Sen. Vieira, I know your concern on this because you raised it in the procurement legislation, and we accommodated that. We acknowledged it because of the nature of that legislation and the way it sort of stuck in the throat, so to speak, of the population. But I do not see the need to insist on the same positive resolution for this, and I hope you would not see this as an attempt to basically bypass a debate for it. The debate opportunity remains; it is just that we want to create the option.

If we brought a thing on trees, for instance, somebody may trigger a debate on that. If we brought something that had to do with something that was more innocuous, we may not trigger a debate on that and, therefore, we would not have to debate every resolution.

Sen. Vieira: I accept what you are saying. In the procurement Bill, I thought there was a stronger imperative, because the procurement Bill was very bare-bones legislation and it was going to be fleshed out with regs. This is more substantive. I just want to put on record my feelings.

Sen. Ramlogan SC: Sure, sure.

Mr. Chairman: The question is that clause 108 be amended by deleting twenty thousand and inserting one million.

Question put and agreed to.

Clause 108, as amended, ordered to stand part of the Bill.

7.20 p.m.

Clause 109.

Question proposed: That clause 109 stand part of the Bill.

Sen. Young: Mr. Chairman, through you, hon. Minister, Attorney General, looking at this, I have two main problems. First of all, we say an ex parte—we are looking to make it an ex parte application—as you are aware, the law no longer permits, so to speak, ex parte applications. We have decisions from the House of Lords; the PC saying that you should not go ex parte, except in the most dire and emergency circumstances. So, I do not think it should be ex parte.

The second issue I had in mind was, you know, this is again—and I recognize we

are utilizing the Environmental Commission, I was going to suggest the High Court, but if we are going down the road of the Environmental Commission, we can stick with the Environmental Commission, so it is really the *ex parte*, and I have made a suggestion in looking at alternative legislation, that the clause that is the law in Singapore, which can read, by way of an alternative:

- (i) where the National Planning Authority considers it necessary or expedient for any actual or apprehended breach of this Act to be restrained by injunction, the National Planning Authority may apply to the EC for an injunction whether or not it is exercised or is proposing to exercise any part of its powers under;—and then we use the rest of the Act.
- (ii) on an application under subsection (1), the EC need not require from the National Planning Authority any undertaking in damages; and
- (iii) on an application under subsection (1), the EC may grant such an injunction as the EC thinks fit—thinks appropriate for the purpose of restraining the breach.

That is the language I would like to suggest.

Sen. Vieira: Sen. Young, does that allow for *ex parte*?

Sen. Young: It allows for *ex parte*, but that is up to the court. So, we are not expressly telling them you have to go *ex parte*. If someone makes an application to the EC *ex parte*, it is then up to the EC to apply what we all know as the common law that: why you are coming *ex parte*? I want to hear the other side, but them on notice, and I prefer that to us giving, at this stage, the power to the National Planning Authority to go *ex parte*.

Sen. Vieira: My only concern is that because you are talking about development hazards, and the threat to land, the threat to the environment, the threat to humans—[*Interruption*]

Sen. Ramlogan SC: That is right.

Sen. Vieira:—I would not want to exclude the power for an *ex parte* application.

Sen. Ramlogan SC: And it is for that reason we have phrased it as it is, and as a matter of policy, we wish to keep it there, because if you look at 51(6)—I mean, I think you have hit the nail on the head with a bang—it really caters for a wide variety of situations which could lead to imminent threat and danger and so on, and we feel that it should be there. The court already has the power if an *ex parte*

application is made. Under its inherent jurisdiction, the court can direct that they be heard *inter partes*, so that the other party can be heard, or if it grants an *ex parte* injunction, the court can, in fact, have a prompt and efficient return date, in a short space of time to hear the other side affected.

Sen. Young: Chair, I just want to caution—*[Interruption]*

Sen. Ramlogan SC: Chair, we are comfortable with this as is.

Sen. Young:—there is other existing legislation, the Integrity in Public Life Act, that provides for *ex parte* applications to be made under section 11(7), as you are aware, and once the legislation says “*ex parte*”, the court does not—and you can argue it prohibited from then saying, “Look, I want to give notice.” So, what they would say is, I have set in a short date, a short return date, *et cetera*. I would like to caution, again, that we go the alternative and say you can make the application, allow the authority to—the authority then, in its discretion, its attorneys go *ex parte*, and let the court say, well, look, I want notice, or yes you are right, they are about to open this—cut down these trees that would lead to this detriment, *et cetera*.

Sen. Ramlogan SC: I do not think that is correct.

Sen. Vieira: It may obtain.

Sen. Ramlogan SC: Yes. That is right. I do not agree with you Sen. Young because—*[Interruption]*

Sen. Young: May, on application, obtain an *ex parte* restraining order. So, it is saying, that you can, on application, obtain an *ex parte*, but it is saying it is *ex parte* there.

Sen. Ramlogan SC: No, no, no. *[Crosstalk]*

Sen. Lalla: Not necessarily.

Sen. Young: You all make the decision. *[Crosstalk]*

Question put and agreed to.

Clause 109 ordered to stand part of the Bill.

Clause 93 recommitted.

Question again proposed: That clause 93 stand part of the Bill.

Sen. Al-Rawi: Oh, Mr. Chairman, there was 112, which is 113. AG—*[Crosstalk]*

Sen. G. Singh: That was not on the list.

Sen. Al-Rawi: Ganga, look at the point. It is just the question of whether you want to put in “and against the State”. AG, look at that “nah”.

Sen. Ramlogan SC: Which one?

Sen. Al-Rawi: 112, which is the last clause, which was the old 113, subclause (3), the penultimate clause; the last one:

“Notwithstanding subsection (1), on the commencement of this section, legal proceedings instituted by or against the State under the former Act shall be continued and concluded by the State...”

Do you want to say, “and or against” or is it covered?

Sen. Ramlogan SC: That is covered, man.

Sen. Al-Rawi: It is covered?

Sen. Ramlogan SC: That is correct. CPC says it is covered, we will go with his advice on it.

Sen. Dr. Tewarie: We go on to clause 93 now. [*Crosstalk*] AG, you have a matter to answer in 93.

Sen. Ramlogan SC: Yeah, 93?

Sen. Al-Rawi: AG, just in brief, the question was, in light of the sections that the State enjoys where it can claim specific damages, et cetera—[*Interruption*]

Sen. Ramlogan SC: Oh, yeah, yeah.

Sen. Al-Rawi:—whether damages ought to be excluded for the rights of the individuals; the balancing. The State has the power of damages in clause 43, but the individual does not.

Sen. Ramlogan SC: But the individual does not.

Sen. Young: And we did not want to limit or take—because, of course, the EC, we did not want to limit them or exclude them from having the power to award damages.

Sen. Al-Rawi: But, AG, the problem is—just before you answer—the concern is—I should not say the problem—about the inherent jurisdiction and the ability to, you know, just be limited to compensation per se. Not having the power is a problem because of the type of court that the EC is.

Sen. Ramlogan SC: But what are you saying? The court has the power to award compensation, does it not?

Sen. Al-Rawi: But specifically not damages.

Sen. Young: We are expressly excluding damages.

Sen. Ramlogan SC: But compensation is damages.

Sen. Young: No, no, no.

Sen. Al-Rawi: There are different types of damages.

Sen. Young: AG, we are expressly excluding the power here for them to order the payment of damages. Look at this, 92(1), which is the old 93.

Sen. Ramlogan SC: Oh, I see. Yeah, yeah.

Sen. Young: Right. So, we are expressly excluding it. When you have other bodies, for example, the Industrial Court, et cetera, where we provide for it, because whilst it is a court of superior record, when we expressly exclude it, they cannot do it. [*Crosstalk*]

Sen. Ramlogan SC: Compensation is damages.

Sen. Lalla: It is inferring that compensation may be damages.

Sen. Al-Rawi: But by the expressed exclusion of damages, we have limited aggravated, exemplary or other aspects.

Sen. Ramlogan SC: CPC, what is the policy? [*Crosstalk*]

Sen. Al-Rawi: It should have the power.

Sen. Ramlogan SC: I think the CPC is saying that was deliberate, that the power to award damages is restricted and circumscribed.

Sen. Al-Rawi: But where did he get it from?

Hon. Senators: Why?

Sen. Al-Rawi: Where did he get it from? Where is this? But why? You see, AG, I am just concerned to give the court the power, let the court decide. I mean, you have the right of appeal to the Court of Appeal if you are dissatisfied with it. [*Crosstalk*]

Sen. Vieira: Minister, you had mentioned that you were thinking of putting in a clause about the Planning Authority and planning bodies in the performance of their functions and exercise of their powers would act in an objective, transparent and non-discriminatory manner.

Sen. Dr. Tewarie: That is included in the Bill.

Sen. Vieira: Right. Now, if you have that clause in the Bill, and there was a breach because somebody behaved in a discriminatory manner or they acted in a subjective rather than an objective fashion, the court may very well want to say, “Look, I want to not just give compensation, I want to send a signal as well,” and that is why I tend to favour the inclusion of the damages. Today, tomorrow, we could all be on the other side of the fence.

Sen. Ramlogan SC: So, you are saying they should have the power to expressly award the damages?

Sen. Vieira: Yes.

Sen. Ramlogan SC: Chair, can we just delete from the words—we will leave the words in 92(1)—I am on 92(1), 93(1)—“The E.C.” and we will delete straight down to the last line “the E.C.” again, “but the E.C.” So, it will read:

“the E.C. may order the payment of such compensation as it thinks fit.”

Hon. Senator: Perfect!

Sen. Ramlogan SC: All right? Chair?

Mr. Chairman: So, you are deleting “E.C.”

Sen. Ramlogan SC: No, no, no.

Sen. Dr. Tewarie: We are deleting everything; we are deleting everything except—[*Interruption*]

Sen. Al-Rawi: From the word “shall” which appears after “E.C.”, right down to “E.C.” [*Crosstalk*]

Sen. Vieira: AG, we are fine with that.

Mr. Chairman: So should it read as follows—[*Interruption*]

Sen. Al-Rawi: One second, Mr. Chairman. [*Crosstalk*]

Mr. Chairman: We have a change again? [*Crosstalk*]

Sen. Al-Rawi: Yeah, AG, just before you do the quick fix, it may be that we need to reorder it, because they have to prescribe who, and the person must be successful.

Sen. Ramlogan SC: Well, the CPC is suggesting that we leave in some of it and say: “The E.C. shall not order” sorry—“The E.C. may order the payment of

damages...”

Sen. Dr. Tewarie: No, just say compensation.

Sen. Ramlogan SC: Sorry. “The E.C. may order the payment of compensation”—

Sen. Dr. Tewarie:—to any appellant.

Sen. Ramlogan SC:—“to any appellant as it thinks fit.”

Sen. Dr. Tewarie: No, no. He wants the other.

Sen. Al-Rawi: “to any appellant who has been successful or partially successful in appeal against...” [*Crosstalk*]

Sen. Ramlogan SC: But appellant would cover—[*Interruption*]

Parliamentary Counsel: But the order is specific.

Sen. Dr. Tewarie: Because it refers to (2), you see. [*Crosstalk*]

Sen. Al-Rawi: AG, this may work; listen to this language.

“The E.C. may order the payment of compensation as it thinks fit to any appellant who has been successful or partially successful”—[*Interruption*]

Sen. Ramlogan SC: Yeah, yeah.

Sen. Al-Rawi:—“in an appeal against an immediate compliance order or a development repair order.”

Sen. Ramlogan SC: That is it.

Sen. Al-Rawi: And then strike off, “but the EC” to “as it thinks fit”.

Sen. Dr. Tewarie: Yes, yes.

Sen. Ramlogan SC: That is it.

Mr. Chairman: “The E.C. may order the compensation as it thinks fit.”

Sen. Al-Rawi: Yeah.

Mr. Chairman: What is the last one?

Sen. Al-Rawi: So, it should read:

“The E.C. may order the payment of strike damages”—insert “compensation as it thinks fit” and it continues with the words—“to any appellant who has been successful or partially successful in an appeal against an immediate

compliance order or a development repair order.”

Sen. Dr. Tewarie: And then delete the rest.

Sen. Al-Rawi: Then delete, “but the E.C. may order the payment of such compensation as it thinks fit”.

Mr. Chairman: Okay. So, clause 93 would read as follows that:

“The E.C. may order the payment of compensation as it thinks fit to any appellant who has been successful or partially successful”—[*Interruption*]

Sen. Young: Yes.

Mr. Chairman:—“in an appeal against an immediate compliance order”—[*Interruption*]

Sen. Young: Yep.

Mr. Chairman:—“a compliance notice, a development repair order.”

Clause 93, as amended, again ordered to stand part of the Bill.

Clause 3 recommitted.

Question again proposed: That clause 3 stand part of the Bill.

Sen. Al-Rawi: There were two issues that arose in clause 3. Just quickly, one was whether you needed a definition of “local” insofar as it is used.

Hon. Senators: Regional.

Sen. Al-Rawi: Sorry, “regional”, because we use the language “regional” in the Bill. The question was whether we meant “regional Caricom”, but the advisors told us that it meant sub-national.

Sen. Dr. Tewarie: Sub-regional. It is sub-national, sorry.

Sen. Young: So, we are just suggesting an insertion in the definition, “regional” means “sub-national” because that is only obvious to people who are in the planning.

Sen. Dr. Tewarie: Do we not have it?

Sen. Young: No, it is not in. It is not in anywhere.

Sen. Dr. Tewarie: It says regional development plan means a plan in a geographical area, et cetera. All right. So, “regional’ means a “sub-national area

of Trinidad and Tobago”. [Crosstalk] That is okay? [Crosstalk]

Parliamentary Counsel: Regional geographical area.

Sen. Dr. Tewarie: Where is it?

Parliamentary Counsel: This is in the definition. [Crosstalk]

Sen. Young: But, as you know, you cannot use the definition of “regional development plan” as a definition for “regional”. Even when you read the regional development plan, it is still not clear that it is the urban language of sub-national.

Sen. Dr. Tewarie: Okay, but we will use the definition from “regional development planning”. In other words, we will formulate regional around that.

Sen. Young: Sure.

Sen. Dr. Tewarie: Okay?

Sen. Young: That is it?

Sen. Al-Rawi: Did you need a consequential amendment to Schedule IV, as a result of the amendment to 13?

7.35 p.m.

Sen. Dr. Tewarie: “Regional...means a...geographical area”—[Inaudible]—“regional...means”—pertaining to—“a geographical area traversing the boundaries of individual governmental units, sharing common characteristics that may be social, economic, political or national.” Okay? And what is the other one, Faris?

Sen. Al-Rawi: Consequential amendment for the integrity—

Sen. Dr. Tewarie: Yes, I think the AG has that.

Sen. Al-Rawi: The consequential amendment because of clause 13(3).

Sen. Dr. Tewarie: Yes.

Sen. Ramlogan SC: Chair, we have 100 consequential amendments which would take us some time and I would want to have the first one.

Sen. Young: You are amending the Fourth Schedule?

Sen. Ramlogan SC: Yes, we are amending the Fourth Schedule and we will insert after the amendment to the Land Tribunal Act the following: we would insert on the left hand side “Integrity in Public Life Act, Chap. 22:01”, and on the right hand side, “the Director of the Planning, the Chief Building Officer and the Chief Enforcement Officer of the National Planning Authority.”

Parliamentary Counsel: Item 11.

Sen. Ramlogan SC: Yes, that there is No. 11. Mr. MacIntyre, it looks like two inverted commas. [*Crosstalk*]

Sen. Young: AG, just to confirm, the proposed amendment in the Fourth Schedule—you are adding these offices to the Schedule in the Integrity in Public Life Act?

Sen. Ramlogan SC: Yes. [*Crosstalk*]

Mr. Chairman: The question is that—something coming up? [*Interruption*] The question is that clause 3 be amended with the definition of the original Integrity in Public Life Act.

Sen. Young: There is no amendment in clause 3 to include the Integrity in Public Life Act, it is the schedule.

Sen. Dr. Tewarie: It is the schedule, yes.

Sen. Young: It is the Fourth Schedule of the Bill.

Sen. Al-Rawi: We need to put clause 3 stand part of the Bill and then—

Mr. Chairman: We need to put the regional one.

Sen. Young: Yes.

Sen. Al-Rawi: The question is that clause 3, as amended, stand part of the Bill by the inclusion of “regional”, meaning—

Question put and agreed to.

Clause 3, as amended, ordered to stand part of the Bill.

Fourth Schedule.

Question proposed: That the Fourth Schedule stand part of the Bill.

Mr. Chairman: The question is that the Fourth Schedule be amended:

The Integrity in Public Life Act, which includes and insert after Item 10, the following: “Director of Planning and Chief Building Officer, Chief Enforcement Officer of the National Planning Authority.”

Question put and agreed to.

Fourth Schedule, as amended, ordered to stand part of the Bill.

Question put and agreed to: That the Bill, as amended, be reported to the Senate.

Senate resumed.

Bill reported, with amendment.

Question put: That the Bill be now read a third time.

Sen. G. Singh: Division.

The Senate voted: Ayes 29

AYES

Singh, Hon. G.

Coudray, Hon. M.

Ramlogan SC, Hon. A.

Howai, Hon. L.

Hadeed, Hon. G.

George, Hon. E.

Tewarie, Hon. Dr. B.

Bharath, Hon. V.

Moheni, Hon. E.

Maharaj, Hon. D.

Ramnarine, Hon. K.

Smith, Miss K.

Scott, Miss A.

Lalla, L.

Burke, Abp. B.

Robinson-Regis, Mrs. C.

Al-Rawi, F.

