SENATE

Wednesday, July 09, 2014

The Senate met at 1.30 p.m.

PRAYERS

[MR. PRESIDENT *in the Chair*]

PAPER LAID

Annual Report of the Environmental Management Authority for the year 2005. [*The Minister of the Environment and Water Resources* (*Sen. The Hon. Ganga Singh*)]

SPECIAL SELECT COMMITTEE REPORT

Securities (Amdt.) Bill, 2013
(Adoption)

The Minister of Finance and the Economy (Sen. The Hon. Larry Howai): Mr. Vice-President, I beg to move the following Motion standing in my name:

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 to amend the Securities Act, 2012".

Mr. President, this particular Bill came to us some time ago and it was referred to a special select committee. Perhaps, if I can recap for Members of this honourable Senate, the progression of the document so that we could understand the many reviews through which it has gone. In 2012, the Securities Bill at the time was passed with three-fifths support of both Houses, and the Bill was proclaimed on December 28, 2012, or the Act was proclaimed on December 28, 2012, and became operational on December 31, 2012.

It helped us to become a full signatory to the International Organization of Securities Commissions, Multilateral Memorandum of Understanding, in June 2013, but much more importantly than that, Mr. President, what it did is that it put us in a position to more adequately regulate and manage the securities industry in Trinidad and Tobago. At the time when the legislation was passed, this side gave a commitment to fellow parliamentarians to undertake a review of the Act within six months with a view to determining what changes may need to be made.

We provided two updates to this honourable House during the period subsequent to the passage of the legislation on March 26 and June 25, 2013, respectively. While we did not hit the exact six-month deadline, we actually came

to this honourable Senate with the Bill, with the amendments, about 10 months subsequent after the Act had been passed. The passage of time was helpful for us in that it allowed us to review, together with market participants, the operation of the legislation. It allowed us also to reflect on some of the changes that this legislation had introduced and it, therefore, allowed us to make some better contributions in terms of the final draft of the amendment.

During that approximate 12-month period, we consulted with stakeholders such as the stock exchange, the Home Mortgage Bank, the Bankers Association, AmCham, various listed companies, some of the larger listed companies on the stock exchange, as well as a number of other regulators, including the Central Bank. What this allowed us to do was to get a good understanding from all market participants on what was happening and what needed to be done.

The Bill which was laid in this honourable House contained approximately 68 amendments, and those amendments were generally intended to tighten a number of the loopholes which we had identified in the legislation, as well as helped us to further strengthen the Act in terms of clarity, the streamlining of processes and procedures and, in a sense, making it much more user-friendly.

When the amendment Bill was laid at the time, we also used the opportunity to lay the by-laws, which are an integral part of the legislation. So, Mr. President, on March 11 of this year, the amendments which we had proposed were referred to a special select committee of the Senate. The membership of the committee comprised myself as the chairman, Mr. Anand Ramlogan SC, Mr. Kevin Ramnarine, Mr. Gerald Hadeed, Mr. Vasant Bharath, Mr. Faris Al-Rawi, Dr. Lester Henry, Mrs. Helen Drayton and Mr. Elton Prescott SC.

I want to recognize the sterling contribution which was made by all Members of the committee in guiding us to the final report which Members have before them. I want to especially recognize the contribution of the Independent Members who were part of the deliberations, and it would certainly be remiss of me if I also did not recognize the contribution of Sen. Al-Rawi, who, by my unofficial count, had about 63 amendments to the 68 amendments. [*Laughter*] But, you know, I have to say, perhaps it may be said a little bit lightly, but I want to certainly recognize the contribution which was made by Sen. Al-Rawi to making the legislation a much more robust piece of legislation than it was before. [*Desk thumping*]

I also would want to recognize the contribution of the various technical staff without whose work we would not have been able to get this far, and apart from the representatives of our secretariat here, the members from Parliament, we had strong representation and support from the Trinidad and Tobago Securities and Exchange

Commission, the Trinidad and Tobago Stock Exchange, the Central Bank and the Office of the Chief Parliamentary Counsel and the Ministry of Finance and the Economy. Again, I would like to recognize the contribution of a few Members whom I thought made particularly sterling contributions, particularly Mrs. Dilchan, Nataki, [*Desk thumping*] who was the secretary to the committee, as well as Miss Astrea Douglas and Miss Lorraine John of the SEC and the CPC, respectively. [*Desk thumping*]

Mr. President, the committee held eight meetings and each meeting went for between four to five hours, and we had very substantive discussions and deliberations on the issues. Coming out of it, our report has been submitted and the report includes the deliberations of the committee, the Minutes of the meetings, as well as amendments which were made in committee; we have the Bill, which is the amendment Bill together with the amendments which were made in the committee and we have also circulated a document which is the Act as it would look with all of the amendments in it. So there is a document which perhaps one can look at in toto which allows you to see all of the changes and what the Act in its final form would look like as we move forward. So, Mr. President, I think we have before us a very robust piece of legislation which has benefited quite substantially from the work of the committee.

The committee, there were three particular areas, in summary—if I could summarize the work of the committee, there were three particular areas that occupied the committee. The first is related to the extent of information disclosure—if I could refer to our report:

> "the extent of information disclosure requirements"—which are—"placed on the Commission and public accessibility to this information."

The committee felt it was very important, particularly that the right type of information was disclosed to investors particularly, and persons who were putting their money at risk to ensure that the public had the information that they needed and, in addition, that there was significant transparency in the operations of the committee. So that we were very keen on ensuring that there was public accessibility to the information in this piece of legislation, and I would make a reference to the Freedom of Information Act subsequently, later on as we discuss some specifics of the recommendations which the committee has made.

The second point we looked at was:

> "the constitutionality of…civil and criminal provisions of the legislation,"

One of the good things about this exercise that the committee did, Mr. President, was that we did a full evaluation of all fines and penalties which are included in not just this legislation but also related legislation, such as the FIA, such as the Central Bank Act, such as the proposed Insurance Bill, proposed Insurance Act, and so on. We looked at

the legislation and how it compared, and we looked at the fines and penalties in this legislation and how it compared with similar fines and penalties in other legislation. I have to say, it is the first time that I personally had the opportunity to take a look at the different fines and penalties, and the different pieces of legislation, and see how they compared and how they stacked up one against the other, and to be able to search for internal consistency, and to ensure that that was reflected in this particular Bill.

So the constitutionality of the civil and criminal provisions of the legislation was the second area that we spent a lot of time on, and the third area related to:

> "the disciplinary procedures utilized by the Commission and the options that existed for redress against such decisions."

And the changes that we recommended are included in the Bill before us, and the report before us.

One of the key things that came out of it, particularly clause 51 where it is reflected, but in a number of other clauses, was the introduction of the "knowingly and recklessly", the phrase, "knowingly and recklessly". That was very important and it is something that—I do not understand how we missed the first time, but it is certainly something that, I think, significantly strengthens this particular piece of legislation, because it seems almost as if persons can have significant fines and jail sentences even for perhaps what might have been just a mistake, and by putting in the "knowingly and recklessly" language, it allowed us to distinguish that type of behaviour from what may have been a normal mistake that might have occurred.

1.45 p.m.

So that was a particular change that we introduced into the legislation. What this does is that certainly the Bill and the Act, in its final form, will allow us to introduce a number of things such as the promotion of regulatory cooperation. I understand that a memorandum of understanding was to be signed with the Financial Intelligence Unit, and I suspect that it has already been signed. It strengthens the regulatory framework, it fosters transparency and it facilitates an increase in the SEC's enforcement powers.

The Bill with its subsequent amendments places an even greater emphasis on prosecuting market misconduct and manipulation. Sen. Dr. Mahabir has raised with me time and time again, "Did we put the Ponzi schemes inside of here?" and I think it is very important, and it is captured under clause 95. I do not want to

steal the Senator's thunder. I know he would want to make a particular statement about that and, perhaps, we can deal with it at that time, but we have taken steps to address some of these areas in the legislation. We have done it in a particular kind of way which reflects the generic nature of the types of schemes that would need to be addressed as part of this.

Mr. President, the very important role that this particular piece of legislation plays cannot be overstated. The fact is that this piece of legislation is almost like a glue that kind of sticks together a number of other pieces of legislation, and that facilitates the regulation of a number of activities within our marketplace, which is extremely important if we are to see ourselves as a financial centre, going forward.

Our vision for this particular industry is that we want to see the financial services sector continue to grow and, in fact, to play an even greater role than it is playing at the moment. Our financial services sector is the second largest economic sector in Trinidad and Tobago, accounting for approximately 14 per cent of gross domestic product. Our vision is to see this particular sector continue to grow and become a larger part of our economic environment. To do that, it needs to be very well and robustly regulated.