Baldeo-Chadeesingh, Mrs. D.

Cudjoe, Miss S.

Young, S.

Cummings, F.

Drayton, Mrs. H.

Balgobin, Dr. R.

Wheeler, Dr. V.

Prescott SC, E.

Mahabir, Dr. D.

Vieira, A.

Small, D.

Le Gall, Dr. S. B.

Question agreed to.

Bill accordingly read the third time and passed.

**NURSES AND MIDWIVES REGISTRATION
(AMDT.) BILL, 2014**

[Fourth Day]

The committee of the whole Senate resumed its deliberations on the Bill.

[Chairman: Sen. James Lambert]

7.50 p.m.

Dr. Khan: Mr. Chairman, first I would like to crave the indulgence of the Senate that we could start over the committee stage from the beginning, because we have circulated a consolidated amendment list of both amendments, as well as, we also circulated a consolidated Bill. We would like to start with the consolidated amendment list. [*Crosstalk*]

Mr. Chairman, could I indicate that there have been some clauses, up to clause 9A that have been accepted already, and I have been advised that we could start from clause 10 onwards and then go back to the first part, clauses 3, 4 and 5 for those new amendments. The House committee had already approved up to clause 9A.

Mr. Chairman: Clause 10?

Dr. Khan: Yeah, so we could start with clause 10.

Mr. Chairman: We will start with clause 10. [*Crosstalk*]

Parliamentary Counsel: Clause 9A.

Dr. Khan: Clause 9A.

Mr. Clerk: Where they want to start from, clause 9?

Mr. Chairman: No, he said he wants to start with clause 10. Clause 10?

Parliamentary Counsel: No, 9A.

Mr. Chairman: Oh, 9A.

Clerk: No, 9A will be a sub of 9, so we will have to go back to clause 9. [*Crosstalk*]

Dr. Khan: Okay, we will do clause 10 then and we will come back to 9A. We will come back to the new clauses after, at the end, so we will start with clause 10 and revisit 9A, et cetera, at the end, and also clauses 3, 4 and 5 which are the new clauses. So we will start at clause 10.

Sen. Al-Rawi: Sorry, hon. Minister, just so literally we are all on the same page, because—first of all, thank you very much for the colour-coded track change amendments. I just got it. It was apparently here—[*Crosstalk*] hold on, it was here, but I was not aware it was here, so I was working with the consolidated versions of stuff. You did circulate beforehand the amendments to go inside—I was manuscript writing until Sen. Vieira, thankfully, flagged me to the fact of its existence, right?

Could you just—so that we are literally all on the same page, so we would know which of the clauses—are we dealing with the original Bill? When we say clause X, is it the original Bill?

Dr. Khan: Clause 10 would be from the original Bill.

Sen. Young: So that is:

“The Act is amended by inserting after section 8, the following new section:”

Sen. Al-Rawi: So the Bill we should have in our hands is, as amended in the HOR Bill, right? So when we refer to a clause it is that clause.

Dr. Khan: It is the Bill that you are referring to it.

Sen. Al-Rawi: Correct. And then I had a few amendments circulated. There was an amendment by Sen. Prescott which was circulated. There was a list of amendments by Sen. Cudjoe—

Dr. Khan: We saw that. We will deal with that.

Sen. Al-Rawi: Right, and then there was a supplemental list of amendments.

Dr. Khan: What we have done is created a consolidated list of amendments—

Sen. Al-Rawi: Right.

Dr. Khan: So on that page you will have both the list that was previously circulated and the supplemental list.

Sen. Al-Rawi: Okay, just let me get that one. One moment. I have the supplemental list of amendments—

Dr. Khan: You should have a consolidated list there.

Sen. Lalla: The consolidated list starts like this. The first page is like this. [*Shows Senator a copy*]

Sen. Al-Rawi: No, I do not have that. Could I beg for a copy, please, if the Clerk could just pass one?

Sen. Young: Is it the: “List of Amendments to be moved in the Senate by the Honourable Minister of Health during the second reading of the Nurses and Midwives Registration (Amendment) Bill, 2014”? That is what it is?

Dr. Khan: Yes.

Sen. Young: Ours does not have colour, the copies we have been given—I just want to make—“Column 1 Clause (Section in Act), Column 2 Extent of Amendment”.

Dr. Khan: Yes, that is it, that is it.

Sen. Young: Nine, “Delete and substitute the following clause 9:”

Sen. Lalla: Yeah, so that should be right.

Sen. Drayton: Which one? Is it the one with red and blue?

Dr. Khan: No, that is the consolidated Act. That is where all the clauses will be in the Act itself. You also will have a consolidated Bill.

Clerk: Is it dated June 17?

Sen. Al-Rawi: We have a consolidated Bill too?

Sen. Lalla: We just spoke about, the last clause is 9.

Hon. Senator: I have a Bill with green, Sir.

Dr. Khan: Right, that is the consolidated Bill. The one with the red is the consolidated Act.

Sen. Young: Correct, with all the different red, green, purple—

Dr. Khan: That is the full Act, with everything in it.

Sen. Young: Correct.

Dr. Khan: So, what we are working with is the consolidated Bill.

Mr. Chairman: Hon. Senators, it is dated on the last page, June 17—May 13 had been crossed and it is dated June 17, 2014, the last page.

Sen. Al-Rawi: Hon. Minister, did you circulate five minutes' time so that we could—

Dr. Khan: This has been done since last week. Unfortunately, we did not want to upset your progress in the last Bill.

Sen. Al-Rawi: Okay.

Dr. Khan: So we did it since last week. We just consolidated it to make it easier for reference.

Sen. Al-Rawi: Okay, thank you. So we are up on page now?

Dr. Khan: So you all have the consolidated amendment, you have the consolidated Bill and I am not too sure, you all should have the consolidated Act.

Sen. G. Singh: “Which one you dealing with?”

Dr. Khan: So we will start with the consolidated list of amendments. We are starting with clause 10, Mr. Chairman, page 2.

Sen. Al-Rawi: That is section 8, right?

Sen. Lalla: Yeah.

Dr. Khan: That is the proposed section 8.

Sen. Prescott SC: I have an amendment somewhere out there. Has it been addressed?

Dr. Khan: Your amendments were addressed, Sen. Prescott.

Sen. Prescott SC: It has been?

Dr. Khan: All of them.

Sen. Prescott SC: Thank you.

Dr. Khan: Everyone.

Sen. Prescott SC: Thank you. [*Crosstalk*]

Hon. Senator: Alternately?

Dr. Khan: Yeah. You will see like “enrolled” and the “Rolls” as you go through it.

[*Crosstalk*] If you look at the consolidated Bill, Sen. Prescott, you will see most of it is there.

Sen. Drayton: Are we using the different Bills at the same time?

Dr. Khan: No, you are looking at one Bill. The Bill is the consolidated Bill with the green in it. That shows all the amendments.

Sen. Drayton: Okay, so ignore everything else?

Dr. Khan: Well, you can if you would like to, but, Mr. Chairman has to go through the list of the actual consolidated amendments. If you go through the list of consolidated amendments, it is all in the consolidated Bill as recalled, you will see it referenced across. That in green are all the amendments that we have done. [*Crosstalk*]

Mr. Chairman: But all the amendments are not in colour? [*Crosstalk*]

Sen. Al-Rawi: It makes good sense. I could track it now.

Sen. Lalla: Is it exactly what you are asking for?

Sen. Al-Rawi: Yeah. [*Crosstalk*]

Dr. Khan: It is easy. It is very easy. You think you could get it easier than this? [*Crosstalk*] Sen. Drayton, how is it?

Sen. Drayton: Okay.

Dr. Khan: Consolidated amendments, consolidated Bill and I think you might have the consolidated Act with everything in it. So, if we could work with the Bill and the amendments together. Okay, Mr. Chairman?

Mr. Chairman: All right, we will see how it progresses.

Clause 10 reintroduced.

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

Dr. Khan:

In proposed section 8A-

- (a) in subsection (1) insert after the word “employ” the words “, at such salary and remuneration as the Council may from time to time determine,”;
- (b) In subsection (3) –
 - (i) In paragraph (a) insert after the word “Registers” the words “and Rolls”;
 - (ii) In paragraph (d) by deleting the word “Register” and substituting the words “Registers and Rolls”; and
 - (iii) In paragraph (f) insert after the word “Registers” the words “and Rolls”; and
- (c) In subsection 5 –

- (i) In paragraph (a) insert after the word “Register” the words “or Rolls”; and
- (ii) In paragraph (d) by deleting the word “Register” and substituting the words “Registers or Rolls”.

Sen. Drayton: Clause 10 amended and circulated, I should take it, is all those in green in this Bill.

Dr. Khan: Yes.

Sen. Al-Rawi: Green?

Dr. Khan: No, no, that is the Act, Faris.

Sen. Al-Rawi: Yeah, but there is the insertion of the new clause 8A, right?

Sen. Lalla: Yeah.

Sen. Al-Rawi: Okay. [*Crosstalk*]

Sen. Young: It is easier to follow, for me, from the consolidated Bill.

Dr. Khan: Yeah. It is only referenced in the Act. Follow the Bill, it is easier in the Bill.

Sen. Young: If you need to see where it fits in, you go to the Act.

Dr. Khan: Yeah. Is that okay? [*Crosstalk*]

Sen. Al-Rawi: Okay. For me it is easier tracking the marked-up Bill, so thanks—I mean the Act.

Mr. Chairman: Is it okay, or do we have—[*Crosstalk*]

Dr. Khan: Well, we are on clause 10, and clause 10:

“10. The Act is amended by inserting after section 8, the following new section:

“Registrar 8A.(1) The Council shall employ,”—and the amendment that is circulated—“at such salary and remuneration as the Council may from time to time determine...”

That is the amendment. And you go down also to subclause (3)(a), where we inserted after “Registers”, “and Rolls” to take into consideration the different rolls and registers.

Subclause (3)(d) shows, instead of having “Register”, it will be “Registers and Rolls.”

In subclause (3)(f) we inserted “and Rolls” after “Registers”, just to keep it

consistent. The actual consolidated amendment speaks to that.

8.05 p.m.

Subsection (5) (a) we insert “or Rolls” after “Register”, and subsection (5)(d) we remove “register” and insert “Registers or Rolls”. I think Sen. Prescott had given us these amendments.

Sen. Vieira: I did as well, when we sat together.

Question put and agreed to.

Clause 10, as amended, ordered to stand part of the Bill.

Clause 11.

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

Sen. Prescott SC: Mr. Chairman, should it not be now 10A?

Sen. Al-Rawi: Ten, because there was a deletion.

Dr. Khan: Those are new clauses. We will come back to them.

Sen. Al-Rawi: And there is no way that that Standing Order could be suspended for ease, right?

Dr. Khan: I would have loved to.

Sen. Al-Rawi: Is there any way?

Sen. Robinson-Regis: No, there is no way.

Sen. Al-Rawi: Because it is very confusing otherwise.

Mr. Chairman: The Minister will—in these amendments.

Dr. Khan: In clause 11, subsection (4)(b), “the area of expertise” is taken off and is replaced with “specialization”. In subsection (6), “both” has been deleted and replaced with “the Register of Midwives”. Subsection (7):

“Where the Council cancels the registration of” and you insert “a midwife...”

That was missing. And you also have, after “the name of”, “the midwife” inserted, and you continue with “the nurse or advanced practice nurse from the Register of Midwives...” Those were insertions in clause 11.

Question put and agreed to.

Clause 11, as amended, ordered to stand part of the Bill.

Clause 12.

Question proposed: That clause 12 stand part of the bill.

Dr. Khan: In clause 12(2A), we have replaced “six” with “three” and deleted clauses 12(2B), (2C) and (2D). That takes care of that, Mr. Chairman.

Sen. Robinson-Regis: Just repeat what you said.

Dr. Khan: In the proposed section (2A), delete the word “six” and replace it with the word “three”.

Sen. Robinson-Regis: And you said something else.

Dr. Khan: And then also D—

Sen. Vieira: You are deleting (2B), (2C) and (2D).

Sen. Robinson-Regis: Okay, thanks.

Sen. Al-Rawi: Hon. Minister, did we take care in subclause (4) of the original 16, which is the section to which this clause relates, the need for a consequential amendment where we speak about “the register”? So have we fixed the concept of “register” there?

Dr. Khan: There is a sweep-up clause in the end.

Sen. Al-Rawi: So you have done it that way, right?

Dr. Khan: Yes, for all.

Sen. Al-Rawi: Thank you.

Mr. Chairman: Sen. Cudjoe, are you comfortable with the amendments?

Sen. Cudjoe: I had a concern with (2B) where the responsibility for accreditation would now be given to the Accreditation Council only. Would there be some collaboration between the Accreditation Council and the Nursing Council on this?

Dr. Khan: Of course, yes.

Sen. Cudjoe: Can we provide for that in the—to ensure that it happens?

Dr. Khan: You do not need to provide it because the Ministry’s policy is exactly that. Any other nursing examination body is recognized by the Accreditation Council. The Nursing Council is recognized by the Accreditation Council, so, too, any other registration body in the world. So they would be part and parcel of that. And Caricom is going to have an exam for Caricom, which is the RENR exam and the Nursing Council exam will no longer exist. It will be a Caricom exam, which is a registration

exam. Okay?

Mr. Chairman: That is fine, Senator?

Sen. Cudjoe: It is acceptable, and I am glad it is placed on the record because members of the Nursing Council are concerned about being bypassed by the Accreditation Council.

Dr. Khan: No, no. They would not be bypassed.

Question put and agreed to.

Clause 12, as amended, ordered to stand part of the Bill.

Clause 13.

Question proposed: That clause 13 stand part of the Bill.

Dr. Khan: Mr. Chairman, in subsection 16A, we insert after the word “Council”, “for a period of four years in the first instance”. That is in 16A (1).

In 16A(3), we insert after “nurse” the word “intern” and we delete the word “public” before “hospital” in that section. In subsection 16A(4) we delete “Regional Nursing Body” and replace it with “or any other examining body recognized by the Accreditation Council”. And subsection (6) and (7) will be deleted.

Sen. Drayton: Minister, could I seek clarification?

Dr. Khan: Sure.

Sen. Drayton: In 13, I think it is (3), where you inserted the word “intern”, why “intern”? Because an intern is someone who is now qualified.

Dr. Khan: No, there will be an intern for provisional registration until they do pass the licensed exam. So you must define the word “intern”. “Nurse intern”, not “nurse”. They would not be called “nurses”, they would be called “nurse intern”.

Sen. Drayton: Oh, so the definition has defined “intern”.

Dr. Khan: Yes.

Sen. Al-Rawi: And it is not similar to doctors; it is specifically arranged in respect of nurses.

Sen. Drayton: All right.

Dr. Khan: Well, clause (D) as we just did, the amendment (D), we deleted subsections (6) and (7) and replaced with the following:

“Where a nurse intern fails the licensing examination after his third attempt, the Council may require him to take a one-year remedial programme before he re-submits himself to a licensing examination.”

In subsection (7), you renumber 8 to 14 as 7 to 13, because you have just deleted (6) and (7), and (f) in renumbered subsection (7), we delete the word “seven” and replace it with the word “six”.

In renumbered subsection (8) we deleted the words “seven, he shall be issued a”, and replaced with the words, “six and the original provisional certificate granted under subsection (1) has expired, he shall be issued another”.

In amendment (h), in renumbering subsection 10, delete the words “six months” and replace it with the words, “three months”. And (i), delete as renumbered, subsections (11), (12) and (13).

Sen. Prescott SC: Minister, may I just disturb you? In the new amended (8), could somebody account for that comma after “another”?

Dr. Khan: Apparently it is a typo. Yes, delete the comma.

Sen. Prescott SC: Yes.

Sen. Drayton: I would like to seek clarification. How many times could the intern be given a new certificate? Or what is the maximum period of time during which the intern must now pass exams and qualify to be a nurse?

Dr. Khan: Maximum four years, three chances or remedial courses for one year, and then you have only two years after to pass the exam.

Sen. Drayton: So that is what? How many all-told, four?

Dr. Khan: Four years to start, in the first instance. If after three attempts in the first four years—well, after three attempts—you are not successful, the Nursing Council will determine if you need to do a remedial course for one year. Your provisional certificate would still stand at that time. After that one-year remedial course, you can re-sit the exam or you have two years thereafter to sit the exam. If you do not pass it in that two years’ time, well then, you are out.

Sen. Drayton: So, in fact, you have up to seven years.

Dr. Khan: Six, and one year remedial. During the year of the remedial, you cannot take the exam. You will be under training by the Nursing Council.

Mr. Chairman, 16B:

“The Council shall keep for the purposes of this Part a roll to be known as the

‘Nurse Intern’s Roll’ on which shall be entered the names of every person who has been issued a Nurse Intern's Certificate to practise as a nurse intern in accordance with section 16A.”

Sen. Prescott SC: That should be “name” not “names”.

Dr. Khan: What is that?

Sen. Prescott SC: Line three.

Question put and agreed to.

Clause 13, as amended, ordered to stand part of the Bill.

Clause 14.

Question proposed: That clause 14 stand part of the Bill.

Dr. Khan: Mr. Chairman, clause 14A, you renumber paragraphs (a) to (d) as (b) to (e), and insert a new paragraph (a) as follows:

“(a) in subsection (1) by inserting-

(i) after the word ‘Register’ the words ‘or Roll’; and

(ii) after the word ‘registration’ the words ‘or enrollment’.”

In subsection (c), in paragraph (b) as renumbered, in proposed subsection 1A, delete the words “Advance” and “advance” and replace with the words, “Advanced” and “advanced” respectively.

And D: In paragraph (c) as renumbered in proposed subsection (2) insert after the words “fee and any” the word “administrative”. And further amend it by deleting the words “on 30th September of each year” and substitute it with “for three months after it becomes due”. A further amendment. So you do not have a specific date.

Sen. Prescott SC: Mr. Chairman, I have a view that “enrollment” only has one “l”.

Dr. Khan: No, we checked it.

Sen. Vieira: I have the opposite view. English versus American spelling.

Dr. Khan: Apparently there is a sweeper clause at the end that takes care of that. I think it is 33 or 34.

Mr. Chairman: Minister, could you repeat?

Dr. Khan: Okay. In paragraph (c) as renumbered, in proposed subsection (2) insert after the words “fee and any” the word “administrative”, and delete the words “on 30th September of each year” and replace it with “for three months after it becomes due”.

8.20 p.m.

Question put and agreed to.

Clause 14, as amended, ordered to stand part of the Bill.

Dr. Khan: Mr. Chairman, could we look at new clause 14A as we are here, amended as circulated?

Mr. Chairman: I thought we had indicated that when we finish the reading we will come back.

Dr. Khan: All right, Mr. Chairman.

Mr. Chairman: Let us not confuse.

Clause 15.

Question proposed: That clause 15 stand part of the Bill.

Dr. Khan: Mr. Chairman, the Act is amended by repealing section 19 and substituting the following:

<p>“Falsely Conveying impression of being registered</p>	<p>(1) A person who, not being registered or enrolled under this Part, or who during any period when his certificate of registration or enrollment has been suspended or cancelled or is deemed to have been suspended, takes or uses the name or title of ‘advanced practice nurse’, ‘registered nurse’, ‘nurse’ or ‘nurse intern’ whether alone or in combination with any other words or letters, or any name, title, addition, description, uniform or badge implying or calculated to convey the impression that he is registered or enrolled under this Part, or is recognized by law as an advanced practice nurse, a registered nurse, a nurse or a nurse intern, commits an offence.</p>
	<p>(2) A person who, not being registered or enrolled under this Part or, who during any period when his certificate or registration or enrollment issued under this Part has been suspended or cancelled, practises as an advanced practice nurse, a registered nurse, or a nurse intern commits an</p>

	offence and is liable on summary conviction to a fine of ten thousand dollars and for imprisonment or two years.”
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Sen. Young: Much better.

Sen. Prescott SC: Just a question, please. In the new subclause (2), five lines from the end, was it meant to exclude the word “nurse” standing on its own from among those there as had been the case in the prior subclause? In the prior subclause the offence was putting forward yourself as an advanced practice nurse, registered nurse—*[Interruption]*

Dr. Khan: Say that again, Sen. Prescott.

Sen. Prescott SC: In subclause (1) the offence is putting yourself forward as being one of four things: an advanced practice nurse, a registered nurse, a nurse or nurse intern. In (2), five lines from the end, we say the person is putting himself forward, practising rather as only three.

Dr. Khan: As a registered nurse or a nurse?

Sen. Prescott SC: Advanced practice nurse, registered nurse or nurse intern. So “nurse” is omitted. I wondered whether it was deliberate.

Dr. Khan: Well, we could insert it after nurse. Further amended by inserting after the word “nurse”—*[Interruption]*

Sen. Prescott SC: After “registered nurse”.

Dr. Khan: After “registered nurse”, “nurse”, for consistency.

Sen. Dr. Wheeler: Minister, what about midwife? Midwife was not supposed to be included there?

Sen. Al-Rawi: There is a separate section for that. *[Interruption]*

Dr. Khan: They have their own section.

Sen. Al-Rawi: Under Part III of the Act.

Sen. Dr. Mahabir: It is supposed to be “for two years”, not “or two years”. In mine I am seeing “or two years”.

Dr. Khan: I think it is “for”. Typo. After “imprisonment” the word “for”.

Sen. Prescott SC: Uh?

Sen. Dr. Mahabir: It is supposed to be “for”.

Sen. Prescott SC: Thank you.

Sen. Al-Rawi: It is correct in the marked-up version of the Bill.

Mr. Chairman: “For two years” and you insert “nurse” after—*[Interruption]*

Dr. Khan: “registered nurse”, after the comma.

Question put and agreed to.

Clause 15, as amended, ordered to stand part of the Bill.

Clause 16.

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

Dr. Khan: Mr. Chairman, in clause 16:

The Act is amended in section 21 by repealing subsections (2) and (3) and substituting the following subsections:

In the proposed subclause (2) we want to delete—*[Interruption]*

Sen. Al-Rawi: You are not repealing (3), it is just (2).

Dr. Khan: In (2)?

Sen. Al-Rawi: Yes, by repealing subsection (2), not (2) and (3).

Dr. Khan: No, no, we start 16 A, the first part.

In the proposed subsection (2), delete the word “nurse” and substitute the word “midwife”; which is (2)(b) in your consolidated Bill.

Sen. Al-Rawi: On page 19. So the new (2).

Sen. Singh: Yes.

Dr. Khan: Page what?

Sen. Singh: 19.

Sen. Al-Rawi: We are looking at the marked-up Bill, sorry.

Dr. Khan: Oh, you are using the marked-up Bill? Right. Okay. This is subsection (2)(b). You will remove the word “nurse” and put “midwife”.

Sen. Al-Rawi: It is repealing subsection (2) and inserting a new subsection

(2), so that is the original language of the Bill.

Dr. Khan: Yes.

Sen. Al-Rawi: Right? And that is any person who has—

“(a) completed a course of training”.

Then (i), (ii) and then (b). Is it that (b) you are referring to?

Dr. Khan: Yes.

Sen. Al-Rawi: Okay, the second line below that (b)?

Dr. Khan: One, two, the second line, you see the word “nurse”, you cross it and put “midwife”.

Sen. Prescott SC: You are dealing with the word “proper person to be” in that one?

Mr. Chairman: “Proper person” under subclause (2) becomes—*[Interruption]*

Sen. Prescott SC: Three lines from the end.

Sen. Al-Rawi: Of that (b).

Sen. Prescott SC: Three lines from the end of (2)(b) or (2).

Mr. Chairman: So where it says the duty of a “nurse” you will put “midwife”?

Sen. Al-Rawi: Right, midwife. I see. It just was not flagged in the blue at this point. Understood. Hon. Minister, is the word “passed the examination prescribed”?

Sen. Lalla: P-A-S-S-E-D.

Sen. Al-Rawi: P-A-S-S-E-D as opposed to P-A-S-T.

Dr. Khan: And 16 C, Mr. Chairman, we are deleting the proposed subsections (3), (5), (6) and (7). There will be a new clause which we will deal with that after.

Question put and agreed to.

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

Clause 17.

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

Dr. Khan: Mr. Chairman, clause 17 is amended in section 22.

In paragraph (a), in the proposed subsection 22(2)—

- (i) insert after the words “fee and any” the word “administrative”; and
- (ii) delete the words “certificate or” wherever they occur.

Sen. Al-Rawi: And the amendment to strike secretary to registrar comes—
[*Interruption*]

Sen. Lalla: That is a sweeper.

Sen. Al-Rawi: That is a sweeper? Okay.

Question put and agreed to.

Clause 17, as amended, ordered to stand part of the Bill.

Clauses 18 to 21 ordered to stand part of the Bill.

Clause 22.

Question proposed: That clause 22 stand part of the Bill.

Dr. Khan: Mr. Chairman, clause 22 is amended as circulated.

The Act is amended by inserting after section 32, the following new section:

“Part III amended	32A The Act is amended in Part III, by deleting the words ‘she’, ‘her’ and ‘herself’ wherever they occur and substituting the words ‘he’, ‘his’ and ‘himself’ respectively.”
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Sen. Prescott SC: Even though I cannot follow, I had made a—[*Interruption*]

Dr. Khan: That is exactly what you had put in. If you look at the consolidated Bill itself, you will see it is there.

Sen. Prescott SC: That is the colourful one?

Sen. Lalla: Yes.

Dr. Khan: The colourful one with—[*Interruption*]

Sen. Lalla: Look at page 24.

Dr. Khan: If you look at page 24, section 32A has gone and replace with the other one.

Sen. Prescott SC: Okay. So what I had recommended has not been accepted?

Dr. Khan: Which did you recommend?

Sen. Prescott SC: My amendment says for the purposes of this Act—this is the new 32A.

“All references to a midwife shall include a reference to a male and a female without discrimination.”

8.35 p.m.

Dr. Khan: We did not do the exact words but we incorporated it like this here based on the CPC’s advice.

Sen. Prescott SC: You decided to go with the reference to gender.

Sen. Al-Rawi: That is taken up by section 3 of the Interpretation Act in that the “he”, male includes the female.

Dr. Khan: Yes, “he” includes the female.

Mr. Chairman: Sen. Prescott, that is okay?

Sen. Prescott SC: I think—yes, thank you.

Question put and agreed to.

Clause 22, as amended, ordered to stand part of the Bill.

Clause 23 ordered to stand part of the Bill.

New Clause 24.

Dr. Khan: Mr. Chairman, clause 24 is amended as circulated in—the Act is amending section 38A in subsection (1) by inserting after the words “his name”, the words “on the Register of Advanced Practice Nurses”, and in (b) by deleting the words “registration as a” and substituting the words “registration as an Advanced Practice Nurse”, and in (c), in subsection—[*Interruption*]

Mr. Chairman: Hon. Minister, I have been advised it is a new clause.

Dr. Khan: No, it is a new clause? Yes, the following new clauses, yeah, renumber clauses 24 to 28 and clauses 26 to 30.

Sen. Lalla: We got to come back.

Dr. Khan: We got to come back to that?

Mr. Chairman: The new clauses we will come back. Agreed?

Dr. Khan: All right.

New clause 24 deferred.

Clause 24.

Question proposed: That clause 24, renumbered 26, stand part of the Bill.

Dr. Khan: Mr. Chairman, there is an amendment to that circulated:

A. Delete clause 26 as renumbered and replace with the following:

“Section 41 amended 26. The Act is amended in section 41 -

(a) in subsection (1) by deleting the words “Council may with approval of the Minister” and substituting the words “Minister may in consultation with the Council”;

(b) in subsection (2) -

(i) by deleting the words “the Council may, with the approval of the Minister, make Rules and” and substituting the words “the Minister may in consultation with the Council make”;

(ii) by inserting after paragraph (a), the following paragraph:

“(aa) prescribing the conditions under which persons may be registered as advanced practice nurses;”

(iii) by inserting after paragraph (b), the following paragraph;

“(ba) prescribing the standards for continuous education and training of advanced practice nurses, nurses and midwives;”;

(iv) in paragraph (d) by deleting the word “nurses” and substituting the words “advanced practice nurses, nurses or nurse interns”;

(c) by inserting after subsection (3) the following new subsections:

“(4) The Minister in consultation with the Council may by regulations, prescribe the qualifications and experience required and the scope of practice for the advanced practice nurses.

(5) Regulations made under subsection (4) shall be subject to affirmative resolution of Parliament.”

Question put and agreed to.

Clause 24, renumbered clause 26, as amended, ordered to stand part of the Bill.

Clause 25.

Question proposed: That clause 25 stand part of the Bill.

Dr. Khan: Mr. Chairman, the amendment would read:

Delete clause 27 as renumbered and substituting the following:

“Section 44 amended 27. The Act is amended in section 44 -

(a) by inserting before the words “Register of Nurses,” the words “Register of Advanced Practice Nurses,”; and

(b) by deleting after the words “register of Nurses,” the words “or to”.

And a new subclause (c) to read:

(c) include the words “the role of nurse interns”.

Mr. Chairman: Instead of the register of nurses, the word “midwives”. So you will remove “Register of nurses” and insert “midwives”?

Dr. Khan: No, and (c):

By inserting after the words “register of midwives” the words “the role of nurse interns”.

Sen. Prescott SC: Minister, may I enquire how is 44 now to read?

Dr. Khan: 44?

Sen. Prescott SC: Yes, that you may restore to the register a name which had been removed permanently.

Dr. Khan: You mean 44 in the Act, how it will read?

Sen. Prescott SC: Yes.

Dr. Khan: “The Council may, at any time, restore to the Register of Advanced Practice Nurses, the Register of Nurses, the Register of Midwives, the Roll of Nurse Interns”—[*Interruption*]—or to the Roll of Nursing Assistants, as the case may be, any name which has been removed therefrom, whether permanently or for a fixed time.”

Sen. Prescott SC: What is the verb that governs “permanently or for a fixed time”? Removed?

Dr. Khan: Where is that?

Sen. Prescott SC: In that last—

Dr. Khan: Whether permanently or—

Sen. Prescott SC: That is a reference to removed permanently or removed for a fixed time?

Dr. Khan: They cannot be removed permanently or for a fixed time, depends on the council.

Sen. Prescott SC: And you may restore them to the roll if they were removed permanently?

Dr. Khan: Yes, you can.

Sen. Prescott SC: You may restore to the roll somebody who had been removed permanently—

Dr. Khan: Yeah, somebody who was removed permanently or for a fixed time. You could have two different things, two levels.

Sen. Dr. Mahabir: Yeah, but if it is permanent, Minister, it is final.

Dr. Khan: Not really, not in the medical practice.

Sen. Dr. Mahabir: Okay, all right. But will it make more common sense if you say, as the case may be, any name which has been removed from the register? So it can read:

The Council may at any time restore to the Register of Advanced Practice Nurse—*[Interruption]*

Dr. Khan: Why do we not just stop at “removed” then?

Sen. Dr. Mahabir: “Any name which has been removed”. Yeah, you could say that. Any name which has been removed from the register or removed.

Sen. Al-Rawi: That is an excellent suggestion.

Sen. Vieira: But sometimes, you are suspended, not removed. *[Crosstalk]*

Sen. Dr. Mahabir: It is removed, any name that has been removed, because basically you want to give the council the power to reintroduce a name. Yeah, so any name which has been removed for whatever reason is now not our business.

Dr. Khan: Okay. So, Mr. Chairman, we will take that if after the word—in section—

Sen. Al-Rawi: In clause 27.

Dr. Khan: In clause 27.

Sen. Al-Rawi: Adding a subclause (c).

Dr. Khan: Section 44 which is the amendment to the Bill should read—
[*Interruption*]

Sen. Al-Rawi: New clause 27.

Dr. Khan:—clause 27 delete the words after “therefrom”—[*Interruption*]

Sen. Al-Rawi: Adding a new subclause (c), hon. Minister. So the new 27, you have (a) and (b).

Dr. Khan: That will be a (d).

Sen. Al-Rawi: Well, in my own, I only have (a) and (b). Oh, you just added a (c)?

Dr. Khan: No, I just put in a (c).

Sen. Al-Rawi: I see, so then it will be (d). Right? So delete the words “therefrom whether”—

Dr. Khan: No, delete all the words occurring after “therefrom”.

Sen. Al-Rawi: After the word “removed”?

Dr. Khan: No, after the word “therefrom”.

Sen. Al-Rawi: Yeah, sorry, “therefrom”.

Sen. Young: Remove “therefrom”, so you are removing the comma go down, all the words after.

Mr. Chairman: You are putting in a new (d) and what are you inserting?

Dr. Khan: Delete all the words occurring after “therefrom”.

Mr. Chairman: The question is that clause 25 as amended as will exist—no, the existing clause 25 as amended to clause 27 and further amended by inserting the word—no, let us go over that again. The question is that clause 25 as circulated and further amended or renumbered to clause 27 and further amended by inserting the words “Register of Midwives” the words—

Dr. Khan: After the words.

Mr. Chairman: After the words “Register of Midwives” the words “the roll

of Nurse Interns” and a new subclause of (d) by deleting all the words occurring after the word “therefrom”.

Dr. Khan: That is correct.

Question put and agreed to.

Clause 25, renumbered clause 27, as amended, ordered to stand part of the Bill.

Clause 26.

Question proposed: That clause 26 stand part of the Bill.

Dr. Khan: Mr. Chairman, there is an amendment:

In the proposed amendment to section 47, insert after paragraph (b) the following paragraph:

“(ba) the Roll of Nurse Interns;”

We want to insert after paragraph (b), the following paragraph (ba) “the Roll of Nurse Interns;”.

Question put and agreed to.

Clause 26, renumbered clause 28, as amended, ordered to stand part of the Bill.

8.50 p.m.

Clause 29.

Question proposed: That clause 29 stand part of the Bill.

Dr. Khan: Mr. Chairman, we have an amendment for clause 29, as renumbered, which is section 48. We want to delete clause 29 as renumbered and substitute the following:

The Act is amended in section 48 by deleting the word “nurses” and substituting the words “advanced practice nurses, nurses or nurse interns”.

Sen. Dr. Mahabir: Mr. Chair, I think there is one “or” that is too much. I think it should read:

The Council may approve the design or description of any badge or uniform to be worn by advanced practice nurses, nurses, nurse interns, midwives or by nursing assistants.

Sen. Al-Rawi: Correct.

Dr. Khan: Mr. Chairman, we could further amend it by deleting the word “or”

after the word “interns”. After the word “interns” insert a comma and delete the words “or by”.

The Act is amended in section 48 by deleting the word “nurses” and substituting the words “advanced practice nurses, nurses or nurse interns,” and deleting the words “or by” after the word “interns”.

Mr. Chairman: So you delete the words “or by midwives or nursing assistants”.

Dr. Khan: Just “or by” after the word “interns”.

Mr. Chairman: And the rest of it remains.

Dr. Khan: Yes.

Mr. Chairman: All right.

Question put and agreed to.

Clause 29, as renumbered, as amended, ordered to stand part of the Bill.