We want to see, going forward, more players in the marketplace. We want to see the existing market mechanisms continue to grow. We want to see more new market mechanisms coming into being. We want to see, for example, the development of a regional marketplace and Trinidad and Tobago becoming a regional centre for capital market transactions, going forward. We want to see, for example, Trinidad and Tobago, perhaps, becoming a centre for dispute resolution for financial matters in the region and even beyond the region.

We are seeing where places like Luxembourg, for example, have become centres for registration of documents and so on, and we think that Trinidad and Tobago, because of some of the challenges faced in some of the more developed markets, which have felt the hand of excessive regulation that, perhaps we can develop a marketplace that is robustly regulated, but at the same time that allows for disputes to be registered and for us to play a role in the management and eventual resolution of such disputes. Up to about a month ago, I actually had some meetings with potential market players in the larger markets such as New York and London, and during the discussions it was very clear that there is an opportunity for us to develop this particular niche sector here in Trinidad and Tobago.

If we are to see this particular sector continue to develop and grow, Mr. President, we would need to pay particular attention to ensuring that we have the right kind of environment that will facilitate the regulation and the management of transactions that take place in our marketplace.

Over the years there have been a number of financial crises and, as we have said here before, financial crises are nothing new. They are things that continue to recur throughout the world. It has happened in Latin America, it has happened in the Far East, it has happened in the United States, it has happened in Europe, and there is no reason to believe it will not happen again somewhere else in the future.

Here in Trinidad and Tobago, we have had the failure of our non-banks in the 1980s. We had the failure of some of the indigenous banks in the late 1980s, early 1990s. We had BCCI here also which itself had some challenges and which eventually went into liquidation on a global basis. We have had the Clico and HCU matters. We have had the Viveka and HMB matters also, although at the time those particular transactions were not illegal, they nevertheless were transactions that required us to pay particular attention to how we regulate the market. Of course, very recently, Mr. President, we had the First Citizens IPO, where we have had a number of transactions which had to be reviewed and referred to the regulator of the Securities and Exchange Commission.

With respect to that, perhaps in passing, I could mention that I know that persons in the marketplace think that the work seems to be going too slowly, as far as that is concerned, but the thing is, such types of investigations do take time. There are thousands of documents that have to be reviewed, different types of documents. There are documents that have to be cross-tabulated, they have to be cross-referenced, they have to be further investigated in detail and, therefore, it takes some time to put together a case to determine whether there is enough of an issue that can lead to prosecution through the courts.

I think, Mr. President, that in all of that though, it is important for us not to lose sight of what our vision is and what our public policy position is, as far as these things are concerned. We would not want three transactions out of 12,000—because there were 12,000 new shareholders that came into the market as a result of that particular IPO; we certainly want to learn from the lessons of those three particular transactions—but we would certainly not want that to colour what we do as far as the overall economy is concerned, and the public policy position which the Government takes.

This Government has a particular view as far as the private sector and civil society's role is concerned in Government. To that extent, on this side, the Government's position differs, in some marked instances, with the position that had been articulated under the previous Government and, that is, we see our role as being one, not in trying

to own assets necessarily, but really in arriving at the widest possible control or the widest possible ownership of assets in Trinidad and Tobago. We see the role of the private sector and civil society as being participative in that process of ownership. It is because of that, that it is our intention to continue the role of widening the private sector ownership and participation, and private sector in the broadest sense to include civil society in the ownership of selected assets in Government.

As you know, Mr. President, we had identified the Phoenix Park Gas Processors as a possible IPO that would be coming out shortly, and that is currently engaging our attention. We have also looked at the potential for the TTMF and Home Mortgage Bank to be merged, and that for the merged institution to also be listed in the marketplace, but that one, we still have that particular matter under consideration. It would be a further way down the road before we take a final position on that, but we do have the Phoenix Park Gas Processors IPO as one that we are having under active consideration at the moment.

Mr. President, as I said, we have gone through this Bill on a number of occasions. We went through the Bill itself here. The initial Bill went through the Joint Select Committee. The current Bill which was laid here also was referred to a Special Select Committee, and this Special Select Committee had a number of meetings at which we drilled down in detail. So the Bill itself has had the benefit of wide participation by Members here, as well as wide participation from the overall stakeholders, who will be affected, both from the point of view of regulation as well as from the point of view of participation in the marketplace.

In terms of the report itself and the amendments that we have included here, there are just a few areas that I thought we should highlight, apart from the three broad areas that I had identified earlier, and I am talking here in terms of specific amendments. The first one related to conflicts of interest as far as commissioners are concerned. What we sought to do here was to, in a sense, make the languaging here much more robust than it had been before, and certainly to allow commissioners the flexibility—if, for example, you happen to have been involved in the discussions before it came to your attention that you knew that there was likely to be a conflict of interest, how does one deal with that?

In particular, I want to mention the role that Sen. Prescott SC played in helping us to identify some of these weaknesses that, perhaps, we might have overlooked. I think the languaging here at 3(a) allows us to, perhaps, put amendments in that are much more robust than had existed before.

I also want to refer to the "fit and proper" amendment which was in the original Bill, which is very important, particularly again where individuals may have, perhaps, found out that they became an owner, maybe somewhere down the road and not immediately

on the event actually occurring. In such an instance, we did make provisions to ensure that persons who may have innocently breached the legislation as it existed previously, that we are in a position to manage that particular situation.

We also, Mr. President, amended or put in an amendment at clause 71, which goes in after section 169 in the original Act, indicating that:

> "The Freedom of Information Act shall apply in relation to all documents or instruments which are expressly required to be filed with the Commission under this Act."

What we have done, Mr. President, is that we have made certain kinds of amendments which we think make the legislation a little bit more robust than may have existed before. It did require significant discussion, as well as quite extensive amounts of deliberation and research in arriving at the position which we arrived at.

When we initially laid this amendment Bill earlier this year, I think it may have been March of this year, I went through all of the changes that we were going to make to the Bill, so that most of these have been captured in terms of the previous exposition to this honourable Senate. In addition, we have had the benefit of quite a number of months and quite a number of meetings and deliberations on all the changes that were being proposed to be made.

So, in the circumstances, Mr. President, it is not my intention to detain the Senate any longer on this particular matter. I just thought that we should, perhaps, put things in context and identified a few areas where we have made changes. There have been quite extensive changes made in the committee, and those are delineated in the report before us. I will not bother to go back through all of that again.

With those few words, Mr. President, I beg to move.

Question proposed.

2.00 p.m.

Sen. Faris Al-Rawi: Thank you, Mr. President, as I welcome you back, I having just joined you today and being out of the country yesterday.

Mr. President, I rise to make a very short contribution today, and my contribution is going to be short, not because of the sweet words of my learned colleague, the Minister of Finance and the Economy, Sen. Howai, which I must say, I am very grateful for. I think this is the first time that anybody on the Government's end has ever acknowledged the tremendous work that parliamentarians and in particular Opposition parliamentarians do in committee work, [*Desk thumping*] so I thank him for his graciousness.

I rise on a few core issues. We are, of course, for the listening public, through you, Mr. President, debating a Motion, and the Motion today is that we adopt the report of the Special Select Committee. The Special Select Committee sat, to put it into context, upon a recommendation of Senators, when the Bill itself came, and that Bill was for the amendment of the Securities Act, 2012. That Bill had proposed a number of amendments, I think it was close to 68 amendments, back in the first sitting to deal with this, on Tuesday, March 11, 2014.

And in dealing with it, what we realized was that the Parliament's time would be better spent by referring this kind of work to a special select committee and the first thing that we did as a Senate was—in the 68 sections that we had to consider—that we broadened as a committee the number of participants and I wish to put on the record that that is a very sensible thing to do as a Parliament. Usually, the number of members is somewhat constrained and usually you have only one Member of the Opposition and one Member of the Independent Bench sitting, together with Government Senators. On this occasion, we broadened the committee's participation and I think that is a very useful thing for us to bear in mind as a Senate because it allows the work of the committee to proceed unencumbered.

May I say, Mr. President, that Sen. Howai sitting as chairman of this committee handled the work of the committee, the business at hand, and the management of all participants with excellence. [*Desk thumping*] It was truly a very enjoyable experience to work in this committee. I think that we as a Parliament came up with the best fit.

Mr. President, I say so specifically because the securities laws have been under reflection for a very long time. Successive governments have been grappling with the issue of managing a very important sector of our economic engine in the review and reflection that we have done. It is true that a form of catalyst occurred in 2008/2009, with the global financial crisis, which found itself rooted in Trinidad and Tobago, but the securities industry laws are something that have occupied the attention of many a Parliament. And I wish to put on the record that the PNM took great pleasure in discharging its mandate as a responsible Opposition, in attending every single session of this special select committee [*Desk thumping*] and of pouring dedicated work into it.

Mr. President, it was Sen. Howai's willingness to consider the fruit of observation, the fruit of calm reflection that allowed us to get to where we are, quite frankly. Mr. President, if you would permit me to join in Sen. Howai's acknowledgement of the tremendous and outstanding work of the persons that

assisted us in coming together as a special select committee. If you would permit me to name, notwithstanding the fact that the report is before us, the incredible participation of Mr. Iton himself, the Chief Executive Officer of the TTSEC; Miss Astraea Douglas, who served as Legal Counsel and who provided, in my own reflection, the epitome of knowledge of one's work. She was absolutely on the ball with every aspect of reflection on the Bill, from start to finish, from Genesis to the Omega and the end. She was a spectacular representative for the SEC but particularly because she knew her work and knew her Bill; Mr. Kevin Deopersad; Craig Cumberbatch, all of the TTSEC, again provided dialled-in dedicated support. The Chief Parliamentary Counsel was represented by Miss Lorraine John, and I wish to pay particular tribute to Miss John's effort in managing to craft a Bill, amendments to an Act, which not only made holistic legal sense but found itself to be extremely user-friendly.

In this particular committee, we took the opportunity to adopt a scheduling approach to the fines and penalties and offences in the Act, allowing users in the securities industry the ability to understand what particular sections affected them, where offences were created, what the liability for offences were, and what stood as administrative fines as a graduation down from strict offences. That approach, in scheduling out offences as we did, I think is a significant improvement, in terms of the architecture of laws.

Mr. President, the Ministry of Finance and the Economy saw the participation of Kimi Rochard and Kavena Ramsoobhag, again with excellent participation. But, Mr. President, where we saw a much broadened appreciation of the work happened in the attendance of other persons into the committee, and in particular those persons from the stock exchange itself, as self-regulated entities captured under the purview of this Bill and also, from the Central Bank of Trinidad and Tobago—in the Central Bank, of course, Mr. Carl Hiralal, the Inspector of Financial Institutions and Miss Giselle Samuel. Mr. President, from the Trinidad and Tobago Stock Exchange, we had Mrs. Michelle Persad and Mr. Ian Narine, both very experienced persons who brought forward reflections of the self-regulated entities, which I dare say was invaluable to the work of the committee.

Mr. President, this particular committee had the benefit of considering the matrix of fines and penalties with a fine-tooth comb. Very often in laws, fines and penalties seem to be almost plucked out of the ether and one wonders what the root and rationale for this actually is. It was in this particular committee—as assisted by the work that some of us who sit on another committee had in the insurance committee—we had the benefit of understanding how the matrix of fines and penalties ought to operate in this position.

The work of the committee was sterling work. I pay tribute to the hon. Minister of Finance and the Economy for a job very well done. It is one of the rare occasions that the Parliament gets it right and it gets it right because of dedicated participation by all members of the committee. Sen. Prescott was an invaluable light sitting in that committee, as he always is, in his sober reflections, in understanding what the law ought to look like. Certainly I am particularly, as a practitioner, very grateful for his reflection, so that we can have a mature thought in where we go and how we develop the laws of Trinidad and Tobago.

Mr. President, if I were to agree with the hon. Minister on his reflections as to the three core concepts that we focused on—the penalties and offences; the administrative fines; the reworking that we did in that —breeds for a significant improvement of the constitutionality of the legislation. The legislation found itself, in my opinion, in the PNM's opinion, in some difficulty, insofar as it prescribed excessive penalties or penalties that were not sufficiently qualified by the mental intention behind an offence, in terms of recklessness and wilfulness to commit an offence. Those aspects found some rooting in unconstitutional perspectives, in my view, and I think that we have come up with a better product.

Mr. President, the reflections upon the operationality and the interarticulation of the various agencies that have to carry out this work—that is the Central Bank, the self-regulated entities, the SEC itself and the market actors—brought in a very useful analysis of the memoranda of understanding that exist between, for instance, the Central Bank of Trinidad and Tobago and the Securities and Exchange Commission. After all, it is a very real concern that we have a super-regulator in Trinidad and Tobago and that the capacity constraints can often affect the very best-worded law into making it almost otiose. The fact is that without the memoranda of understanding in place, the ability to function, the SEC by itself would be constrained unless there was an active interarticulation with the Central Bank and with the stock exchange, for instance. So I think that we had a much better product in reflecting on that.

The ability to also allow for the voluntary acceptance of administrative fines, as opposed to running through the entire process of moving to an offence every time, I think is a material amendment, an improvement, amelioration to the Bill. It allows for persons who are deemed to contravene the Act, to have a system of warnings, to have application of fines by way of administrative penalties and to be subject to the recording of incidences of fines and penalties on an administrative end, which could lead to a three-strikes rule, a two-strikes rule or a one-strike rule, and I think that segregating out the severity of offences in a graduated system of administrative fines versus offences and penalties is a significant improvement of this law.

Mr. President, much of the work that the PNM would have done when last in government is coming to fruition now. Perhaps, it is axiomatic that that would be the case, insofar as the PNM called an election after two and a half years into its parliamentary term. Perhaps, it is useful that a lot of work and a lot of dedication on the part of the last Government and on the part of the continuity through the members of the public service, coming into the hands of this Government, brings for a gelling-in of product and efficiency.

Permit me, Mr. President, to just make a few small observations on my learned colleague's gloss-over of a very significant issue and that is the fact that the IPO at FCB, the now infamous IPO at FCB, is something that we must pay very close attention to, [*Desk thumping*] and we must pay very close attention to it, not because of the fact that it is scandalous or that it happened under this particular Government's watch, not just because representatives of the Ministry of Finance and the Economy sat on that particular IPO committee and engineered the result, not just because of that, but because as a country, notwithstanding the record level of expenditure that this country has witnessed under this particular Government, $400,000 million of expenditure in just over four years, equivalent to 10 years of back-to-back appropriation and supplementary appropriation of successive governments prior to this, $400 billion of expenditure has happened, not because of real diversification in the economy, but because of the production of oil and gas in our economy.

Mr. President, when we hear the Government signal that there is another IPO on the horizon, we must warn the Government that we are ever vigilant on this side to ensure that the taxpayers of Trinidad and Tobago, those people who are being offered the opportunity of public ownership of public assets, are treated with an even approach, stand on an even keel and have fair opportunity [*Desk thumping*] because it is the lack of fair opportunity that presented itself in the FCB initial public offering that scandalized this country.

It is also the Government's approach to seemingly hiding the events that has caused great concern. Whilst the Government has great ability and fanfare from the ever-absent Attorney General, to continuously wave the flag of prosecution against every person that stood in a previous government, it does not seem to have, with the greatest of respect, any form of measure or equality when it comes to persons that sit in their own camp. [*Desk thumping*] If, for instance, strictly private, confidential for purposes of national security reports can be given to the Prime Minister of Trinidad and Tobago, and laid in Parliament—and I refer, of course, to the Commission of Enquiry into the 1990 Attempted Coup. If that

document marked "For Eyes Only" of national security could be laid bare in the Parliament of Trinidad and Tobago, one wonders how Senior Counsel of that level as the Prime Minister is, could give one form of advice and then take another form of advice when it comes to an event like this.

I want to put on the public record that this Government's need for initial public offerings is a very sincere one, because whilst we have had $400 billion of expenditure, whilst we have had that, our revenue has been brought forward only by the fruits of oil and gas and this Government is very long on expenditure and very short on revenue, and the significant revenue markers that have happened under this Government come by way of tax amnesty and come by way of the initial public offerings into entities and institutions built by a previous government.

The success of FCB and the rise in the value of the shares, and the 12,000 persons permitted to own these shares did not happen by mistake, Mr. President. FCB was created as a result of the merger and reworking of three failed institutions in this country and those three failed institutions, under the hand of the very Minister of Finance and the Economy now, who provided yeoman service as he stood in the FCB position that he did for the years that he did, he was a first-hand witness to the kind of dedication that the Government of Trinidad and Tobago, under a PNM management, poured into the First Citizens Bank [*Desk thumping*] and that is the reason why it is a successful IPO. Because if Republic Bank can trade its shares at its value, if RBC can trade at its value, if Scotiabank can trade at its value, then it is obvious that FCB, as one of the strongest indigenous banks in this country, would have similar capacity and that did not happen by luck.

I want to disagree with the Minister when he says that this Government has a different approach and seeks to distinguish itself from the previous Government, because he sought to persuade the Senate that the PNM was not interested in public ownership. That is the furthest thing from the truth. The PNM insisted that it take state responsibility when all investments in Trinidad and Tobago were collapsing. When Texaco was pulling out of the oil and gas sector in Trinidad and Tobago, and shutting in oil wells and closing down production, it was the PNM government that came in to purchase out Texaco and to invest money in oil and gas so that 150 years later, this country could see buoyancy.