Clause 30.

Question proposed: That clause 30 stand part of the Bill.

Dr. Khan: Mr. Chairman, clause 30, as renumbered speaks to section 49. It says:

Delete and replace with the following:

30: The Act is amended by deleting section 49 and substituting the following new section:

49. Where the application of any person for registration or enrollment has been refused by the Council, or where any order has been made for the removal of the name of any person from the Register or Roll or the suspension of any person registered or enrolled under this Act, the Registrar of the Council shall give notice forthwith of that fact to the applicant.

Sen. Prescott SC: Mr. Chairman, may I ask of the Minister, please, to look at 49 again.

Dr. Khan: Which 49?

Sen. Prescott SC: The Act and to whom should notice be given in 49?

Dr. Khan: The applicant.

Sen. Prescott SC: And what about that person in line 3? There are two things here, where the application has been made for the removal of the name of any person or the suspension of any person. Sorry, you are giving:—the application of any person for registration...has been refused...or where any order has been made for the removal...or the suspension...we notify the applicant for registration or enrolment but

we do not notify the person whose name has been removed.

Sen. Al-Rawi: Correct.

Sen. Prescott SC: Are you with me?

Sen. Al-Rawi: So applicant and person may be mutually exclusive.

Sen. Prescott SC: No.

Sen. Young: Well, just different people. You shall give notice forthwith of that fact.

Sen. Prescott SC: To the person concerned.

Dr. Khan: To what?

Sen. Prescott SC: To the person concerned. So that will include the applicant for registration who has been refused and the person whose name has been removed.

Sen. Young: Or you could keep to the applicant or the person whose name has been removed. Correct.

Sen. Prescott SC: Or simply say, “give notice of that fact to the person concerned”.

Sen. Young: I would like to suggest with the person concerned, I mean, it is kind of defined by the clause but you are broadening the language there, as opposed to if you stick with applicant and the person whose name has been removed. There is less room for interpretation and so.

Sen. Prescott SC: Yes, I am comfortable with that.

Sen. Young: After “applicant” or “the person whose name has been suspended or his name removed.”

Dr. Khan: Delete the word “applicant” and replace it with “person concerned”.

Sen. Young: Let them say they do not know who the person concerned is.

Question put and agreed to.

Clause 30, as renumbered, as amended, ordered to stand part of the Bill.

New clause 31 deferred.

Clause 32.

Question proposed: That clause 32 stand part of the Bill.

Sen. Prescott SC: Mr. Chairman, may I make an enquiry to the Minister, please?

Mr. Chairman: Sorry.

Sen. Prescott SC: I had recommended an amendment to clause 51(A), that the Minister there should act on the advice of the Council. It is a mild enquiry because I know it is a case of national emergency and that may be the reason why you are rejecting the amendment.

Dr. Khan: This is a national emergency because we are replacing the other one. In a national emergency, we have to go direct.

Sen. Prescott SC: I get it, thank you.

Dr. Khan: We put the Council in the other one for teaching purposes. Mr. Chairman, clause 32 as renumbered would be amended:

In proposed section 51A insert after the words “registered to practise” and the words “country, to practise” the words “advanced practice nursing,”; and

B. In proposed section 51B—

- (a) insert after the word “Minister” the words “in consultation with the Council;” and
- (b) insert after the words “to practise” the words “advanced practice nursing.”

Question put and agreed to.

Clause 32, as renumbered, as amended, ordered to stand part of the Bill.

Clause 33.

Question proposed: That clause 33 to stand part of the Bill.

Sen. Prescott SC: Mr. Chairman, just record me as saying no to that misspelling.

Dr. Khan: Mr. Chairman, we have the amendment to clause 33 as renumbered in the amendment Bill.

- A. In paragraph (a) delete the word “;and”.
- B. In paragraph (b) delete the word “.” and replace with the word “;”
- C. Insert after paragraph (b) the following new paragraphs:
 - (c) deleting the words “enroled” and “enrolment” wherever they may occur and substituting the word “enrol”, “enrolled” and “enrollment” respectively; and
 - (d) deleting the word “Secretary” wherever it occurs and substituting the word “Registrar”.

Question put and agreed to.

Clause 33, as renumbered, as amended, ordered to stand part of the Bill.

Clause 34.

Question proposed: That clause 34 stand part of the Bill.

Dr. Khan: Mr. Chairman, we have an amendment.

Delete the words “and Midwives” in the second place where they occur and replace with the word “Personnel”.

Sen. Prescott SC: Chair, may I ask the Minister to first humbly explain to us how we are changing the name of this Act, if it is by this mere introduction in—

Dr. Khan: No. We are coming back to it in the beginning. Section 2 or 3 or something like that.

Sen. Prescott SC: Okay.

Dr. Khan: So this is just part of it.

Sen. Prescott SC: Thank you.

Question put and agreed to.

Clause 34, as amended, ordered to stand part of the Bill.

9.05 p.m.

Clause 3 recommitted.

Sen. Vieira: Before we go there, I just wanted to remind, the hon. Attorney General, in a previous committee meeting, had indicated that we were going to revisit the regulations being subject to affirmation resolution. So this is section 41(5) of the Act, renumbered clause 26. So I just wanted to remind—*[Interruption]*

Dr. Khan: I spoke with the Nursing Council, and they were in agreement with it, affirmative resolution, as well as the Lower House has changed the amendments from “negative” to “affirmative”. So I think I should stay with it.

Sen. Vieira: I would not press it. I am just leaving my position there.

Question again proposed: That clause 3 stand part of the Bill.

Dr. Khan: Mr. Chairman, we want to amend clause 3 by deleting the word “Advance” and replacing it with the word “Advanced” and include the words “Nurse Interns” after the word “Nurses”.

Question put and agreed to.

Clause 3, as amended, again ordered to stand part of the Bill.

Clause 4 recommitted.

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

Dr. Khan: Mr. Chairman, there is an amendment to clause 4, where the amendment is:

“Delete the words “Nurses and Midwives” in the second place where they occur, and replace with the words “Nursing Personnel”.

Question put and agreed to.

Clause 4, as amended, again ordered to stand part of the Bill.

Clause 5 recommitted.

Question again proposed: That clause 5 stand part of the Bill.

Dr. Khan: Mr. Chairman, there is amendment to clause 5:

- A. In the definition of “nursing personnel”, delete all the words after the words “practice nurses” and replace with the words “a registered nurse, a nurse, a nurse intern, a midwife and a nursing assistant;” and
- B. In the definition of “registered nurse” insert after the words “registered nurse”, the words “or nurse”.

Question put and agreed to.

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

New clause 5A.

Dr. Khan: Mr. Chairman:

“Section 3

Amended The Bill is amended by inserting after clause 5A, the following new clause as follows:

“The Act is amended in section 3(2) by inserting after the words ‘enrolled as’ the words ‘advanced practice nurse, nurse interns;’

New clause 5A read the first time.

Question proposed: That the new clause 5A be read a second time.

Question put and agreed to.

Question proposed: That the new clause be added to the Bill.

Question put and agreed to.

New clause 5A added to the Bill.

New clause 9A.

Dr. Khan: Mr. Chairman, new clause 9A as circulated:

Insert after clause 9 the following new clause:

Section

Amended 9A Section 6 of the Act is repealed.

New clause 9A read the first time.

Question proposed: That the new clause 9A be read a second time.

Question put and agreed to.

Question proposed: That the new clause be added to the Bill.

Question put and agreed to.

New clause 9A added to the Bill.

New Clauses 10A, 10B and 10C.

Dr. Khan: New clause 10A:

“Section 13 The Act is amended by repealing section 13.

repealed

New clause 10B:

Section 14 The Act is amended in section 14-

repealed

(a) in subsection (1) by deleting the word “Roll” and substituting the word “Rolls”; and

(b) in subsection (2) by deleting the word “Roll” and substituting the word “Rolls”.

New clause 10C:

Part II The Act is amended by deleting the heading “NURSES”

heading and substituting the following new heading:

amended

“NURSES, ADVANCED PRACTICE NURSES AND NURSE INTERNS”

New clauses 10A, 10B and 10C read the first time.

Question proposed: That the new clauses 10A, 10B and 10C be read a second time.

Dr. Khan: Mr. Chairman, I just wanted to indicate that those are new clauses

added to the Bill:

10A: The Act is repealing section 13;

10B: The Act is amending section 14:

A. In subsection (1) by deleting the word “Roll” and substituting the words “Rolls”;
and

B. In subsection (2), by deleting the word “Roll” and substituting with the word
“Rolls”; and

10C:

The Act is amended by deleting the heading “NURSES” and substituting the following
new heading “NURSES, ADVANCED PRACTICE NURSES AND NURSE INTERNS”.

Question put and agreed to.

Question proposed: That the new clauses be added to the Bill.

Question put and agreed to.

New clauses 10A, 10B and 10C added to the Bill.

New clause 14A.

Dr. Khan: Insert after clause 14 the following new clause:

“Section 14A. Section 18 of the Act is amended -

18 (a) in subsection (1) -

amended (1) by inserting after the word “registration” wherever it occurs, the
words “or enrollment”; and

(ii) by inserting after the word “registered” the words “or enrolled”;

(b) in subsection (2) -

(i) in paragraph © by deleting the word “nurse” and
substituting the word “person”;

(ii) in paragraph (d) by deleting the words “to a nurse” and
substituting the words “of the profession of nursing”;

(iii) in paragraph (f) by inserting after the word
“registration” the words “or enrolment”; and

(iv) in the closing words, by inserting after the word
“registered” the words “or enrolled”; and

(c) in subsection (3) by inserting after the word “registration”
the words “or enrolment”.”

New clause 14A read the first time.

Question proposed: That new clause 14A be read a second time.

Sen. Al-Rawi: One question, hon. Minister? In the amendment to section 18, I think you may need a consequential amendment in 18(1). If you look at your Bill with the marked-up version, sorry the Act, the marked-up Act, are you there with me? Page 17?

Dr. Khan: Go ahead.

Sen. Al-Rawi: Let me let you get your—

Dr. Khan: In the Act or the Bill?

Sen. Al-Rawi: The Act, page 17 of the Act as marked up:

“The Council may by a two-thirds majority of its members present at a duly convened general meeting suspend for such period as the Council thinks fit, or cancel the registration or enrollment of any person whose name is registered or enrolled under this Part, and in such case the certificate of registration or enrollment issued under section 17(1) shall be deemed to be suspended or cancelled as the case may be.”

Now, that is fine as it stood in the original law, but we added in a 17(1A), so we would want to give the Council the power to suspend the advanced practice nurses registered under (1A). So you need to do section 17(1A) and section 17(1), and section 17(1A).

Dr. Khan: So insert (1A) after (1A)?

Sen. Al-Rawi: Yeah. So you would insert and section or however CPC advises it should be done, 17(1A).

Hon. Senator: Not just section 17 (1) or section 17(1A).

Sen. Prescott SC: What does section 17(1A) provide?

Sen. Al-Rawi: We inserted a new (1A); (1A) is where you put the advanced practice nurse into the field. So you would want to have the power to suspend that advanced practice nurse as well, and not just have the power to suspend only registered nurses, et cetera.

Sen. Prescott SC: It says: and in such cases certificate of registration or enrolment—*[Interruption]*

Dr. Khan: Mr. Chairman.

Sen. Prescott SC:—listed under section 17(1).

Sen. Al-Rawi: Or the licence issued under (1A) is what we should—I see what you are saying. So hon. Minister, 17 (1)(a) deals with—you see the words “and in such case the certification of registration or enrollment issued” that applies to 17(1), but in 17(1A), we are issuing a licence which may need to be suspended, and the licence issued under section 17(1A), “shall be”.

Sen. Prescott SC: Was that inserted between “17(1)” and “shall”.

Sen. Al-Rawi: If that was inserted between “17(1)” and “shall”.

Dr. Khan: That is what I am thinking, insert it there? And the licence issued under 17(1A)?

Sen. Al-Rawi: Yes. So it would be “or the licence issued”.

Dr. Khan: Mr. Chairman—[*Interruption*]

Mr. Chairman: Where are we now?

Dr. Khan: Mr. Chairman, we are looking at clause 14A, which is the new clause, all right, amending section 18 as amended and circulated, but further amended by inserting after “17(1)”, the words “or the licence issued under 17(1A)”.

Sen. Al-Rawi: And that is inserted in 18 (1).

Dr. Khan: “or the licenced issued under 17(1A)”;

 inserted after “17(1)”.

Sen. Prescott SC: Just bear with me. Under the new clause 17(1A), we know that the licence may be revoked or suspended. Is 18(1), actually 18(1) says: “revoked, suspended or cancelled”.

Dr. Khan: Cancel the registration.

Sen. Prescott SC: What about revoke the licence? Section 17(1)(a) says: the licence may be “revoked or suspended”, and 17(1) says the certificate shall be “suspended or cancelled”.

Sen. Young: So add “revoked”.

Sen. Prescott SC: So we shall add: “shall be deemed to be revoked or suspended or cancelled”, as the case may be.

Sen. Young: We are just including the word “revoked”, because you have introduced “reopened”.

Sen. Al-Rawi: Hon. Minister, we could do this cleanly in a different way. If you look at the Act, the marked-up Act at page 17, if we were—after the word “issued” in the second to last line—to put a colon, break the paragraph there, put (i), and then it reads, under section 17 “shall be deemed to be suspended or cancelled” as the case may be, and then you put a semicolon or, then (ii) under section 17(1a) “shall be deemed to be” and use the words “revoked or suspended”.

9.20 p.m.

Dr. Khan: Let us simplify it. I would say, continue as we are going and also further amending after the word “(be)”, you put the word “revoked”, suspended or cancelled; after the word “(be)”, you insert the word “revoked”. It will read now:

“And in such case a certificate of registration will be issued under section 17(1) or the licence issued under 17(1)(a) shall be deemed to be revoked.”

And then it continues “suspended or cancelled, as the case may be”. Do you have that?

Sen. Al-Rawi: That is very surgical, Minister.

Sen. Vieira: In fact, on that note, I compliment the Minister and his team for coming back with a vastly improved piece of legislation. [*Desk thumping*]

Dr. Khan: Thank you very much. It is up to you all. What we have also done was colour coded the Act, the track and everything else, so that we can hope that the Senate will take this up as a given.

Sen. Vieira: Absolutely. We were very impressed with it. In fact, we very much appreciate the effort that you and your team have put in this redrafting exercise and I am a lot more comfortable with the legislation now.

Dr. Khan: Thank you, and the CPC also helped quite a lot too. [*Desk thumping*]

Sen. Al-Rawi: And hon. Minister, I am sure you appreciate the Independent and Opposition assistance.

Dr. Khan: Of course, thanks to you all.

New clause 14A read the first time.

Question proposed: That the new clause 14A be read a second time.

Question put and agreed to.

Question proposed: That the new clause be added to the Bill.

Question put and agreed to.

New clause 14A added to the Bill.

New Clause 16A.

Dr. Khan: Mr. Chairman, I propose a new clause 16A which reads as follows:

The Bill is amended by inserting after clause 16 the following new clause:

- | | | |
|--|---|---|
| <p>“New
section 21A
inserted</p> | <p>“Review by
Permanent
Secretary</p> | <p>16A. The Act is amended by inserting after section 21, the following new section:</p> <p>21A. (1) Where three months have elapsed since an application was submitted to the Council, pursuant to sections 16, 16A and 21 and no decision has been given to the applicant, the applicant who feels aggrieved, may file a complaint with the Permanent Secretary.</p> <p>(2) The Permanent Secretary shall cause the matter to be investigated within six weeks of receipt of the complaint.</p> <p>(3) Upon receipt of the report of the investigation under subsection (2), the Permanent Secretary shall forward the report to the Council requesting that action be taken on the complaint within one month thereafter.</p> <p>(4) For the purposes of this section, “Permanent Secretary” means “the Permanent Secretary in the Ministry with responsibility for health.”</p> |
|--|---|---|

New clause 16A read the first time.

Question proposed: That the new clause 16A be read a second time.

Question put and agreed to.

Question proposed: That the new clause be added to the Bill.

Question put and agreed to.

New clause 16A added to the Bill.

New clauses 24 and 25.

Dr. Khan: Mr. Chairman, I propose new clauses 24 and 25, which amend section 38 and 39 as follows:

Insert after clause 23, the following new clauses and renumber clauses 24 and 28 as clauses 26 and 30 respectively:

- | | |
|---------------------|---|
| “Section 38 amended | 24. The Act is amended in section 38: |
| | (a) In subsection (1) by inserting after the words “his name” the words “on the Register of Advanced Practice Nurses,”; |
| | (b) in subsection (1) by deleting the words “registration as a” and substituting the words “registration as an advanced practice nurse,”; and |
| | (c) in subsection (2) by- |
| | (i) inserting after the words “enrolled as a” the words “nurse intern or as a”; |
| | (ii) inserting after the words “removed from the” the words “Roll of Nurse Interns or the”; and |
| | (iii) by deleting the words “Secretary” and substituting the word “Registrar”. |
| Section 39 amended | 25. The Act is amended in section 39 by deleting the word “nurse” wherever it occurs and substituting the words “advanced practice nurse, nurse or nurse intern.” |

New clauses 24 and 25 read the first time.

Question proposed: That the new clauses 24 and 25 be read a second time.

Question put and agreed to.

Question proposed: That the new clauses be added to the Bill.

Question put and agreed to.

New clauses 24 and 25 added to the Bill.

New clause 25A.

Dr. Khan: Mr. Chairman, I propose a new clause 25A as follows:

Insert after clause 25, the following new clause:

“Section 40 25A The Act is amended in section 40 by inserting after the amended word “nurses”, the words “, nurse interns”;

New clause 25A read the first time.