When Taitt & Lyle was coming out of Trinidad and Tobago and subjugating the Caroni workers—the sons and daughters of indentured labourers in Trinidad and Tobago—to abuse, it was the PNM that created Caroni (1975) Limited. [*Desk thumping*]

When Trinidad and Tobago did not know where another dollar was coming from, it was the PNM that created anchors of industrial estates in this country [*Desk thumping*] and the Point Lisas Industrial Estate did not happen by mistake. It was not "voops, vaps or vaille-que-vaille". It was dedicated, intended, specific project implementation, where a PNM Government came and took up the work of a previous government as well. It did not throw away good work. It furthered and bettered good work.

So, Mr. President, when you have a government willing to come into power, as this Government did in 2010, and scrap industries by whim and fancy, not thinking of consequences which could happen, no form of reflection and you end up with, for instance, when you scrap a project like Sural, when you scrap an aluminium industry, not a smelter. Let us say that the smelter was out for now but when you have a project at 90 per cent readiness, as Sural was, where you can import the ingots required for aluminium smelting, aluminium production into this country, and you shut it down after building an electricity generation plant such as TGU, Trinidad Generation Unlimited had, you end up with a billion-dollar loss in T&TEC because they must take a take-or-pay purchase arrangement, buy the electricity from TGU and cannot pay for it because they are not selling electricity, to earn revenue.

That is why I find it dangerous, the affability of my learned colleague, Sen. Howai. He is a good man in his appearance, in his manner and in his intention, I am sure. Hard to get angry with him, measured, well mannered. Perhaps, he is a victim himself; victim of what is known as Stockholm syndrome, where one falls in love with one's captors. Perhaps that explains it. [*Desk thumping*] I do not know. I ascribe unto him benevolent purposes and intentions to his mind, imputing no improper motives, as I always intend not to do. [*Desk thumping*]

But, Mr. President, the fact is—[*Crosstalk*] as I will not take bait from my learned colleague, the Leader of Government Business—that this Government has got to account for its stewardship and cannot seek to misrepresent the history of Trinidad and Tobago and cannot seek to eradicate and erase the hard work of the People's National Movement in building this country's foundations to allow all citizens to prosper.

As I wind up now, Mr. President, I wish to say this is the way legislation should be crafted. The approach of this committee is the correct approach. The hon. Minister had a very hard task. He had to sit, practically by himself on most occasions. It is rather conspicuous that the Attorney General turned up to only one of the committee's sittings, literally only one, and I find it an abdication of duty that the Attorney General of Trinidad and Tobago, my good friend, Sen. Anand Ramlogan SC as he is, cannot find it within his own capacity, to attend important committee meetings such as this.

I do not want to rub the salt into his wound. He is not even here to defend himself, so I have to be careful, but the fact is the Minister did yeoman service. The Opposition was very pleased to support good law and to participate rigorously with effort and with enterprise to get it right. It is a pleasure for the PNM to support this work, this committee's effort and product and we are united in the purpose of producing good laws to the benefit of all citizens of this country, ever vigilant and watchful, as we must be, as to the manner in which this Government will govern the citizens of this country.

I thank you for the opportunity to contribute. [*Desk thumping*]

Sen. Dr. Dhanayshar Mahabir: Thank you very much, Mr. President. Yesterday we had a very long day and I did not intend to speak very much today, so if I lack my customary fire I hope that I shall be somehow indulged, because yesterday we were batting twice and—[*Interruption*]

Sen. Al-Rawi: Today we are batting twice again.

Sen. Dr. D. Mahabir: Yes. This is the first round, and the first, let me try to depoliticize what I think is a very important objective of the Government.

It is heartening, Mr. President, to see the cooperation of all sides on this very important industry. We know that money is a peculiar commodity. When the world moved away from metallic money into paper currency, money became an item of trust and it is said that we should trust only he who has earned it, and many people have not earned that trust in the monetary sphere and it is in this regard we have seen the emergence of the Central Bank or Central Banks as regulatory institutions, to manage those who say they can be trusted, and the objective of the Central Bank being I trust you but I will verify your records.

And, from the early days of banking and central banking, we have learnt not to trust anyone who is handling other people's resources. And so, we come to the point where, in the securities industry, we are dealing with paper, we are not dealing with real assets, we are dealing, rather, with claims to those assets. We have a similar situation where the potential for the abuse of trust is always in existence.

When we debated this Bill a while back, I raised a few issues, with respect to what can go wrong. That does not mean that there are not things which do go right. Things do go right and you do have the industry which deals in paper. It is really wealth which really is going to be translated into paper which would subsequently be traded, and that has resulted in the growth of modern free enterprise industry.

We have had the situation where stock exchanges across the world continue to thrive, especially in the developing world, Latin America and Asia in particular. But the problem is when things go badly, they go so awfully wrong that they can cause entire economies to collapse and it is here that we have to be very vigilant.

I did raise the issue, as the Minister of Finance and the Economy indicated, about whether you specifically had Ponzi schemes in the legislation and the answer is, of course, yes—that and all other schemes. Because, in our history, when we looked at the fraudulent activities which occurred and we pinned them down, they were all without exception in the nature of this Ponzi scheme, and we start from the very early '80s, when we started a process known as financial intermediation, that is we were getting deeper and deeper into financial products.

We moved from the credit union movement and banks into non-bank financial intermediaries. Here, we had these non-bank intermediaries—International Trust being the most celebrated—at some point in time, obtaining new deposits to pay off the old deposits, the old matured certificates, and creating a veneer of legitimacy and respectability until, at some time, the truth was told and then, of course, in the financial sector, we know that once there is a crisis of confidence there is bound to be a stampede which, unfortunately, can carry with it a number of really well-functioning institutions.

In the '80s, we did not see the stampede, in relation to the commercial banks, but we saw practically every single non-bank financial institution failing because, at the time the law was vague on Ponzi schemes. We did not understand the term. What is that really? It appears time and time again. It is really an attempt by the perpetrators of the fraud to give the impression that what they are selling is a safe asset. It is a fixed deposit. Nothing could be safer than a fixed deposit, except when the institution which offers this instrument has absolutely no resources to honour its fixed deposit obligations.

So it is giving the investor the impression that your assets are safe with me, I will induce you with a higher rate of return and then when the obligations mature and you do not have the earnings to satisfy those obligations, you will simply encourage new deposits, via higher and higher interest rates, to pay those obligations. We have seen it in the International Trust situation and the collapse of those agencies.

Hopefully, by now, the people of the Republic of Trinidad and Tobago will understand that when a legitimate or a long-established financial institution can offer you 5 per cent on a fixed deposit, but another institution is offering you 12 per cent, something is usually amiss, and these institutions usually trade in an environment of asymmetric information. They have information that you do not. They have knowledge to which you are not privy. And in this situation, the investor always finds himself at a great disadvantage. We have seen this time and time again.

In the ‘80s, in the United States, this notion of the junk bond emerged. I was trained in old-fashioned thinking that a bond is a safe instrument, and when I encountered the term “junk bond”, I was confused then and I am more confused now. How could the practitioners of Wall Street, with decades of experience, have accepted as an instrument in their portfolio, an item which calls itself a bond but which, at the same time, has an adjective “junk”? Does anyone invest in junk? I always thought junk was something to discard. I did not know junk was something you had in your portfolio and you always get, from the financial experts—those learned individuals in business schools—a great deal of explanations. By the time they get to their third equation, they have lost me and when they have lost me, I know it is fraud, because I usually follow the legitimate arguments very well, and the junk bond scandal caused a tremendous amount of loss, again, in the investment community in the United States.

We have moved on to another scheme and I am focusing on the Ponzi scheme, you see. We have moved on to the mortgage-backed securities. These securities, these derivative securities—and I see there is always an eagerness to introduce them into our Republic. Well, I think they ought to be introduced only when the brokers themselves understand it clearly, they understand the probability of risk associated with each one, and I can tell you, there are individuals who sell these instruments, who do not understand what they are.

The only individual who knows the true risk of a derivative security is the mathematician who has created it and the problem here is that you call it a mortgage-backed security. It is backed by mortgages. Anything backed by mortgages is supposed to be safe. So the moment you hear the terms “a junk bond, a mortgage-backed security, a fixed deposit or an executive premium annuity account”. Executive, it is for important executive people; a premium—well it carries a premium and it is an insurance premium; annuity, an annuity is something that is going to be given to you for life; account. It has all the lovely, laudable phrases in there and it backs nothing.

The potential for wrongdoing in the securities industry is simply phenomenal. We know that. Money cannot manage itself, and in this regard, we have Central Banks, a good institution. Our Central Bank is a good institution, established, from what I recall, in 1966. It is doing its job very well, managing the monetary economy, ensuring that banks are well regulated; the financial sector is under control; the exchange rate is well managed. There are problems, I know, but we have had a Central Bank with a distinguished tradition.

What we are looking at now, Mr. President, is the securities industry. As an economy grows, as it develops; as it becomes larger, in terms of the GDP, the value of goods and services produced; as it becomes larger, in terms of the 400 with a lot of zeros that Sen. Al-Rawi spoke about, over the last number of years, we know that we have a large flow of funds. The flow of funds would generate a tremendous surplus, which would be seeking an outlet and whenever there is a demand, a supply will always originate. So, if there is a demand for a fixed deposit instrument, there will always be an agency, a financial institution that is going to provide that particular instrument that is in demand, not that the instrument is necessarily good. We need a regulator to ensure that the instruments supplied are legitimate instruments.

I come now to the regulator. The regulator is the Securities and Exchange Commission. We have had one for the last 18 years, since 1996. Mr. President, I am not impressed with their performance, and I am not impressed with the performance, not because it is something to say, but because I have had the opportunity to examine this agency. And, looking at the 1996 law, which originally created the institution, I saw that the law was very clear on insider trading. The 1996 law, which was subsequently amended in 2012, and I think we are now amending further, was very clear, with respect to a problem which the legislator at the time thought was an important problem, which was insider trading; insider trading referring to unfair competition in the market.

Eighteen years later, with the old law, we have not seen a single case being built up. I am not talking about anyone "cutting a jail" on the matter, but we have not seen, over the past 18 years, a single case where a dossier was built, a file was created and a case was prosecuted. It could not be that over the last 18 years, individuals in Trinidad who have come to the stock exchange for the first time, were individuals whose character was beyond repute, beyond dispute. It had to be that there was a level of malfeasance, perhaps, which was not detected. We have had anecdotal evidence and we have seen nothing come to light.

I was told that: well, you know, it is very difficult to build a case against someone. Well if it is difficult what you have to do is exercise greater effort. But when I looked at the organization, I saw, from the last time they came before the Public Accounts Committee, in a staff of around 60, only about five individuals were involved in actual investigations and that the policing arm of the organization was very ineffective. Clearly, what we are doing in the Legislature is we are producing excellent law that will satisfy the international community, that the securities law in Trinidad and Tobago is very, very well refined, that we are on top of all the problems which are currently in existence and the law is flexible enough to take into account problems which may arise in the future.

But yesterday, Mr. President, I spoke and I focused my two one-hour contributions on institutional failure and I did specifically cite the Securities and Exchange Commission as an institution, in my opinion, which has failed. I spoke about Town and Country Planning as well, because we have passed a very good planning law recently and one waits to see whether, on account of the new law that has been passed, there will be some amelioration of illegal quarrying in our natural resource, the Northern Range.

Any time I go to the Asa Wright Centre I always see a little patch of the hill brown and I am hoping now, that with the new law, with the new piece of legislation that passed with unanimous support in this Chamber, that there will be something translating on the ground to make sure that the law is actually enforced. We would like to enforce the law. The laws in securities fraud need to be enforced.

Mr. President, we have had people who have made the news over the last two decades, with respect to the airport scandal. We have heard the names of Ish, Brian and Steve as if they are Wynken, Blynken, and Nod and we know that there was a level of wrongdoing there. But we have had a fraud of colossal proportions, which has brought a recession in this economy for the last five years in the Clico matter and we are not seeing anyone talking about any kind of prosecution or anyone paying the price in the manner in which Sir Allen Stanford and Madoff are currently doing time for what they have done to the financial landscape of the United States.

Sen. Dr. Balgobin: I talked about it.

Sen. Dr. D. Mahabir: My good friend, Rolph Balgobin has spoken about it and I want to emphasize his point that we want, really, to send a signal, in Trinidad and Tobago, that if someone is a petty thief, he will get the due treatment from a magistrate in a lower court and if someone is a grand buccaneer, he too will find a similar treatment at a higher court and we would like the SEC to be able now to send a signal to the population that the old way of doing fraud is not going to continue. You will have to find new ways of doing fraud because the old fraud is a fraud that we have under control. We have our investigating arm and we will bring you to swift and speedy justice. We will build a case against you.

In the United States, the SEC has, on average from what I have read on their website, 100 prosecutions for Ponzi schemes on a year. They do prosecute and they wiretap. You have to find—it is a unique policing agency. It is not the typical type of investigation that you would want. The SEC works closely with the FBI. The FBI wiretaps and collects the evidence.

2.45 p.m.

And when another agency appeared before us in the Joint Select Committee, we were told that if there was a suspicion of fraud, the police has every authority to engage in monitoring conversations so that they can get information about wrongdoing, and then you have the police being the investigating arm, the SEC collecting the evidence, the SEC giving the directions, and the Director of Public Prosecutions building up the case so that it can be prosecuted.

Unless we get there, Mr. President, unless we see somebody "cutting a jail" in this country for the kind of white collar crime that has existed since 1980, this piece of legislation is going to come to naught. Let me repeat that. I want to repeat it. Yes. Unless we see someone in this country—[*Interruption*]

Sen. Prescott SC: "Cutting a jail."

Sen. Dr. D. Mahabir:—well, let me not say "cutting a jail", it becomes "making a jail" now—"making a jail"—with a stiff jail time for engaging in fraudulent activity in the securities industry, this Bill is going to come to naught. Because given the lawlessness of our society—and I focused my contributions yesterday, Mr. President, and I want to emphasize the point—we have a crisis of failed institutions; we have some institutions in this country that we need to look on as beacons.

You know, I consider the First Citizens Bank to be a flagship institution in Trinidad and Tobago. Since its creation from the three institutions under the direction of our esteemed Minister of Finance and the Economy, there was little by way of a loss of confidence in the institution on account of fraudulent activities or dishonest activities. I do not think it is fair to say that the FCB was a bank that was singled out for a bank in which there were irregular practices.

There is another institution. It is not as if all of our institutions have failed. There is another institution, the Unit Trust Corporation, one of the finest institutions created in this country way back in the 1980s, 1981, which has over the years shown itself as an institution that can serve the population, those who are trying to accumulate capital; it can serve the population, and the impression of improper and illegitimate activities within the organization simply does not exist. Not that they have not made bad investments, but in making investments on money there is some permission for error, some leeway for making a few faulty investments, as long as those that you have which are legitimate are going to compensate for the minor losses that you are incurring.

So we do have excellent institutions, we have a Central Bank, what we do need now is that Securities and Exchange Commission to understand the critical role it is playing with respect to the reduction of securities fraud. It is important for wrongdoers to know that there will be punishment, and stiff punishment, not just fines. These people must do jail time because usually the perpetrators of fraud are, because of the fraudulent activities, wealthy enough to pay the fine, and they are not concerned about social sanctions. These are people who lack shame, they are "unshameable". So that the actual fines that they pay are seen as a normal cost of doing business.

What you need to do is for them to rub shoulders with some of the people, some of the gang leaders and gang members and so on, in blue collar and rough crime. You need them to do some time with those people for them to really understand that what they have done to the population, what they have done to the society, what they have done to the Ministry of Finance and the Economy, is wrong.

We speak a great deal about the payments and so on that we have to make, and these payments are small in relation to the payments which have come out of the public purse when a Minister of Finance has to intervene so that he uses resources to pay for the reckless disregard of individuals to how their behaviour is destroying people's lives and hard-earned property.

It would be good, I think, if the Minister of Finance and the Economy could have the staff undertake an analysis of how many miles of roads Trinidad and Tobago would have been able to construct. I understand we want to construct highways extending to Mayaro, and we want to have highways across the country. It would be good for the Minister to have his staff undertake a costing of completing the road network in Trinidad, and to determine whether the $21 billion that he had to pay in Clico would have defrayed the cost of that infrastructure exercise. That would be, Mr. President, the real cost of what the Clico bailout and financial fraud have done to Trinidad and Tobago. It has prevented the country from having its road infrastructure, and that is in real terms.

And we want therefore, for the Securities and Exchange Commission to start doing the small things. Their job is to look at prospectuses. That is their specialization. How could that agency, as knowledgeable as they are in the law as my colleague Sen. Al-Rawi has said, how could that agency have passed a prospectus on the FCB issue which was said to contain some flaws? That is what they do. You are not supposed to do that. And one waits again for the outcome of their investigation. We know it is patient—and I am very patient because I know

when someone goes to jail, if I have to go to jail I would like the case against me to be a very strong case, and so patiently build up the evidence. It should not be a flippant case because I will have my colleague on the right here as my attorney, and I am sure a weak case would be thrown out, so let it be a strong case. I have not yet retained him.