Question proposed: That the new clause 25A be read a second time.

Question put and agreed to.

Question proposed: That the new clause be added to the Bill.

Question put and agreed to.

New clause 25A added to the Bill.

Sen. Dr. Mahabir: There is an excess “or” in there. It should be “nurse interns, midwives or nursing assistants”. You have one “or” too many. Minister it is going to read:

The Council may with the approval of the Minister designate such schools, hospitals or institutions as it thinks fit to be recognized as places of training or as affiliate places of training for nurses, nurse interns, midwives or nursing assistants as the case may be.

Dr. Khan: I got it. Mr. Chairman:

Be further amended by deleting the word “or” after “interns”.

New clause 25A added and be further amended by deleting the word “or” after the word “interns”.

New clause 25A read the first time.

Question proposed: That the new clause 25A be read a second time.

Question put and agreed to.

Question proposed: That the new clause be added to the Bill.

Question put and agreed to.

New clause 25A added to the Bill.

New clause 31.

Dr. Khan: Mr. Chairman, I propose that the new clause 31, section 50 be amended as follows:

Insert after clause 30 as renumbered, the following new clause and renumber clauses 29 to 31 as clauses 32 to 34:

- “Section 50 amended
31. the Act is amended in section 50:
- (a) in subsection (1), by deleting the words:
 - (i) “three hundred dollars” and substituting the words “five thousand dollars”;
 - (ii) “four months” and substituting the words “one year”;
 - (iii) “seven hundred and fifty dollars” and substituting the words “ten thousand dollars”; and
 - (iv) “twelve months” and substituting the words “two years”; and
 - (b) in subsection (2), by deleting the words:
 - (i) “three hundred dollars” and substituting the words “five thousand dollars”; and
 - (ii) “three months” and substituting the words “six months”;

New clause 31 read the first time.

Question proposed: That the new clause 31 be read a second time.

Question put and agreed to.

Question proposed: That the new clause be added to the Bill.

Question put and agreed to.

New clause 31 added to the Bill.

New clause 32A:

Dr. Khan: Mr. Chairman, I propose a new clause 32A as follows:

Insert after clause 32 as renumbered, the following new clause:

- “Section 52 amended. 32A. The Act is amended in section 52-
- (a) In subsection (1) by deleting all the words after the word “Court” and substituting the word “.”; and
 - (b) In subsection (2) –
 - (i) By deleting the words “other moneys payable under this Act” and substituting the words “monies other than those specified under subsection (1)”;
 - (ii) by inserting after the word “fees,” the word “administrative”;

New clause 32A read the first time.

Question proposed: That the new clause 32A be read a second time.

Question put and agreed to.

Question proposed: That the new clause be added to the Bill.

Question put and agreed to.

New clause 32A added to the Bill.

Question put and agreed to: That the Bill, as amended, be reported to the Senate.

Senate resumed.

Bill reported, with amendment, read the third time and passed.

9.35 p.m.

Mr. Vice-President: Hon. Senators, I propose that we suspend and take a break for about 15 minutes and resume at 9.50 p.m.

9.37 p.m.: *Sitting suspended.*

9.50 p.m.: *Sitting resumed.*

JUDGES SALARIES AND PENSIONS (AMDT.) BILL, 2014

Order for second reading read.

The Minister of the Environment and Water Resources (Sen. The Hon. Ganga Singh): Thank you, Mr. Vice-President. Mr. Vice-President, I beg to move:

That a Bill to amend the Judges Salaries and Pensions Act, Chap. 6:02, be read a second time.

RELATED BILLS

The Minister of the Environment and Water Resources (Sen. The Hon. Ganga Singh): In moving this Motion, Mr. Vice-President, I seek leave of the Senate to debate along with this Bill, a Bill entitled “An Act to amend the Retiring Allowances (Legislative Service) Act, Chap. 2:03”, because the Bills are interrelated.

Mr. Vice-President: Is this the wish of the Senate?

Assent indicated.

JUDGES SALARIES AND PENSIONS (AMDT.) BILL, 2014

Sen. The Hon. G. Singh: Thank you, thank you very much, Mr. Vice-President. Mr. Vice-President, because of the Standing Orders, we will now have to deal with the Bill entitled “An Act to amend the Judges Salaries and Pensions Act, Chap. 6:02”.

Mr. Vice-President, in doing so, it is an honour and privilege to lead the debate on this Judges Salaries and Pensions (Amdt.) Bill, 2014. Mr. Vice-President, earlier today, the hon. Prime Minister issued a statement, and I intend to read that statement into the record, and I quote from that statement, Mr. Vice-President:

“It is rare that the Government and the Opposition ever agree on anything.

The Judges Salaries and Pensions (Amendment) Bill, 2013 and the Retiring Allowances (Legislative) Amendment Bill 2014 were passed in the House with the full support of the Opposition.

The Retired Judges Association has also come out in full support of the said Bill which impacts their representative group.

Notwithstanding this level of agreement, there have been strong objections in some quarters to the Bills. Consistent with my policy of always allowing views to be ventilated and decisions arrived at after such due consideration the government’s current position would be not to proceed with approving the Bills until all perspectives and opinions are ventilated. The Senate debate on the said Bills which

commences today will allow for some of these perspectives and opinions to be ventilated.

Further, the government expresses its willingness to refer the matter to a Senate Select Committee for review should such a procedure be agreed to by all parties in the Senate debate. Yet further the government expresses its willingness to accept and adhere to the recommendations made by the Senate Select Committee.

At the end of the day, the national interest is what must be served.”

/s/ Kamla Persad-Bissessar SC, MP

Hon. Prime Minister of Trinidad and Tobago.

So, Mr. Vice-President, it is an honour and privilege to lead this debate on the Judges Salaries and Pensions (Amdt.) Bill, 2014, because it allows, together with the Retiring Allowances (Legislative Service) (Amdt.) Bill, 2014, to deal with new pension arrangements for members of the Judiciary and the Legislature—two pillars of our Constitution.

We do so, Mr. Vice-President, in the context of the framework established by the hon. Prime Minister and, we do so, Mr. Vice-President, in the context that we are now almost 11½ hours after we started this session at 11.30, but all Senators who are not Ministers are not entitled to pension.

Mr. Vice-President, as a current trade union leader, one of the largest unions in the country, you, after spending so many hours chairing the various committees and now in the Chair, you are not entitled to pension, and that is an anachronism born of a colonial mindset [*Desk thumping*] which the legislation before us in this Senate would correct.

So, Mr. Vice-President, when we look at what the president of the Retired Judges Association—and I have no doubt that the catalyst for the formation of this Retired Judges Association in 1999 was the fact of the level of mendicancy that the judges have been reduced to in this country [*Desk thumping*] because of the nature of their pension—and the president of that association, retired judge Zainool Hosein, had this to say in the *Trinidad Express* of June 23, 2014:

“There has been no breach of the separation of powers principle with the Judges Salaries and Pensions Amendment bill, president of the Association of Retired Judges, Zainool Hosein, stated on Saturday.

He was responding to statements by Martin Daly, SC, that the Salaries Review Commission was established to deal with judges terms and conditions and that

the bill created a situation of ‘constitutional impropriety’ where the Executive was fixing the pension arrangements of the higher judiciary.”

10.00 p.m.

“But Hosein did not agree with this.”—and I quote—“We are no longer in office. The pension is only payable to past office-holders and therefore the separation of powers is not an issue,”—[*Desk thumping*]—

“Hosein said in respect of the retired judges that SRC”—the Salaries Review Commission—“has consistently taken the position that the pension, of retired judges do not fall within their jurisdiction. ‘They took the view that that matter must be dealt with by Parliament’, he said. ‘Now it has been dealt with by Parliament, by both Government and Opposition (which agreed to it),...I am a little surprised that on a matter in which they (SRC) claim no jurisdiction they are reportedly expressing concerns’...

Hosein said Daly and others conceded that the situation with retired judges needed to be urgently redressed. He (Hosein) said the Retired Judges Association which had been in existence for about 15 years, had been making representations because of the unsatisfactory level of the judiciary pensions. ‘We have one or two judges who have served for over 20 years and whose pension is less than that of a judge who served for 10 years. The inequity of that is clear for all to see,’ he said.

Hosein said some judges’ pensions were stagnant for 15 or more years. ‘That cannot be fair in any country or in any system,’ he said.

He said any trade union having to deal with such a situation would have resorted to ‘convulsive action’. He said the judges had suffered in silence for a long period. During debate on the bill, Government leader Dr Roodal Moonilal pointed out that Ulric Cross had a judicial pension of \$3,500 at the time of his death.”

So it placed into context: here it is former Justice Cross, a national hero, a hero who fought for the whole Western Hemisphere in World War II, [*Desk thumping*] who was a Chief Justice in Tanzania, and who served this country at the time of his death, had a paltry sum of \$3,500 a month.

Mr. Vice-President, you see, this question of constitutional impropriety we want to address frontally, because the Constitution comes out as a kind of a lance, a convenient lance aimed at any attempt to bring change in this society. [*Desk thumping*] And you have certain constitutional promoters, so to speak, and it is because of the ingenuity of the Attorney General, because of his industriousness [*Desk thumping*] that we have

been able to procure two legal opinions from illustrious and eminent Queens Counsels.

I want to read into the record, because we want to debunk this question of constitutional impropriety by the action that the Lower House took in passing these amendments, and I would demonstrate the lack of robustness in the utterances when we point out the various amendments of both Acts in the current situation and you would see how people take positions of convenience based on where they stand on certain situations. Mr. Vice-President, this is an opinion by Timothy Straker QC, dated June 24, 2014; Timothy Straker QC, 4-5 Gray's Inn Square, London, and this is what Timothy Straker QC had to say:

“An unseemly situation has developed whereby some who served with distinction as members of the judiciary of Trinidad and Tobago have fallen on hard times in consequence of inflation diminishing the value of their pensions.

The Constitution provides, by section 140, for the Salaries Review Commission. This commission is obliged from time to time with the approval of the President to review the salaries and other conditions of service of judges: section 141. Any report relating to such review has to be laid, as soon as possible, on the tables of the House of Representatives and the Senate.

This provision aids in securing the independence of the serving judiciary from the Executive Arm of the State. However, it is but one of a number of matters which affect the independence of the judiciary. It is not possibly accurate to state that it is the only such matter.

In any event it should be noted that the provisions to which I have drawn attention, including those that give existence to the Commission, do not preclude legislative action in respect of the service terms of the judges. Further, and with even more strength, the provisions do not preclude legislative action in respect of the retired judiciary, especially the retired judiciary who have fallen on hard times.

An argument has been advanced that legislation presently being promoted in the Judges Salaries and Pensions (Amdt.) Bill, which provides for the periodic provision of the pension paid to retired judges is unconstitutional, serves to undermine judicial independence or constitutes a proposal that undermines the commission. I do not consider those points to be correct.”

So the Queen's Counsel, Timothy Straker, is in agreement with Justice of Appeal

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Zainool Hosein and refuting and debunking the issue of constitutional impropriety raised by others. I continue, Mr. Vice-President:

“There is no constitutional bar to proceeding as proposed. This is clear from the legislative provisions to which I have referred. They do not bar the action and, indeed, make plain the continual role of legislation. Why else, it may be asked, are the reviews of the commission placed upon the Table of each House? Further, the lack of offence to the Constitution is emphasized by the fact that the Bill is amending legislation. It amends the existing Judges Salaries and Pensions Act, Chap. 6:02.

I do not consider it undermines the judicial independence. It is not a scattering of largesse by a government on serving judges, but the correction of a social wrong present in the case of retired judges. True it is that serving judges may suppose that it reflects an attitude that indicate that judges, when retired, will be maintained but that view ought in any event to be present and its manifestation is not something that undermines the independence of the serving judiciary.

Further, the proposal does not undermine the Constitution. The functions and obligations of the commission are left entirely unaffected. I should add that I have looked at the case of Sharma, Privy Council Appeal No. 73 of 2006.”

This is Chandresh Sharma. This is the case in which Members, who were Members of Parliament, elected Members of Parliament, were denied salary for a year as they served the Parliament of this country.

So in the Privy Council Appeal No. 73 of 2006, in which the Judicial Committee indicated that the premise of sections 140 and 141 of the Constitution, is that those within it would be paid with review being undertaken by the commission. That is plainly consistent with what is presently proposed.

In the conclusion of Timothy Straker QC:

“The argument that the current proposal is unconstitutional, undermines the independence of the judiciary or undermines the commission is not sustainable.” [*Desk thumping*]

I will read that again, Mr. Vice-President. Eminent Queen’s Counsel, an expert in his area, says in the conclusion after reviewing the circumstances and the law:

“The argument that the current proposal is unconstitutional, undermines the

independence of the judiciary or undermines the Commission is not sustainable.” [*Desk thumping*]

Mr. Vice-President, industrious as the Attorney General is, one legal opinion is never enough. Having gone across to the United Kingdom he then sought the opinion of a constitutional expert in all of the Caribbean, Sir Fenton Ramsahoye Q.C. [*Desk thumping*] I would read the advice into the record of Sir Fenton Ramsahoye Q.C:

“An issue has been raised as to whether the Salaries Review Commission can be constitutionally bypassed if Parliament wishes to legislate for the improvement of benefits for judges when they cease to be in service. The Salaries Review Commission functions pursuant to section 141 of the Constitution, it is not self-activating. The commission may, from time to time with the approval of the President, review the salaries and other conditions of service of the persons who are, by this section, subject to its jurisdiction.

When a review is undertaken, the commission reports to the President who is obliged to forward the report to the Prime Minister for laying, as soon as possible, upon the Table of each House. In approving of a review being undertaken by the commission, the President acts on the advice of Cabinet. It is not one of the matters in which the President can act without ministerial advice. The Constitution does not provide that the report is to be effectual upon being laid. It is the function of Parliament to make the report effectual [*Desk thumping*] by appropriate legislative action.

In fulfilling that function, the Legislature is not subject to restrictions imposed by the Constitution. It follows that Parliament may implement or reject the recommendations made in the report, or may implement the report subject to modifications which Parliament may determine for itself. The collaboration of the words ‘salaries and other conditions of service’ appearing in section 141 of the Constitution suggests that the work of the commission, on review, is concerned with persons who are in actual service enjoying the salaries and conditions, whatever they may be. The section does not appear to have in its contemplation persons who are not serving when the commission makes its report on the review.

The Constitution is intended to operate with an independent Judiciary. The salaries and other conditions of service of judges are determined at the time of appointment and are to be enjoyed while they are in service. They are not to be altered to their disadvantage while they are in service. There is no

constitutional impropriety in improving their salaries and other conditions of service while they are in service.” [Desk thumping]

10.15 p.m.

“The purpose of a review by the Commission is to make recommendations to enable persons in service to be satisfactorily rewarded while they perform their functions. The Constitution contemplates that the rewards may need to be varied from time to time and the Commission is vested with the duty of making recommendations which will come to the notice of the legislature when the Commission’s report is laid before the two Houses. It is not obvious that the Commission is tasked with making recommendations for Judges who are no longer in service but there is a societal interest in the future welfare of Judges who have rendered service.”—[Desk thumping]—

“Judges are at the heart of the rule of law. Their endeavours contribute to the peace and security of the State and its people. Society has an interest in ensuring that when they have retired from service they are able to live until death with a measure of comfort and that their widows should be able to maintain a reasonable standard appropriate to their condition. The improvement of benefits payable to Judges on retirement is essentially a matter for the legislature which has the power to tax and spend and which is aware of the changing conditions in the society. The legislature has a wide discretion in dealing with this matter bearing in mind its responsibility to the people.

The amending legislation which is proposed is essentially a matter for the peace, order and good government of Trinidad and Tobago by ensuring that the Judges who while in service have supported the rule of law should until death live in comfort and dignity. I am of the opinion that there is no constitutional impropriety in the proposed legislation which Parliament can pass without the intervention of the Salaries Review Commission.

I advise accordingly.

Sir Fenton Ramsahoye S.C.

24th June, 2014.” [Desk thumping]

Mr. Vice-President, you see the robustness of the legal advice obtained by the hon. Attorney General from two eminent persons, a Queen’s Counsel and a senior counsel. It only shores up the position taken by the Government and by Members of the Lower House, that it is well within their remit to deal with this matter.

So that, therefore, it is within the constitutional remit of this Parliament to deal with the matter, both of the Judges Salaries and Pensions Act and also the question of the retirement allowances legislation. [*Desk thumping*]

It is my intention, Mr. Vice-President, to look at the question of the evolution of the Judges Salaries and Pensions Act and to demonstrate that there were some nine amendments made by the Legislature over the years on this piece of legislation. But during that period, it reminded me of the poem by Charles Wolfe on the burial of Sir John Moore at Corunna: not a drum was heard, not a funeral note. There was deafening silence. So during that period when those nine amendments were made, not a word, not a drum roll. They were like Simon and Garfunkel singing “The Sound of Silence”. [*Laughter and desk thumping*]

Sen. Ramlogan SC: “Yuh earn yuh pension right there, boy.” [*Crosstalk*]

Sen. The Hon. G. Singh: So now, Mr. Vice-President, in 1969 under the Judges and Salaries Pensions Act, Chap. 6:02, Parliament provided for the pensions for retired judges and their spouses. Under this Act, separate sections provide for the pension of retired judges and their spouses and that of a Chief Justice and his or her spouse.