I understand when you pay an attorney a dollar, if you give him a dollar in his hand, I have read in a novel—yesterday I quoted from one novel—I have the other novel in which the moment you give an attorney a dollar and he accepts it, he has retained you as his client. So when I pass that dollar to you, Senator, and you accept the dollar, you know that any time I am threatened by jail, I have to get bail.

So that the reality is that we know that a case has to be built up patiently and slowly. We know that a wrong was done. The good thing, Mr. President, is this: as I have always maintained, in the FCB IPO in which there was wrong, no one on the Government side got a greater allocation of shares than they were entitled to. The evidence has indicated that, I would imagine every Member of the Government who applied would have gotten according to the laws.

No one in the Opposition was implicated, and so it meant that a bank that was state owned did not have with it the normal type of corruption which is politically associated corruption. It seems as though the Government's and the Opposition's hands were both clean on this matter. It is individuals there who were in the organization violating the trust of the Minister of Finance and the Economy who engaged in their own type of side deals and trading, and which then defrauded the people of the Republic of an allocation of a commodity which was in short supply.

The economic reality is simple. Whenever a commodity is in short supply, and whenever the shortage of supply has created a premium on its price, but that premium is not being charged, there will be excess demand. And whenever there is excess demand for any commodity, there will always be a subterranean market. It occurs in the foreign exchange market when the exchange rate is not equilibrium; it will occur in the market for baigan, and eddoes and aloo and onion. Whenever there is a shortage and the thing is under price control and schedule, there will always be a parallel market. I did not create that law, that is just a fact of the economy.

With the FCB situation, there was a commodity that was in short supply, a lot of money chasing a limited offering, and individuals, rational as they are, we are all rational people, we will not pay $25 for an item where at the same time on the same shelf you saw the identical item for $20. So, you go to the supermarket and you see a bag of soap powder, one is $25 and the same brand is $20 on same shelf, you are not

going to pick up the one for $25, you are going to pick up the one for $20 because to do otherwise means that you are not making the most judicious use of your scarce resources—basic 101 economics. And so what we found in the IPO was a potential for there to be a parallel market. And whenever there is a parallel market, there is always going to be some fraudulent activity. This is an activity that has to be investigated.

It did not include the Government, but it is important as we now engage in trying to get more of this paper property in the hands of the population that we learn from the IPO. We send a message to those who perpetrated the wrongdoing, that they are going to be called to account and called to book because in this industry there is a tendency, Mr. President, once the public has moved on to other matters, those who have participated in fraud, and who have mastered it are waiting once again to ply their trade on another unsuspecting population. There is no shortage of supply of those who hold the view that public savings are theirs to plunder, and we do need to send a message to those who think that they will get away with it, that not on this occasion, not this time.

I remember Sparrow singing a calypso, "all is mine, all is mine", well, about some guy from the Caribbean island stealing money from the fountain, and afterwards when the police "catch de fella", the police say "not this time". Well, not this time you are going to get away. We do need, as we have always emphasized, passing good law in this Parliament, we want to ensure that we can now enforce the law. We need to build the institution. We have financial institutions which are functioning very well, and this means our financial economy, Mr. President, is a stable one.

3.00 p.m.

We have taken the disruptions, but the time is now right as we move on, for there to be a strengthening of this institution, and a strengthening of this institution not only in relation to the enforcement arm of trying to track the wrongdoers, but also with understanding, having a staff complement, understanding every single financial product. Because now that we are in the realm of products which few people understand, we have found ourselves in a blurred area where investment houses merge over time more and more into casino operations, where what they are selling is so vague, imprecise, difficult to pin down and complex, that few people understand and that asymmetric information poses in my mind the next opportunity for major fraud. As it has happened in the north, it will happen here.

As we proceed, therefore, we need to ensure, one, the Central Bank can increase its own institutional capacity for looking after an increasingly complex insurance industry. The regulation of insurance is something that we have little experience. The Bank of England has little experience. We need to develop that if we are to implement the new

laws coming out in that area; and, second, we do need to strengthen this institution. I think it would be incumbent upon the Minister of Finance and the Economy and future Ministers of Finance to really ensure, Mr. President, that this institution can provide adequate reports to show, not what they are doing with respect to prosecutions only, but what they are doing to strengthen themselves. What is their work programme? What is their work plan?

I attempted to build an institution, Mr. President. It was the public utilities commission. I know what institution building is about. It is difficult, it is complex, it is demanding, it is time consuming. I was able to get people from Ofwat in England to come and advise us on how we can increase our own efficiency in that regard. It would, I think, be incumbent on future Ministers to keep an eye on this institution so that we know that they are getting the kinds of exposure, technical expertise, from institutions, regulatory institutions abroad which have dealt with a range of problems, so that in a short space of time, over the next five years, having had a period of 18 years in which to really get into the groove of action over the next five years, we want to see a lean, mean, aggressive institution. An institution that is a crocodile as my colleague, Balgobin, will say, but a crocodile that really bites.

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

Sen. David Small: Thank you, Mr. President, for giving me the opportunity to contribute in this debate. I want to begin by extending what I consider to be my congratulations to all those who participated in the effort. I think that the legislation that has come before us, when I spent looking at the 453-page document, I recognized quite a bit of effort went into it, and I think this is what the Parliament is supposed to deliver when we engage in a process. It has gone through several levels and what has come out is really a robust document. I have a few comments I want to make, Mr. President, if you will permit me, before I deal with one or two, just one little issue.

Mr. President, in my thinking into this, the Government of the day is challenged with the distribution of wealth and management of the economy, and there is a feeling in the society that the gap between the haves and the have-nots—this is not the TV show. But there is a widening gap between the haves and the have nots in the society and whether we think so or otherwise, I think that there is a perception at least in the market.

There is also something that probably no one wants to talk about in Trinidad and that is what is called the "underground economy", where there are movements of cash flows that are not in the "formal system"; and you know we have been experiencing a huge toing and froing in the past few weeks with persons trying to access US dollar currency at a time of the year when there should not be this abnormal demand, and there is a logical explanation for that. But no one wants to talk about it and I will just indicate that there is an explanation for why this is happening.

Mr. President, I think that when I think through this whole process of governance and trying to understand how I spent many years in a governance role in an institution—I was actually the chairman of the board's audit committee. So I spent several years, so nine years understanding governance. I understand the whole issues with Enron and WorldCom and what led to it; and what is called Sarbanes-Oxley; and putting things in place so that reporting standards are in place and the responsibilities placed on boards of directors, responsibilities placed on the management. I learnt new terms such as "illusory earning". It is just an entire science in and of itself, and when I think about what we are trying to do here with this, I tend to agree with my colleague, Sen. Dr. Mahabir, that this seems to be quite an excellent bit of legislation. Our concern is enforcement. I look at it and I look at the SEC website—our local SEC—and I look at what they are charted to do and I have a question: what is the focus of the SEC? And that is material to getting what we want.

Mr. President, if you look at the website in the UK, it is called the Financial Conduct Authority and their website says:

> "The job of…the FCA"—is to pursue enforcement to—"change behaviour by making it clear that there are real and meaningful consequences for those firms or individuals who don't play by the rules."

That is the body that is charged with managing all the financial institutions in the country and their focus is on enforcement.

I go to the Securities and Exchange Commission of the USA. You look on their website and it is a very short statement, but it is a very succinct statement. What they say is that enforcement is their number one priority. So, I ask this question because I am trying to, in my mind, the exact statement—I am just flicking to the website here. It says and I quote:

"First and foremost, the SEC is"—an—"enforcement agency."

So is the local SEC an administrative body? What is the focus? For me, it is not immediately clear, and when I look at the legislation in front of us and I see that when they are doing, I think it is section 150(1):

"The Commission may appoint a person to conduct such investigations..."

I am asking, perhaps, what is the trigger for the enforcement?

In other jurisdictions—and probably I am guilty of looking at too many other jurisdictions—there seems to be an inbuilt enforcement capability, and enforcement is the core of what they are charged to do. They have administrative things that they do also, but their focus is on enforcement and making sure that people know that if you

want to be a party in the process, you are going to be looked at very closely, and if you have "infracted", you will be penalized. And this brings me to the point that has been raised, again, by colleague, Sen. Dr. Mahabir, that in its 18 years of existence, the Trinidad and Tobago Stock Exchange Commission has never successfully prosecuted anyone and that has to be some kind of record. Trinidad and Tobago is the cleanest place. White-collar crime does not exist. Has to be. It just does not make sense.

After the WorldCom scandals and Enron scandals in the USA, the SEC of the USA formed something called the Corporate Fraud Task Force in 2002, and in the first five years of its existence, it obtained 1,236 convictions. Not prosecutions, convictions, because people were just doing the wrong thing and they started to clamp down on it.