Section 6(1) sets out the minimum and maximum amount of pension payable to any judge or Chief Justice. Section 6(1) reads:

“Subject to this section, the pension that shall be paid to a person who retires from an office to which this Act applies shall be an amount not less than forty-four and a half per cent and not more than eighty-five per cent of the annual pensionable emoluments drawn by him at the date of his retirement.”

Section 7 provides for the pension payable to a retired Chief Justice, and it reads:

“A person who at any time retires from the office of Chief Justice shall be granted a pension at the rate of the full amount of his pensionable emoluments.

Section 8 provides for the pension payable to a retired judge, other than a retired Chief Justice, and it reads:

“A person who at any time retires from an office to which this act applies, other than the office of Chief Justice, shall be granted in respect of his service as a Judge a pension which is the aggregate of one-third of his pensionable emoluments and one-three hundredth and sixtieth of his pensionable

emoluments in respect of each completed month of service as such.”

Section 12 provides the manner to determine the pension and gratuity payable to the spouse of a deceased Chief Justice, and it reads:

“Where a person dies while he is entitled to receive a pension in respect of his service as Chief Justice and he leaves a widow, the widow shall be paid a pension at an annual rate equivalent to two-thirds of the pension payable to him at the date of his death or a monthly pension in the sum of three thousand dollars, whichever is the greater.”

Secondly, 12(2) reads:

“Where a person dies while holding the office of Chief Justice and he leaves a widow, the widow shall be paid—

- (a) a gratuity of an amount equivalent to twelve and a half times one-quarter of his pensionable emoluments at the date of his death; and
- (b) a pension at an annual rate equivalent to one-half of his pensionable emoluments at the date of his death or a monthly pension in the sum of three thousand dollars, whichever is the greater.”

Section 13 provides the manner to determine the pension and gratuity payable to the spouse of a deceased judge, and it reads:

“Where a person dies while he is entitled to a pension in respect of his service as a Judge and he leaves a widow, the widow shall be paid a pension at an annual rate equivalent to one-half of the pension payable to him at the date of his death or a monthly pension in the sum of three thousand dollars, whichever is the greater.

- (2) Where a person dies while holding the office of a Judge and he leaves a widow, the widow shall be paid—
 - (a) a gratuity of an amount equivalent to twelve and a half times one-sixth of his pensionable emoluments at the date of his death; and
 - (b) a pension at an annual rate equivalent to one-quarter of the pensionable emoluments payable to him at the date of his death or a monthly pension in the sum of three thousand dollars, whichever is the greater.”

This Act was passed on August 31, 1962 and, therefore, has been in force for a period of 50 years.

As I indicated earlier, Mr. Vice-President, the Act has been amended nine times over the last 44 years, by parliamentarians, by the Legislature, and as I have indicated, not a drum was heard, only sounds of silence.

Sen. Ramlogan SC: Not a dog bark!

Sen. The Hon. G. Singh: But they come out like weevils out of the latticework now, but perhaps they do not like double figures.

Act 37 of 1971 repealed and replaced section 4 of the Act in relation to salaries. There was no amendment with respect to pensions. Secondly, Act No. 38 of 1975 repealed and replaced section 4 in relation to salaries. There was no amendment with respect to pensions. Thirdly, Act No. 43 of 1976 amended section 6 of the Act to replace the one-third and two-thirds limit with the 44 and a half per cent and 85 per cent limit, on the annual pensionable emoluments that could be drawn upon by a judge at the date of his retirement.

Sen. Ramlogan SC: So they altered the pensions already.

Sen. The Hon. G. Singh: This Act was assented to on June 18, 1976, but by section 5 of this Act it was deemed to have come into operation on August 31, 1962.

So the point made, Mr. Vice-President, is that by virtue of legislation—by virtue of legislation—the terms and conditions of the pension of sitting judges, in the context of pensions, have been altered by Parliament, by the Legislature.

Act No. 39 of 1981 amended section 4 in relation to salaries. There were no amendments with respect to pensions. No. 5—Act No. 3 of 1985, repealed and replaced section 4 of the Act in relation to salaries, and inserted a schedule, listing salaries for 1981, 1982, 1983 and thereafter for the Chief Justice, Justice of Appeal and the High Court judges. There was no amendment with respect to pensions.

No. 6—Act No. 17 of 2007 amended sections 12 and 13 to increase the pension payments to widows to \$1,000—the princely sum of \$1,150. [*Crosstalk*] Mr. Vice-President, 2007, by way of Parliament, \$1,150.

Hon. Senator: “Chilibibi!” [*Laughter*]

Sen. The Hon. G. Singh: No. 7, Mr. Vice-President, Act No. 30 of 2007 amended sections 12 and 13 of the Act to increase the pension payment to widows from \$1,150 per month to \$1,650 per month.

No. 8—Act No. 1 of 2009 amended sections 12 and 13 to increase the pension payment to widows to \$1,950. So \$1,100 in 2007, to \$1,650 in 2007, to 2009,

\$1,950.

No. 9—Act No.13 of 2010 amended sections 12 and 13 to increase the pension payments to widows to \$3,000.

Mr. Vice-President, it is interesting to note that out the nine amendments to this Act, four dealt with the issue of salaries and five dealt with pension, four of which increased the pension payable to the widow of a deceased judge. So where was the robustness of the legal arguments? Where is the robustness of the legal arguments, when they speak about constitutional impropriety in increasing the pension to widows and to retired judges, all over this period, over a decade?

You have a similar situation for parliamentarians—similar situation—but that will be dealt with by virtue of the Standing Orders, within this debate, but separately.

You had similar situations—you had, just by way of having an appreciation, the Act dealing with the Retiring Allowances (Legislative Services) (Amdt.) Act has been amended, in effect, five times in 1976, twice in 2007, 2008 and in 2012.

So, Mr. Vice-President, the current Judges Salaries and Pensions (Amdt.) Bill makes the following proposal: the pension would be calculated based on salary, judicial contact and housing and transport allowances. The formula to calculate the pension would be changed from one-three hundredth to one-three hundred and sixtieth—one over 360. Provision is made for the adjustment of pensions to which retired judges are entitled. Provision is also made for the periodic review of such pensions.

Provision is also made to increase the amount of pension payable to the widow of a judge and the widow of a Chief Justice. Provision is also made for the periodic review of the pension payable to the widow of a judge and the widow of a Chief Justice.

10.30 p.m.

And similar situation—Mr. Vice-President, when you read the letters of the spouses of retired judges and you hear their plea, Mr. Vice-President, you understand what predicament we place people who, in the words of Sir Fenton Ramsahoye, “they are the heart of the independence of the Judiciary in our country”. And when you read their plea whether it is the plea of a spouse whose husband, a retired judge, is in hospital and cannot afford—*[Interruption]*

Sen. Dr. Tewarie: Medication.

Sen. The Hon. G. Singh:—the bills in the hospital, and if the money is utilized for the payment of medical bills—paltry as it is—they cannot afford to live; that is the status. That is the situation.

Hon. Senator: Heartless people.

Sen. The Hon. G. Singh: And, Mr. Vice-President, I want to deal with this whole question of the jurisdiction of the SRC because, you see, Mr. Vice-President, I have personal experience as a parliamentarian going before the SRC, whether in Opposition or whether in Government. I recall attending an SRC meeting together with the late Ken Valley and MP Colm Imbert, and when you left that meeting you could have seen from their demeanour that ideologically, first they did not have an appreciation of the work that takes place by parliamentarians. [*Interruption*]

Hon. Senator: True.

Sen. The Hon. G. Singh: No appreciation whatsoever, but I would leave that when I come to deal with the aspect of the retiring allowances, the legislative services amendment.

Mr. Vice-President, by the Judges Salaries and Pensions Act, Chap. 6:02, provision is made for judges' pensions and the increase of salaries and allowances, from time to time, by the Salaries Review Commission which determines the manner in which the judges' pensions are calculated, the formula because that is the base that is provided. There is no provision in this Act, or in any other legislation that deals with increases of judges' pensions once they are initially determined upon retirement. But by that it is clear that the judge is to receive that pension and no more for the rest of his life.

Sen. Ramlogan SC: That is right.

Sen. The Hon. G. Singh: No more for the rest of his life. So that you have situations, Mr. Vice-President, in which a judge receiving—as Justice Cross—a \$3,000-plus pension will receive that for the rest of his life. No question of inflation or the impact of inflation, but we beat our chest and say this a country in which the rule of law prevails, and the very persons who carry out that rule of law are treated with such disdain and contempt by the institutional mechanisms in this country.

Hon. Senator: Aristocratic vagrancy.

Sen. The Hon. G. Singh: Since there are no statutory provisions, Mr. Vice-

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President, relating to the visiting or revisiting of judges' pensions, then many judges and their families live in a ruinous state after some time in retirement. Some of these judges—I mean, I do not like to call names because I know—
[*Interruption*]

Sen. Ramlogan SC: Well, no, you have permission. [*Laughter*]

Sen. The Hon. G. Singh:—some of these judges, like Justice of Appeal Maurice Corbin, Clement Phillips, Justice Achong and McMillan. And when I read the letter of the daughter of former Chief Justice Cecil Kelsick, you wonder why would you want to become a judge? Why would you want to become a judge? And in order to attract a pool of talent that will make it easier for the Judicial and Legal Services Commission to attract senior counsel, it is necessary that we deal with this legislation in the interest of the democracy of this country.
[*Desk thumping*]

Now, I see members of the SRC, Salaries Review Commission, scurried to the President, to His Excellency—[*Interruption*]

Sen. Coudray: “Scurried”—good word.

Sen. The Hon. G. Singh:—and they are entitled so to do. But, Mr. Vice-President, in support for the non-visiting of the pension, the Salaries Review Commission has never made any recommendation for increasing such pensions because they have repeatedly said that they have no jurisdiction to deal with any matter of a retired judge. [*Desk thumping*] So, they take a kind of omission approach, but it is really passive resistance.

Sen. Ramlogan SC: Well said.

Sen. The Hon. G. Singh: In addition, the judge is debarred from practising his or her profession, which only a few judges can do, for a period of 10 years from the day of retirement. So there is this bar, there is this legal bar that prevents a judge from practising for 10 years and you have an impecunious pension to support yourself and your family. [*Crosstalk*] So that if you retire at 65, then you remain for the rest of your years, and judges are living until 90-something—[*Crosstalk*] I will come to that—and they are living for more than 20 years and they are just surviving threadbarely.

Hon. Senator: Suffering in silence.

Sen. The Hon. G. Singh: Mr. Vice-President, since no one is there to assist the judge in these trying times, then the only avenue to the judge, that a judge can turn to, is to Parliament which has the power and jurisdiction to deal with any

matter, in anything which Parliament has not otherwise provided for. The power of Parliament in these circumstances is supreme, and where the Bill is a money Bill it cannot be amended by the Senate.

Sen. Ramlogan SC: Exactly.

Sen. The Hon. G. Singh: That is right. It is right. It is accepted. The meagre pension was also subjected to income tax until the then President ANR Robinson intervened by order and granted judges certain reliefs which inter alia granted the judges' pensions free from tax.

You see, Mr. Vice-President, it took the intervention of the Prime Minister by order, as Minister of Finance at the time, to make the judges' pension—paltry sum as it was—tax free. They needed other things tax free, salaries and allowances, but certainly the pensions were tax free.

The question that arises, Mr. Vice-President, if Parliament does not have the power to deal with this matter, then who else has the power?

Hon. Senator: Precisely.

Sen. The Hon. G. Singh: Who else? Is this going to be a power that is going to come down with divine intervention? For too long we in this society have not been confronting the reality of the society. [*Desk thumping*] I want to congratulate this Senate, in particular all Member of this Senate, for confronting the area, the reality of this society in procurement. [*Desk thumping*] So the procurement Bill was passed with a unanimous vote by all Senators—[*Interruption*]

Hon. Senator: Historically.

Sen. The Hon. G. Singh:—in a landmark debate. I want to congratulate also the hon. Members of this Senate who today, by unanimous vote, passed the Planning and Facilitation of Development Bill which required a constitutional majority. [*Desk thumping*] Landmark paradigm-shifting legislation. So, we are beginning to confront the reality beset us in this society. And this evening too we are confronting another reality. This is what governance is about.

Sen. Al-Rawi: If not now, when?

Sen. The Hon. G. Singh: And, Mr. Vice-President, and you know the irony of this is that, look—look at you. You all are not regarded under the law as legislators. You understand the kind of oxymoron it is? You make law—you make law—you spend hours in committee stage, you go through it, like Sen. Al-Rawi, with a fine-tooth comb, and we are happy for that because it contributes to

good law [*Crosstalk*] but you are not by law regarded for pension purposes as a legislator. This is a wrong we have to correct in this country. [*Desk thumping*]

Hon. Senator: Talk for Al-Rawi.

Sen. Dr. Tewarie: And the law was made by the colonial Legislative Council.

Sen. The Hon. G. Singh: It is a law borne out of a colonial mindset.

Sen. Ramlogan SC: Yes.

Sen. The Hon. G. Singh: It is a law borne out of when the Members of the Upper House were members of the aristocracy.

Sen. Ramlogan SC: That is right.

Sen. The Hon. G. Singh: But in this grouping here we have the sons and daughters of slaves and indentured servants that go through our ancestral background. [*Desk thumping and crosstalk*]

Hon. Senator: Cloth peddlers.

Sen. The Hon. G. Singh: And persons who built this society—I would not forget to the cloth peddlers. [*Laughter*] So there is no landed gentry or aristocracy here. This is our country and we have built this country on the virtue of the sweat, toil, and the tears of our ancestors and we now take that responsibility, that we are putting this wrong, right, today. [*Desk thumping*]

Mr. Vice-President, judges are delinked from the civil service by the budget speech of Eric Williams in 1981; they have remained so ever since. It is a travesty to think that the judge should live on a fixed pension for the rest of his life when his sitting colleagues have their salaries and allowances adjusted upwards, from time to time, thereby correspondingly receiving increases and increasing their pensions.

I ask rhetorically, Mr. Vice-President, when the SRC arranged this meeting, the Salaries Review Commission arranged this meeting, what were they going to talk about? [*Crosstalk*] What were they going to talk about?

Sen. Ramlogan SC: They do not have jurisdiction.

Sen. The Hon. G. Singh: They said that they did not have jurisdiction when they abdicated their responsibility to deal with it. They left it to the Legislature, and Legislature took up the mantle, as I have indicated over nine times, and they were all silent at that time. [*Crosstalk*]

So, Mr. Vice-President, having said repeatedly they have no jurisdiction, what it is they are coming to say? They have found that jurisdiction overnight? They have found jurisdiction overnight? They acquired jurisdiction overnight? The scales have fallen from their eyes?

Mr. Vice-President, the intervention by the then Prime Minister Robinson to bring relief to judges, with respect to their pensions, indicated further that the Executive has the power and authority to bring further relief to judges by the increase of their pension, and this is what the other place did, and rightly so. I want to now—because you see people are placing the SRC in this frontal position and hiding behind this mask of the Salaries Review Commission.

10.45 p.m.

I want to place on record some salient facts on the role of the SRC. Mr. Vice-President, in 1980/81, the then Prime Minister Dr. Eric Williams refused to implement the increase in salaries of judges as recommended by the SRC. The Prime Minister then laid in Parliament legislation by regulation to give the judges a new allowance, the judicial contact allowance. He did not consult nor require approval from the SRC.

Sen. Ramlogan SC: That is right. That is right.

Sen. The Hon. G. Singh: The SRC never complained. Not a squeak.

Hon. Senator: Not a beat.

Sen. The Hon. G. Singh: Not a drum, not a funereal note, just the sound of silence. [*Desk thumping*] In 1988/89, the then Prime Minister Robinson indicated that the State could not increase the judges' salaries. He, however, decided to make the salaries tax free and he did so by laying the necessary legislation in Parliament. He did not consult the SRC or seek its approval. The SRC did not object. The sound of silence. Not a drum roll, not a funereal note.

Mr. Vice-President, it seems obvious that the SRC cannot fetter the Legislature in its lawmaking function. The purpose of the Judges Salaries and Pensions (Amdt.) Bill is to amend the existing Act to change the method of calculating a judge's pension by including certain allowances. If it becomes law, as we hope that with the support of all Senators here, it will do so, then the SRC would have the jurisdiction to determine the salary and those allowances under its powers in the Constitution. To say that the SRC can stop the Legislature amending a law to change the method of calculating pension, is to fetter the Legislature's powers of

making law.

Since when? Since when those who occupy institutional office want to share power with the Legislature when they have no accountability and responsibility to the people of this country? [*Desk thumping*]

Mr. Vice-President, the sitting judges did not approach the Government to change the pension Act. The retired judges were the ones who did. The SRC acknowledges that it cannot say whether it has jurisdiction over retired judges. They do not, as they are no longer judicial officers or public officers, or persons holding offices under the SRC jurisdiction, and this is what Justice Zainool Hosein said. He has stated publicly in the newspaper article. The SRC was always aware of the inadequacy of the pension level of retired judges. In their report of 1984, for example, the Salaries Review Commission considered the issue of pension and superannuation benefits and deferred the matter to a special committee. Ten years later in 1991 the matter came up again before the SRC and, again, it was deferred. So when, I think, somebody referred to their work as being slothful—S-L-O-T-H, Mr. Vice-President—there has been a reputation of that by the chairman of the SRC, but the facts speak for themselves. The facts speak for themselves, Mr. Vice-President.

So, 10 years in 1984, it was deferred back in 1991, and again it was deferred. In response and as I have indicated earlier, in 1999 the retired justices association was formed and shortly after its formation, representatives of the retired justices association appeared before the Salaries Review Commission, chaired then by Prof. Maxwell Richards. Prof. Maxwell Richards, later to become the President of this country. So, hence, for 20 years the SRC did not address or deal with the matter of pension for retired judges.

As indicated earlier, when Prof. Maxwell Richards became President, a delegation of the retired justices association went to see him to discuss the matter. So, in a situation where on the one hand the SRC was saying that it had no jurisdiction to deal with the matter, then there was nobody else for the retired judges to whom they could seek redress, other than the President, and through him, the Parliament.

In the circumstances, Mr. Vice-President, the Retired Judges Association had no option but to complain to the President with the hope that the matter would be addressed by the Parliament. If on the other hand, the SRC had jurisdiction to deal with or address the pension of retired judges, they have declined to do so since 1980, over 34 years.

Sen. George: They need more time.

Sen. Ramlogan SC: Give them more time, they are still considering it.

Sen. The Hon. G. Singh: Hence, the retired judges ought to air their concerns to the President, and through him, to Parliament for the Government to deal with the matter. So, 34 years, purely on an unempirical basis, that is slothful by any standard.

Mr. Vice-President: Hon. Minister, you have three minutes to wind up. [*Crosstalk*]

Sen. The Hon. G. Singh: I just want to be clear, I have three minutes for the hour?

Mr. Vice-President: Yes, to the hour.

Sen. Maharaj: He has an extension?

Mr. Vice-President: No.

Sen. The Hon. G. Singh: Mr. Vice-President, there are some 30 retired judges alive. You have, for example, Justice Narine, Justice Kelsick, Justice Guya-Persaud, and I have indicated—[*Interruption*]—and I am told by my colleague, they are not doing very well.

So, it is clear, Mr. Vice-President, that in the current situation, you have a situation where it is constitutionally appropriate for the Legislature to deal with this matter. You have Members of the Senate who are not within the embrace of the pension Act, and that is something that we intend to correct. You have a situation where the time has come for us to confront the realities that beset us in our society, and we ought now to begin that process, because it is the rule of law. This is a society under threat from various elements, in particular the criminal element, and we therefore have to be able to recruit the best and the brightest amongst our senior lawyers to fill the Bench of this country.

And it is our view as the Government, that in confronting this reality, we would be able to attract new recruits, we would be able to attract persons of calibre to the Bench, but we must correct this wrong because of the inaction and the institutional anomie that exists in the society. For too long we have turned a blind eye, and when the blind—in the situation where the SRC turned a blind eye—it was a case of the blind leading the blind and all you could do is to fall down, in the words of my good friend, the Attorney General, “fall down in ah canal or ah drain”.

So, therefore, Mr. Vice-President, I wish to commend this Bill, I wish to commend this—an Act to amend the Judges Salaries and Pensions Act, 2013. And I want to say that this is as part of the beginning of having new politics. Instead of a politics that leads a society to confront its problems, we find ways to hide from

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them, and there is no better example than the Salaries Review Commission. We turn a blind eye to our own realities and we do so and lead to institutional atrophy that eventually we have to cure through drastic intervention.

So, with these few words, Mr. Vice-President—and I wish I had more time—I wish to commend this Bill to this honourable Senate, and I hope it receives the unanimous support. And with respect, by virtue of the Standing Orders, we will also have a debate, all subsequently, on the Retiring Allowances (Legislative Service) (Amdt.) Bill, 2014.

Mr. Vice-President, I beg to move. [*Desk thumping*]

Question proposed.

Sen. Camille Robinson-Regis: [*Desk thumping*] Thank you very much, Mr. Vice-President. I rise to contribute to this very important piece of legislation that has elicited quite a lot of acrimony in our society. It has resulted in some rats coming out of their holes [*Desk thumping*] and determining that in a situation where persons who have served this society and now find themselves almost in a state of mendicancy [*Desk thumping*] are being attacked unfairly by persons who are perhaps millionaires in this society. [*Desk thumping*]

Mr. Vice-President, despite the fact that many have said that the Opposition is being self-serving, that the Opposition should not support the Government in this endeavour, we of the Opposition say this evening as we said—tonight, as a matter of fact—in the House of Representatives, that this is a situation that must be confronted head-on [*Desk thumping*] and if it is not done so now, then when?

Sen. G. Singh: When?

Sen. Al-Rawi: Exactly.

Sen. C. Robinson-Regis: We in Opposition are saying that enough is enough. [*Desk thumping*] The retired judges have said without true fear of contradiction that they have served this country in most, if not all instances, they have served this country well. They were appreciated when they were on the Bench and now that they are off the Bench, they can barely find the means to live adequately.

And, Mr. Vice-President, it is not that this legislation is going to make them millionaires. All it seeks to do is to bring them up to a standard of living that will make them live adequately.

Sen. Al-Rawi: Exactly. [*Desk thumping*]

Sen. C. Robinson-Regis: Mr. Vice-President, I do not often agree with the hon. Devant Maharaj, but I have to use his words this evening. It is an opportunity for us to show and allow them to live decently [*Desk thumping*] and that is all that we can ask.

That is all that we can ask our society to do when persons have served adequately and at the highest level in our country, that they are allowed to live decently. [*Desk thumping*]

Mr. Vice-President, it was in 2005—I was a Member of the Cabinet then—that the retired judges came to Prime Minister Manning, in circumstances where they were totally ignored by the SRC—[*Interruption*]

Sen. Ramlogan SC: That is correct.

Sen. C. Robinson-Regis:—and asked for assistance in getting this situation solved—2005. We are now in 2014, nine years later.

11.00 p.m.

Sen. Maharaj: How many have died?

Sen. C. Robinson-Regis: I hate the fact that I keep repeating Devant Maharaj—[*Laughter*] but on this occasion, how many have died, Mr. Vice-President? [*Desk thumping*] How many have become more seriously ill? How many are in a state of being bedridden with their spouses, who in some instances, are also ill? Are we to just sit as a society and say that there is nothing we can do? Mr. Vice-President, I say tonight that that must not fall on this Parliament. [*Desk thumping*] It must not be said in 2014 that we put our hands in the air and said that we could do nothing, because in fact, we can do something—[*Interruption*]

Sen. Hadeed: And we will do something. “How yuh like dat?”

Sen. C. Robinson-Regis: “Ah love it.” [*Laughter and desk thumping*] And, Mr. Vice-President, we will do something as a Parliament.

It is not as a Parliament that we represent only certain classes of people; as a Parliament, we represent the lowest of the low and the highest of the high. [*Desk thumping*] And if persons who have served at the highest level need our assistance, we must come to their assistance, and tonight we are coming to their assistance.

Sen. Al-Rawi: Without fear or favour.

Sen. C. Robinson-Regis: Malice or ill will.

Mr. Vice-President, despite all that we have said, despite the fact that these persons have been waiting for nine years, there continues to be recrimination and misinformation. There has been a feigned outcry, there has been feigned ignorance, and there has been an unexpected level of hypocrisy—[*Interruption*]

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and desk thumping]

Sen. Al-Rawi: Yeah, yeah, yeah.

Sen. C. Robinson-Regis:—that has occurred in relation to this legislation.

Sen. Al-Rawi: That is what it is, say it as it is.

Sen. C. Robinson-Regis: Mr. Vice-President, I stress hypocrisy, because some of the main persons who are speaking against this legislation, and in most instances they are speaking because the parliamentarians are also linked, parliamentarians must be treated like dogs.

Sen. Ramlogan SC: Yes, yes.

Sen. C. Robinson-Regis: “Doh say yes, because they might say that we said yes.” [*Laughter*] But, Mr. Vice-President, that is what this society believes. You must come to work, you must work hard and then at the end of the day, you must be kicked and be ill-treated. And, Mr. Vice-President, we who have chosen public service, either as parliamentarians or as judges, must let this society understand that we have decided that we are doing a job of public service. It does not mean that if we decide or determine to be public servants that we must be ill-treated. That can never be fair. [*Desk thumping*]

Many of those who have spoken against this legislation sit in their ivory towers and pontificate on all types of issues, and sometimes, on many occasions mislead the public, mislead the public, sometimes deliberately. [*Desk thumping*]

Sen. Al-Rawi: Have their wives write newspaper articles in their names. [*Crosstalk*]

Sen. C. Robinson-Regis: Today, we have asked the SRC on more than one occasion to deal fairly with emoluments for all persons, particularly, parliamentarians. Today, we are dealing with the life after work, and, Mr. Vice-President, hon. Ganga Singh mentioned the name of Mr. Justice Clement Phillips. I have a personal story with regard to Mr. Justice Clement Phillips. His daughter and I were best friends in Bishop’s Junior School and Bishops High School. And I know as a fact, when Mr. Justice Clement Phillips departed this life, his daughter was at university and had to leave because there was no money available to keep her at university. She was at the university in Jamaica, at UWI.

Mr. Vice-President, you know how my friend was able to go to school?—sitting judges put money together and they sent her back to university. Her mother could not afford it. Clement Phillips gave his life to the Judiciary, he acted as Chief Justice on

more than one occasion. He was in the process of building a house. They could not finish that house, they had to sell the property to survive. And, Mr. Vice-President, I know that from personal experience because she was my friend. She lives out of the country now, and that cannot be right. [*Desk thumping*] That cannot be right.

So, when you work, you do not get the consideration of the SRC. After you have left the job, you are still not getting the consideration of the SRC. And you, we, as a society must understand, and particularly in this Senate, despite the fact that we are not elected, we have a significant voice, [*Desk thumping*] and our voices must be heard on this occasion.

Judges are eminent lawyers who, in most instances, have given up what could have been a very lucrative career in the legal fraternity to serve in a very restricted way.

Sen. Ramlogan SC: That is right.

Sen. C. Robinson-Regis: Because when they become judges, they cannot associate with certain people for want of persons saying that they may be influenced, they have to be careful how they socialize. It is a very restricted life, and there are attorneys who in one brief make more than a judge makes in one year. “Eh”, Mr. Attorney General?

Sen. Ramlogan SC: Of course, that is right.

Sen. Al-Rawi: Nothing wrong with that.

Sen. C. Robinson-Regis: Mr. Vice-President, we must bear in mind that judges cannot practise for 10 years after they leave the Bench, and the issue must be whether the judge, his wife and other dependents must be left in a position where they cannot make ends meet. Must that be what our society descends to, Mr. Vice-President? We on this side say that they must live comfortably in a community that they helped to build. [*Desk thumping*]

At present, we have 43 judges serving on the Bench and 30 retired judges, but I stress that there will be no back pay as I understand the legislation; however, there will be an upward evaluation payable now to those 30 persons. Our objective in this Senate must be to deal with this pension matter now. [*Desk thumping*] We must rectify this situation for all times, and for now and in the distant future. The retired judges cannot fight for themselves. They have done what they can do. It is therefore incumbent on us to fight for those retired judges. We have to do it as part of this Parliament.

Mr. Vice-President, the new proposals are a significant improvement, and rightly so. It is significant enough, I posit, to attract qualified citizens, as we have done

previously, but even more so, now that there will be an improvement to attract qualified citizens to serve as judges without fear of a deterioration in their quality of life, and that would mean a continuous flow of citizens to make themselves available to public service, a return as was said by the Leader of the Opposition, to the golden age of public service.

Mr. Vice-President, quite a lot has been said by the Salaries Review Commission, about constitutionality and so forth. As a responsible Opposition, we have listened to all the opinions and views of interested citizens, with appreciation. We may not and we do not agree with all the comments. Some of those comments, in fact, were quite disparaging and designed to denigrate, and in fact—[*Interruption*]

Mr. Ramnarine: Wrong, factually wrong.

Sen. C. Robinson-Regis:—those comments in the main were inaccurate, [*Desk thumping*] and I put on record tonight that in the main those comments were misleading.

Sen. Al-Rawi: Purposefully.

Sen. Lalla: Mischief making.

Sen. C. Robinson-Regis: Mr. Vice-President, very few comments drew reference to the many representations made to the SRC over the years by the judges, that is, the retired judges and Members of Parliament. In the case particularly of the retired judges and their pensions, we on this side are advised that the SRC's response was that they have no jurisdiction to treat with the obvious anomalies, and that it is the responsibility of the Parliament. Mr. Vice-President, I repeat, we on this side of the Senate are advised that the SRC's response was that they have no jurisdiction to treat with the obvious anomalies, and that it is the responsibility of the Parliament. Even in relation to pensions for current judges, the SRC's reports, historically, simply state that pensions are recommended in accordance with the relevant law. And where is that relevant law?

Sen. G. Singh: Right here.

Sen. C. Robinson-Regis: Right here, in the Parliament, passed by the Parliament and it means that it is up to the Parliament [*Desk thumping*] to amend that legislation. So for us on this side, it is, for want of a better word, shocking, that the SRC could be complaining that they were not consulted on this occasion. It is almost as if they were either Rip Van Winkle or Lazarus, being resurrected all of a sudden. [*Desk thumping*] Where were they?

Mr. Vice-President, we say on this side, to the contrary, the SRC was consulted on various occasions. In fact, on page 12 of its last report, the SRC itself confirmed that

such consultations did take place, but in their usual manner, they recommended a deferral of its considerations of the matter until the conclusion of some permanently pending review.

Hon. Senator: It is called *mañana*.

11.15 p.m.

Sen. C. Robinson-Regis: Mr. Vice President, I put on the record tonight, if for over 15 years a body with the duty to recommend has failed to do so, are we being told that, as a Legislature, we must not act? I think not. Are we being told that our power as a Parliament to legislate is abolished because the SRC has found itself incapable or impotent in terms of acting as it is required to do? I stand and beg to disagree.

Mr. Vice-President, as a Parliament, we have on occasions, as was stated by Sen. Ganga Singh, amended several retiring allowances pieces of legislation. As a matter of fact, we have changed the qualifying period for the receipt of a pension as it relates to legislators. We moved it from eight years to five years and revised the formula. It was the Parliament that did that, Mr. Vice-President. [*Desk thumping*]

I ask the question: was the SRC in snooze mode? Were they snoozing? Again, we did not hear any claims from them about jurisdiction being overshot. We, on this side maintain that where the SRC does not act—15 years—it is incumbent on us to act, [*Desk thumping*] and act we must, and act we will. [*Desk thumping*]. The law and the precedent are on the side of the Legislature.

When the Bills came to the House, we were asked to treat with them in a manner that indicates that there has been continuous neglect by a body which was put in place by the Constitution of 1976, and by a body that had a duty to make recommendations in this regard. That body did not fulfil its obligations and that is a matter of fact that cannot be refuted. [*Desk thumping*]

Hon. Senators: Yeah, yeah, yeah!

Sen. C. Robinson-Regis: Mr. Vice-President, our understanding is that proposals were made to the Attorney General and submitted to the Cabinet where they were accepted, and these proposals found their way into the Bills that are before us today. We, on this side totally disagree with any notion that our power to act in this matter is circumscribed or constrained pending the recommendation of a body that has traditionally chosen not to act.

Mr. Vice-President, the SRC comprises a chairman and four members, established under section 140 of the Constitution and appointed by the President, after consultation with the Prime Minister. The commission, in defining itself in its 98th report, stated that it achieves its mandate by:

“...undertaking comprehensive reviews of remuneration arrangements applicable to the offices within its purview, taking into account remuneration arrangements provided to persons holding comparable positions”—and I repeat—“holding comparable positions in the private sector, State Enterprises and other jurisdictions.”

They have not admitted any responsibility for reviewing pensions, but they are all over the news, on this occasion, claiming that they have a duty, that there was a duty to be consulted, not acknowledging that they have, in fact, been consulted over the past 15 years and that, in fact, they have received proposals in the past.

Mr. Vice-President, it is strange that no commentator raised any claims of self-interest or bias when the SRC that meets, at most, twice a month to fulfil its limited—and I repeat, limited—mandate, recommended a remuneration package for its chairman of \$15,540 per month, and \$8,210 per month for its members.

Hon. Senator: Ohhh! And what is the Senators’ salary?

Sen. C. Robinson-Regis: Mr. Vice-President, I would like to make the further point that the chairman of the SRC—I repeat—claims that the SRC was not consulted by the Parliament, and this is not true. This is not true! Mr. Vice-President, I repeat, as was stated by Sen. Singh, a team of MPs—as a matter of fact, the current President has been on the SRC for 25 years.

Hon. Senator: Twenty-five years!

Sen. C. Robinson-Regis: Twenty-five years, and has received representation from the Parliament on this matter for more than 20 years.

Hon. Senator: Wow! He is part of the problem.

Sen. C. Robinson-Regis: Mr. Vice-President, I repeat what was said by Sen. Ganga Singh. A team of MPs representing Government and Opposition, including Ken Valley, Ganga Singh and Colm Imbert, met with the SRC as far back as 1998, and in 2004—[*Interruption*]

Hon. Senator: One man passed away.

Sen. C. Robinson-Regis: As a matter of fact—yes, Ken Valley passed away before we could see anything happen with the SRC. And in 2005, representations were also made. In 2013, prior to the publication of the 98th report of the SRC, a bipartisan team of MPs again met with the SRC, and on all occasions—and, Mr. Vice-President, I

will repeat this information when the next Bill comes, with more information. On all occasions, over the last 20 years, the SRC has ignored—and I repeat, ignored—the representations made to them by MPs and judges with respect to pensions, and refused—[*Interruption*]

Hon. Senator: With impunity.

Sen. C. Robinson-Regis:—refused to accommodate the requests made, and now they have the temerity, the audacity, to say that they were not consulted. This is really, really something that we must take notice of. [*Desk thumping*]

Mr. Vice-President, the 89th report—the report that was published in 2009, was published five years after the House Committee sent its recommendations to the SRC on pension reform—I will repeat this—and they simply regurgitated the same position they adopted in 2005, which was, and I quote:

We have received a remit to consider the recommendations of the House Committee of the House of Representatives for the amendment of the Retiring Allowances (Legislative Service) Act, Chap. 2:03. We propose to treat with this matter in a subsequent report.