In the past five years, Mr. President, federal prosecutions, they have secured 81 convictions out of 88 prosecutions for insider trading alone and they look at Ponzi schemes and, Sen. Dr. Mahabir's favourite person, Raj Rajaratnam, is not "cutting a jail". He is in federal custody for 11 years for Ponzi schemes. And my question is the focus of the SEC and I think that needs some work. My sense is that they are very much in an administrative mode and if something glaring occurs then they may ask somebody to investigate it, but they are very much in an administrative mode, operational mode. They are not necessarily in an enforcement mode. I think that needs to change for this legislation to really be effective and deliver anything, that is foremost.

You know, lots have been said about the FCB IPO and all sorts of issues. We were talking about something else completely different yesterday, and I am saying I heard some wonderful words, self-serving, himself to himself, conflict of interest. Why did someone not say when the FCB matter was going on, himself to family members, himself to co-workers, himself to himself? No one said anything because that is a classic case. Insider trading is himself to himself, himself to his friends, himself to his family members, and that is what is going on. So I am acutely interested in the outcome.

I understand it is a complicated matter, it takes time, but from where I sit, if there is not even an attempt to have a prosecution, I think that the general public will start to have some questions that they are going to ask because the information that is available now points to some sort of malfeasance. But I am not an attorney, let me stay away from that. I have no information to convict anyone.

There is also the issue of market misconduct and that is something that really requires—I mean, I have seen, I think, section 158. There is some text in there, but I am, again, what is the trigger? How do we do it? The Minister of Finance and the Economy would get tired of me talking about the ways in which the financial system

here works. I know in the US and in the UK, they conduct what is called regular reviews of the retail and commercial banking sector, and they do it to identify where competition may be weak or not working properly to the detriment of the population. Do we really understand whether or not the retail banking sector is competitive or is it weak; and is it acting to the detriment of the population? Has anyone really asked that question?

I am not going to mention my pet peeve about the credit card rates, but the issue raised by Sen. Dr. Mahabir about his attempt to earn a credit card, yesterday, should point us in the direction we were looking at, that something is not altogether correct and it needs someone to look at it.

Is the SEC the right body? Is the Central Bank the right body? Is the Ministry of Finance and the Economy the right body?—to say, listen, let us do an analysis of what is going on with the retail banking sector and conduct to see whether or not—because they are there in my understanding to serve the public. They are there to make a return for their shareholder. I have no problem with that, but I think that every quarter record profits and I cannot get anything for my money in the bank. It seems heavily weighted against the consumer. That is how it appears.

So, Mr. President, I think that the legislation before us has several measures in there, but I am concerned about whether or not there is enough support within there for the enforcement of the legislation. I do not think that the SEC as it is currently focused, or set up, has the wherewithal, the ability, the capability to do any enforcement. The fact that it says at section 150, they may appoint a person to conduct such investigations as they consider; no, that is not good enough. Enforcement should be your mandate. Administrative things, checking forms, okay, that is part of your job, but your focus. Which is why I am saying, what is the focus? And I think that needs to come—

The legislation cannot inform the focus, but that is something that could come—directions, from the Ministry of Finance and the Economy and say, "Listen you need to change your focus and you need to focus on making sure there is enforcement". And when there are deviations in the enforcement, enforce the penalties, put the penalties in place, have the administrative actions or whatever actions need to take place happen because if you do not do that, you create a system where no one is afraid of the penalties because the penalties are not being applied.

There is always a case in Trinidad. You transplant a Trini to another place, and all of a sudden they are the most law-abiding person in the world. Why? Because when they get to another place, they know that the penalties and the laws will be enforced in

that particular place. They come back home and they just do whatever they want and that continues to be the style of operating, and until such time as we get in the mode of saying, not necessarily zero tolerance, but zero tolerance when you break the law, when you have clearly broken the law.

I have a concern because I looked through the legislation with quite a bit of reading, and my concern is about not only acts of fraud—but I did not quite catch it—about conspiracy to commit fraud, and conspiracy falls in the same direction. If you sit and you get together a group and you decide to commit fraud or you did not get to do it, you are still liable for penalties. But the only way you could check is if you have a robust enforcement capability because how it is set up now, you are only going to find something going wrong after the fact.

There is nothing, from what I have seen, to be able to catch it while it is in progress or before it happens. Everything is going to be post. We are always in a mode, "oh these guys got away with this, shoots, let us try to investigate it". We are never in the mode, "oh, we caught them planning it before they got it". And there needs to be an element of that in there so that, like I say, I read too much, you have to forgive me. I try to place things, but we are always in the mode of catching things long after the horse has bolted.

3.15 p.m.

People have gone away with the money, the money has disappeared and whatever—share transaction is completed, people have resigned their jobs and everybody is a private citizen and everybody is walking around, "Who? I did not do anything. We are all innocent until proven guilty. Did not know anything." Why? Failure of compliance; failure of regulation. And why is there a failure? Because there is no enforcement. So that we need to focus on enforcement. I am making that point.

I am not going to talk about my other peeve about the tax-free Government bonds that I need to make sure our citizens get a share of the wealth. I am not going to talk about the fact that I would like to see the Minister of Finance and the Economy work and try to get tax-free saving bonds to make sure that the citizens of the country share the wealth a little bit. I am not going to talk about the tax-free bonds in any way. Yeah? [*Crosstalk and laughter*]

Sen. Dr. Mahabir: He will bring it in the budget.

Sen. D. Small: No, I am not talking about it.

Sen. Howai: He has not mentioned it at all.

Sen. D. Small: I have not mentioned it.

So, Mr. President, I go back to my initial statement. I think that the Government of the day, whosoever is the Government of the day, the sitting administration is, has a responsibility for overall economic management; they have a responsibility for wealth distribution. Government cannot abdicate its responsibility for wealth distribution. If they do that, then the feeling in the population is that the Government is not on their side, it may be on somebody's side but it is not on their side, and then you have other systemic problems that can come from that.

When you sit in a place where you have the State bank. I am probably getting—I see I do not have much hair again, I remember the Workers' Bank right at the corner of Duncan Street and Independence Square and then it morphed into the NCB. People, do you know what NCB is? National Commercial Bank—exposing my age here. And the FCB is one of the stronger financial institutions in the country. You do not want to have a crisis of confidence in the management of the bank. You do not want that, it is bad for business. They should be dealt with harshly, quickly, and Government should be sending a clear message that the infractors will be punished, will be punished. They will not escape, not this time. All those who got away and went Miami and Gold Rush and all the other wonderful places that I think Minister Griffith is aware of. [*Laughter*] He has no particular interest in Gold Rush but he is aware of Gold Rush. All those who got away and went—[*Interruption*]

Sen. Griffith: Who? Me? [*Laughter*]

Sen. Al-Rawi: The Senator is well informed, Minister. [*Laughter and crosstalk*]

Sen. D. Small: All those who got away—[*Interruption*]

Sen. Al-Rawi: Even with Sen. Hadeed.

Sen. D. Small: My apologies, Minister. All those who got away, I want to stick a pin that not on this one. This is a national institution. Virtually every average person has an account in FCB, has some faith and confidence. There was clearly some act or acts of malfeasance and there should not be anybody getting scot-free away on the basis that the SEC cannot conclude its investigation. There is documentation, there were flaws, there were actions that were taken, and I am acutely interested in the outcome of that investigation because—I will not mention it again until it is time that it comes up.

So, Mr. President, first and foremost, I believe that in supporting the measures outlined here and in supporting the matter in front of us, I want to send a message, respectfully, and ask for the Minister of Finance and the Economy, the Central Bank, whoever is responsible for trying to have a conversation with the SEC to understand how do they change their focus, what is required to make sure that they have the requisite resources. It is my view on an analysis of what they have in their structure now and what their resources are, that they cannot administer the sector. The fact that we have not had a single successful prosecution in 18 years should be a huge red flag.

Sen. Dr. Mahabir: Not a single prosecution, not successful; not a single prosecution.

Sen. D. Small: Yeah. So something is fundamentally wrong. It could never be that in all the millions of transactions that have taken place in 18 years, you are trying to say that it is absolutely perfect. That simply does not exist. Perfection does not exist in the environment. It does not exist. So that all it means is that things have happened and people have either not caught them or just seen them and left them alone, and that is not good enough for where we are going forward. So, Mr. President, with those few words, I want to thank you. [*Desk thumping*]

Sen. Dr. Rolph Balgobin: Thank you, Mr. President. I just have a couple of points, I do not expect to be more than five minutes. I rise in support of the report of the committee and the legislation that it has put forward. I think this represents a phenomenal piece of work and my congratulations go to each and every Member of the committee, and to all of the people who supported what clearly appears to be a rigorous piece of work. As I said, I just have a couple of quick observations.