Hon. Senator: Ohhhh! “It eh reach yet.”

Sen. C. Robinson-Regis: That was in 2005, and they repeated the same thing in 2009. Mr. Vice-President, are we to wait until 15 of the 30 judges die?

Hon. Senator: “Ah want back meh money.”

Sen. C. Robinson-Regis: Are we to wait until all 30 judges die before we do something? Are we to wait until they become so incapable of taking care of themselves that they are almost coming, cap in hand? I repeat, I think not. I think not! Ours is the responsibility to do something, and to do it now. [*Desk thumping*]

Mr. Vice-President, we are clear that the reasons for the new features were essentially to set things right in relation to the small group of living retirees who have been ignored over the years, and to ensure that we attract the best minds and young professionals to a judicial career, each such career being distinguishable from the general public service careers in a number of ways. We have had a chance here in this House to give the proposals that came from the originating House a second look, and as a consequence of that, we are of the view that despite the fact that the SRC, and others, are saying that we need to banish this legislation and return it to the SRC, we are saying we are not returning it because we do not want it to acquire [*Desk thumping*] dust and mould.

But, Mr. Vice-President, as I indicated, we have had an opportunity to take another look at what is before this House. We would like to make a suggestion, and one

suggestion that we would like to make, particularly as it relates to the retired judges, is to re-examine the allowances that are being considered for the entire computation of the pension. So that we should re-examine whether judicial contact should, in fact, be included as part of the computation.

We should also re-examine whether—Mr. Vice-President, if I may, the issues that we would like this House to re-examine, having looked at this legislation again, is the mechanism for computation so that the inclusion of judicial contact, we feel that that should be re-examined. We are also of the view that the issue of the housing allowance, that the amount as it relates to the pension, should also be re-examined. As a matter of fact, it may be worth our while to look at the formula for housing allowance as is prescribed in the definition of “pensionable emoluments” in the Pension Act for public servants, and that is, and I quote:

“‘pensionable emoluments’ in respect of service under the Government of Trinidad and Tobago includes salary, personal allowance, inducement allowance, house allowance or the estimated value of free quarters and any fees paid out of the Treasury by way of salary except that the amount to be allowed for house rent or for estimated value of free quarters shall not exceed one-sixth, nor the amount to be allowed for fees one-fourth, of the actual salary in office;”

11.30 p.m.

We on this side would like to suggest that that formula could be examined as a possible formula for the determination of the pensionable allowance and how we would include the housing allowance. We also suggest that there may be an opportunity to index pensions going forward. It has been said in the Lower House that the pension should be indexed to whenever there is an increase in salary. We on this side would like to suggest, whenever there is an increase in salary of a sitting judge.

We on this side would like to suggest that perhaps the pensions may be indexed going forward to the annual increase in the year-on-year index of retail prices as published by the Central Bank. That would mean that, any increase in judges’ pensions annually, it would be increased by the same percentage as the increase in the index of retail prices for that year. Whereas now, inflation may be ravaging the current pensions of judges, if we do an indexing of this nature, when there is inflation it is indexed and there would be an automatic increase.

Mr. Vice-President, these are some suggestions that we would like to put forward to the Government in specific reference to the judges’ pension. When we

debate the pensions of Members of Parliament, we have some similar and some additional suggestions.

But, Mr. Vice-President, I would like to end by indicating that we must never find ourselves in a position where some of our citizens are in such a pauperized situation that they have to come cap in hand to the Legislature, that they have to come cap in hand to the Cabinet.

It is incumbent on those of us who sit in the Senate, and in the other place, to make sure that when we have the opportunity, we do what is right for all the citizens of Trinidad and Tobago. [*Desk thumping*] And I repeat, Mr. Vice-President, despite the fact that we may not be elected MPs, we represent the people of Trinidad and Tobago whenever we come to this Senate.

Mr. Vice-President, before I close, let me indicate a slightly contrary view to the view expressed by my colleague on the other side, that the Senate can in fact make amendments to a money Bill. In fact, as recently as 2012, the Senate amended the Finance Bill of 2012, and in 2014, the Senate amended the Finance Bill of 2014. So, Mr. Vice-President, amendments can be taken on board. Of course, it would be up to the Government to determine what they want to do because the policy is theirs.

But we on this side will not shy away from our duty to ensure that the retired judges of Trinidad and Tobago, who have served without let or hindrance, are placed in a better position by the legislation that we pass in this Parliament. [*Desk thumping*]

Mr. Vice-President, with those words, I thank you for this opportunity. [*Desk thumping*]

Sen. Helen Drayton: Mr. Vice-President, thank you. I will try to be brief. I am aware of the time. I would just like to comment first on two statements, one by Sen. Ganga Singh and the other by Sen. Robinson-Regis, and I thank both of them for the enlightened discussions. I want to thank Sen. Robinson-Regis for the suggestion that she has just made with respect to the formula because it is where I have a serious problem.

With respect to the comments by Sen. Ganga Singh—really, he was quoting the advice given by Senior Counsel, and I must say that I was surprised to hear that the pensions were commented on in a way that suggested that it is not a condition of current employment and that it is solely about retirement. Now while pensions are about income in retirement, pensions are based on salary income and

other emoluments, and therefore, should not be treated in isolation of properly constructed competitive salary structures. You run a risk. That does not mean that substantial relief cannot be brought immediately to retired judges who are suffering hardships.

I have to say that Sen. Ganga Singh also mentioned that it is a critical component for the attraction and retention of good talent and I want to submit, therefore, that it is important that we understand we are dealing with two issues, bringing immediate relief to current retirees and attracting and retaining talent and we are not going to handle pensions in a manner such that it really does not serve the need of a judge to sit in office for any tenure of time, more so, given the fact that there is no qualifying period of service before a judge receives a pension. There are risks involved in the approach we have taken in this Bill, however, I support the principle.

Now, this Bill in clause 3 seeks to redefine pensionable allowance to include 100 per cent of judicial contact allowance, housing allowance and transport allowance to calculate pensions. Now, the intent is to give judges an increase in monthly pensions and bring immediate relief, as I have said, to retired judges, and I am certainly on the side of the retired judges and all judges who, like everyone else, deserve a pension that allows them to enjoy a comfortable standard of living in their golden lives.

There are many retirees who have served this country in high risk position and with dedication, and in extraordinary ways all their productive lives, and today they suffer the pain and the lack of the type of care that they need. They are among retired police officers, teachers, members of the defence force, nurses. They are all living in poverty. I came across one yesterday that brought tears to my eyes, and this was a retired assistant commissioner of police. His pension is less than a thousand dollars a month. So let us understand that when we seek to do things, we have to be careful that we do not lean too much on the emotional side so that we are blind to objectivity in dealing with the future well-being of our citizens.

Now let me say that I sincerely believe that judges belong to a unique and special sector of society. They are the chief custodians of our Constitution. They are in a position to thumb down the laws by Parliament if they feel that these laws infringe the Constitution. Their compensation with a tax-free privilege is the only one enshrined in the Constitution; and the Constitution, therefore, recognized the special position of judges in society. They are an integral part to our stability, and yet they must be above and apart from the frays of daily life in order to dispense

justice dispassionately and justly. I do not necessarily buy the argument that judges must wait until evaluations are completed for the entire public service before their jobs could be evaluated.

Now having said that, I just want to address this matter of the Constitution and how this Bill was brought to Parliament. Now the Act which governs judges' salaries is the Judges Salaries and Pensions Act. It is only by this Act that salaries and pensions for judges can be changed, which is what we are being asked to do today. I have no problem with that. Now according to the Act, adjustment to regulations from time to time is by the President of the Republic, and usually that is interpreted as meaning on the advice of Cabinet unless the Constitution states at the sole discretion of the President.

In section 6, the Act states that the President may, by order, prescribe pay allowances and benefits and other terms and conditions. Judges' salaries and pensions are constitutional and statutory arrangements, and therefore, if Parliament gets involved in setting judges' pensions, however, the Constitution intended that Parliament should do so upon the recommendation of the SRC. If the SRC has abdicated its responsibility, that does not mean to say that the Constitution is overturned. What it means to say is that if the SRC is not performing, Cabinet has the power to recommend to the President, who appointed them, fire them. And this is what we keep doing. This is what we keep doing. I have heard all the nice arguments, but people who are not performing, they sit there, they do not perform, and it is symptomatic of many other areas in the public service. So we have to have respect for the Constitution and the judges, as I said, are the chief custodians of the Constitution.

Now, let me admit there is a puzzling note in the SRC's 98th Report of 2013 and I quote:

“With regard to pension benefits, we have been made aware of an undertaking to improve...benefits for which the office holders are currently eligible. We are of the view, also, that improvements in such benefits should be treated...holistically...”

Now this was a note in the SRC Report of 2013. Now clearly, the SRC was aware that proposed amendments for judges' pensions were on the way. The question therefore: did it abdicate its responsibility, or is it that it never saw judges' pensions as their responsibility? So I have to empathize with what my colleagues

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have said with respect to the SRC. You cannot say that it is your responsibility and you put in the very report that you know that a review and exercise was taking place and you did not exercise your authority with respect to that.

Now I have heard complaints against the committee that is responsible for reviewing salaries and other benefits. A job evaluation exercise has been talked about for years, and up to the time of research I think I am aware that a contract is supposed to be soon to be awarded with an estimated completion, possibly 2015. In the meantime, retired judges are experiencing hardship. The problem with the SRC is exactly the problem with the entire public service and, that is, that the structures, systems and processes belong to Jurassic Park, not the 21st Century. [*Desk thumping*] They cannot serve our needs, so it begs the question.

It is okay for the Government and the Opposition to lament the inefficiencies of the SRC, but I have to be frank. It is good to be an Independent Senator in that regard because both of you have had 60 years to bring about meaningful change, and from what I am aware, I have not seen any results or the public does not feel any results of a public service that has been re-engineered or there is an attempt to re-engineer it so that it could serve their needs, and the SRC is only a symptom of just one area of the collapse.

11.45 p.m.

So, when you want to lament about the inefficiencies of the SRC, understand, if the system is now biting and biting you where it hurts, which is in the pocket, that might be the process of natural justice. [*Laughter*] But I do not understand why a proper evaluation could not have been done for the judges within six months.

Now, the job evaluation criteria for such position should include comparisons with earnings in the higher end of the profession of private law firms. Now, at one time, I was the head of HR of a large financial institution crossing 11 jurisdictions, so I have seen just about every pension plan I can see. But, even then, I was aware that judges' compensation was about 40 per cent to 50 per cent behind comparable senior positions in the private sector. So today, if you use any appropriate formula, regression analysis, whatever, the lag has to be substantially behind market rates, and I know that the SRC knows this. But, is the problem solely with the SRC? I do not think so since Cabinet can refuse to accept SRC's recommendations as has happened in 2008. There was no SRC review in 2011 so the judges have been neglected.

I am aware of the extent to which retired judges have lobbied for improved

pensions. I fully empathize with them, but I believe there should be no shortcuts to good compensation management, and proper procedure should be followed to arrive at fair, competitive compensation for judges rather than compound the distortion in current compensation. That is what has caused the judges hardship in their retirement and that is what is going to continue to cause them hardship, unless we address the issue of competitive compensation for judges. By all means, take measures, through the Ministry of Finance and the Economy, which is the appropriate body to do those reviews, and bring substantial relief to your retired judges. What we are asked to do is what we have done for judges for the past two decades: patching, fill up compensation gaps in a haphazard way, and it is not serving the purpose that it should.

Now, it is to be noted that the principle of including allowances as pensionable income is not a precedent here or elsewhere. That has already been established in the pension law as Sen. Robinson-Regis mentioned so I am not going to go over that again. But, if you note according to section 133 of the Constitution which deals specifically with pension, under subsection (6), it states that:

“For the purposes of this section...Judge...”—is—“deemed to be public service.”
—for reason of pensions. I mention that because when it comes to the pensionable emolument, there are senior managers within the public service where their pensionable emolument includes up to the one-sixth of the housing allowance amalgamated with salary. I think it is important to mention that because it gives us, it opens the door, for coming up with a more appropriate formula to address the judges’ pension without creating all sorts of precedents.

Now, pension should be determined by objective criteria. And I just want to mention here that over the past couple of weeks, we have heard many comments with respect to the two Bills that have been brought which proposed enhanced pensions for judges and parliamentarians, and such commentary made reference to performance and public confidence. Now, I empathize with some of those statements, however, there needs to be some education here.

What salaries should be paid for a job and what pension should be paid have nothing to do with performance on the job or whether there is public confidence in the persons doing these jobs in the Judiciary or Parliament. Performance is not a criterion when establishing what a job is actually worth in the marketplace and this is why I say that we have some very archaic notions with respect to compensation.

The value of a job is dependent on proper evaluation and other types of analysis, and in the case of judges, their decisions set precedents that have far-reaching implications, although, as I said, their decisions could be challenged up to the Privy Council, but their decisions also have major economic impact as we see in the recent

judgment with respect to the Clico investors. Judges' positions require expert and authoritative knowledge, and in many countries, including the UK, their salaries are higher than that of the Prime Minister.

Here, the Salaries Review Commission has maintained a system of basing salaries on an archaic hierarchical model that forces salaries of critical positions to stay below the Prime Minister and a Minister. Hence, you have a situation of a Commissioner of Police earning some \$25,000 or \$26,000. I mean, it is absolutely ridiculous. It is easy to understand why a Chief Justice's salary is \$50,000, why the judges is between 37 and 42, which is lower than private sector senior attorneys, less than a corporate secretary in the average company, and even less than what SRC commissioners are earning, and therein lies a problem.

Now, granted their salaries are tax-free but that does not compensate for the low salary base. Currently, the allowances are virtually 100 per cent of base salary, and therein lies the problem, and that is why this Bill is before us. There is a low salary, so if you try to base pension on that, they are in hardship, but we are doing the same thing again, because in time, that becomes salary, and it is way out of kilter with anything in the marketplace.

The structure is so distorted and I am asking therefore, the Government, to look at that formula, and let us agree on something that brings the relief we are looking for but is also attractive, and I will come to that. The judges now receive three allowances: the housing, the transport and what I call a zebra which is the judicial contact allowances, which on close examination, is supposed to be a personal development allowance, but which, in fact, is a personal allowance, and this is where I might have a little diversion from Sen. Robinson-Regis, because I believe personal allowances, it is often used as a base for pension and I believe that should stay.

I believe the housing allowance, since we already have a precedent and it is established in our pension laws, instead of the one-sixth—the judges are senior people, the Constitution has treated them differently, I have no problem with that being at one-third or even two-thirds. Just using those two mechanisms, that would bring an additional \$10,000 to \$15,000 a month in the hands of retired judges, and it does not create a precedent, it does not distort the system anymore, and it provides room for when job evaluation is done and salaries are properly computed, you can have a very attractive package for judges.

But, also think about this, we speak of judges in their golden years and they are ill and they cannot afford medical, so tell me: why there is not a

comprehensive health insurance for judges? Why? Why not? And their spouses. Why not? That is what would obtain in the competitive environment and, as in the case of UK, in their more productive years, they are able to save far more than a teacher or police on their salaries.

Why we cannot have a group annuity plan for judges that supplement their income in retirement, and since the Constitution has already established a tax-free system for judges, allow the lump sum, when they reach retirement age, to be tax-free which it is, right now, you know, for normal annuities, but also the monthly income to be tax-free. This is a question of thinking a little bit out of the box, although nothing is new, you know, innovative in that context, but it might also provide an expanded role for the Judicial and Legal Services Commission.

So that I think we need to be objective, we feel sorry for them, there are lots of people suffering out there, but that does not mean to say that we should not be objective, we should not be fair and we should not be consistent, and think more of the future in the context of attracting and retaining good talent.

So, Mr. Vice-President, let me say that I support the principle of this Bill, I do not support the formula. I think it is way out of whack, and I really believe there should be a distinction between the monthly pension of a retiree and the monthly compensation of a sitting judge, otherwise you create issues of retention of judges. More so, when the Attorney General has put it in the public domain of reducing the time period that they can work from 10 years to five years, you are creating a very serious problem.

So, I am recommending, whilst this is a money Bill, it is your policy, and you could say, “Well, okay, it can go through as it is”, I am pleading that we reflect on what we are doing. We reflect on what we are doing and let whatever we do serve the judges now who will be future retirees and serve those who are retired now, and I ask—which is a question I would have asked with respect to the legislative proposal—what was the role of Ministry of Finance and the Economy in this in terms of evaluating these proposals? Okay? Mr. Vice-President, I thank you. [*Desk thumping*]

ADJOURNMENT

The Minister of the Environment and Water Resources (Sen. The Hon. Ganga Singh): Mr. Vice-President, we have been at it from 11.30 this morning, it is now some 12 and a half hours, and having regard to the fact that tomorrow, at 10.00 a.m., the Lower House convenes to deal with the Finance (Appropriation and Variation) Bill, and that the staff at the Hansard deal with both Houses of Parliament, Mr. Vice-President, with those considerations in mind, and having regard to the fact that it is an ongoing debate and we have the Retiring Allowances (Legislative Service) (Amdt.) Bill also to deal with, I beg to move that this Senate do now adjourn to Tuesday, July 01 at 10.30 a.m. to deal with

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the Finance Bill, and more than likely, on the 08, we will continue the debate on this Bill.

Question put and agreed to.

Senate adjourned accordingly.

Adjourned at 12.01 a.m.