The first is, I suppose that it is too late for me to turn the tide, but I certainly am of the view that the chair of the SEC should not be appointed by the Government or by a Minister. I think that if that is what I understand from what I read here, certainly I think that this is something that ought to be changed and that the President of the Republic be given a free hand to do as he wishes.

The second point I would make is really related to what Senators Mahabir and Small spoke about, I have a slightly different spin but not in disagreement with what they have had to say. But I wish to make the observation for both the Senate and for the wider community in Trinidad and Tobago, that white collar crime in Trinidad and Tobago has gone completely unaddressed since independence.

You know, the last time I think somebody did something white collar and they got some kind of legal affection for it might have been Farouk Warris with the EC0 and EC1 scandal, somewhere around there. That was about 30 years ago, probably more. That is

when we still had exchange controls and so on. I mean, this was a very long time ago. I do not really recall Trinidad and Tobago having a stellar record where white collar crime is concerned. And so I think that this is a societal oversight, it is a national problem.

Because, what we have signally failed to come to terms with is the little black boy, as we call him, with the gun, the man, whoever he is, has on—whatever he has on—and he has a gun in his hand, he does not have these commissions that do not work, he does not have the legal framework that does not work; he does not have the Ministries not working. That guy does not do any of those things. Does he, Mr. President? I mean, it is really the intelligence of the population, the elite, people like us who either make things work or we do not. But that is the young fella who is making a jail. [*Desk thumping*] So, he is looking at us and saying, "But you are a bigger criminal than me" and the truth is, in many respects, we are. So how does he equalize, how does he bring balance? He uses the tools he has and he uses the means he knows, and we get upset with him for that, but we ought to be thinking about this a little bit differently.

My view, Mr. President, and I am just saying this as I appeal to the better judgment of the Minister of Finance and the Economy and even to the Minister of National Security seated next to him, is that I think enforcement is a variable. It is a variable and we have got to a place in the society where we have started saying and we keep saying, "Lock up everybody".

Now, we have had all of these financial scandals in the late 1970s and 1980s—Trade Confirmers, International Trust—all of these things come right forward to Hindu Credit Union, Clico, now First Citizens Bank. Nobody has been locked up, nobody has even been interviewed as far as I have been able to determine. We had a whole entire Commission of Enquiry into Clico and Hindu Credit Union and still, nobody has even warmed the chair of—the visitor's chair of a detective's desk. [*Crosstalk*] Sorry? [*Crosstalk*] I did not mean to be pointing at you, apologies. [*Laughter*] I am just gesticulating. I will wave my hands at you, Mr. President. My apologies. But no one has been invited to come and sit and give a statement, give their version of events as far as I am aware.

So, I hear the Minister of Finance and the Economy but I am not persuaded that investigations have to take that long you know. I know that there are thousands and thousands of pages to go through but I think a lot of the cases in Trinidad and Tobago look pretty clear cut, and so what happens when you take long? People forget about it. It fades from the public consciousness and we ought not to do that. We should finish these investigations quickly. [*Crosstalk*]

Hon. Senator: We will remind them.

Sen. Dr. R. Balgobin: Well, that is what it ends up being, that people like us have to stand here and remind.

Well, I am sure that the Hindu Credit Union and what happened there, pales in significance to what Allen Stanford did and he has made a jail. He got beat up in jail. We saw all of that too. Then he continues to be in jail. We saw everything. We saw Enron, we saw WorldCom, we saw Tyco, we saw Global Crossing, we saw Parmalat—all of these people. What? Jail. And Hindu Credit Union? Nothing. Clico? Nothing. And now First Citizens Bank, looks like nothing.

Hon. Senator: "Nah", it is something.

Sen. Dr. R. Balgobin: I should say nothing so far, nothing so far.

Now, that cannot be right. Other jurisdictions lock people up very quickly, but here is the thing with locking people up since this is what we are calling for. We all bay for blood now, we bay for blood, but, Mr. President, has it escaped our attention that the courts are full and the jails are full? So it is not that we are not locking people up, the courts full, jails full. So, I think that enforcement, if it is considered a variable, is a dependent variable; it is not an independent variable. The independent variable is capability. It is the capability of the commission to do what it is mandated to do in law. Capability, of course, is a function of what? Of funding and of talent, and so, we must ensure that the SEC is properly funded and that it has the right skills.

You know, when we first looked at this, sometime ago, that was always the concern. Does the SEC have access to a pool of talent with the mix of resources that are necessary to give life to the things that we are saying it must do in here? And the answer was clearly no. And so, we will find ourselves here when the next tragedy strikes quarrelling about the SEC's inaction, but really what we should be quarrelling about is their incapability to act because we have not funded them properly.

And I only rise to make this simple point because it occurs to me sitting here, reading this and listening to these discourses that we have had so far, that this is also true of all of the other commissions and service commissions we have in Trinidad and Tobago. They have all been under-resourced, they have all been rendered incapable, and so, my view is that the Parliament, us, we have been sucked into a model of advocating higher and "dreader" penalties. I feel just now we will have life imprisonment and something looking like the death penalty for almost everything. To me, that is where we are going. It is just we "ratch it, we ratch it up, ratch it, ratch it", because the capability is not there.

You see, if the capability is not there, then you have to make the penalties stiffer and stiffer and "dreader" and "dreader". This is as true for the police as for the SEC. But if the capabilities are there, then you can head problems off. How do you do that? You do that with regular monitoring, enforcement. It is a country with one and a half million people, if you jail everybody, if you jail somebody every time they make a mistake, you will lock up the entire population. We will become a penal colony like Australia 150 years ago. You cannot do that!

3.30 p.m.

Whose soul in here is pure? [*Laughter*]

Hon. Senator: Mine.

Sen. Dr. R. Balgobin: I hope "allyuh" could say that when your minutes run out. [*Laughter*] When your minutes run out, I hope you could say that.

Sen. Al-Rawi: "Purish."

Sen. Dr. R. Balgobin: It is not "purish". It is not off-white and cream and all these colours, right? How do we know that we should lock up somebody for the merest infraction? Do we know that? Do we really know that? Are we sure we know that? Because I would think with a small population and a live and capable SEC can head problems off by saying, hey, you did not fill this out right. Hey, you know you made a mistake with this. Hey, you did that. Do not do that otherwise these are the penalties for that. And what do you do? You encourage a set of behaviours over time, and yes, you are prepared to take harsher action when that is necessary.

So I just wanted to make the point that if you want this to work, the way for it to work and our evidence for it to be working is not necessarily how much people we lock up, it is how much people we prevent from making a jail, because we have been very good at monitoring, because we have the capability to proactively monitor and head problems off. That is a more advanced and esoteric form of governance, and that is the model to which I respectfully submit we should aspire.

Thank you, Mr. President.

Sen. Dr. Lester Henry: [*Desk thumping*] Thank you, Mr. President, for allowing me to make a small contribution to this Bill—or Motion to adopt the committee report on this Bill, that many others have already indicated that we are in support of. I would also like to add that, since nobody saw it fit to mention my name, I was there, [*Laughter*] [*Desk thumping*] and I think I made one or two significant points at some point along the way, yes. [*Desk thumping*] [*Laughter*] Not only on the revised Bill, but on the original Bill which we passed last year, and many a time, the Bill in session, the Bill was basically crafted by the Minister, myself and Sen. Al-Rawi. [*Desk thumping*]

Hon. Senator: "And dey leave yuh out?"

Sen. Dr. L. Henry: Yeah, yeah, yeah "de man leave meh out". [*Laughter*]

Sen. Howai: It is just that Al-Rawi had 63 amendments—he deserves mention.

Sen. Dr. L. Henry: [*Laughter*] But, yes, so having participated in the original 2012 Bill, and also on this committee that we are dealing with right now. And yes, the remarkable lack of imput from many of the Government Members must be noted in the *Hansard* record, but that is not my main point today. [*Laughter*]

I just want to make a few points in terms of some of the things that I think we have to continue to be concerned about, and just in general, of course, the area of financial services as I have mentioned before is something I have a lot of experience in. I do a lot of consulting work in the areas of regulation and so on. So I do not intend to give you a whole lecture which I could, on the pros and cons of this type of activity, in terms of preventing, as the Minister said, financial crises and failures and so on, which some of the other speakers mentioned.

And, of course, the key thing that we must understand in terms of preventing these crises that the Minister mentioned was that you must have things in place in your society, in your economy, in your regulatory structure that prevent speculative bubbles, because behind every crisis usually there is a bubble that precedes it, and many of us are fully aware of all the different bubbles that eventually burst, and created the havoc that we saw in 2009 and continuing, because it has not quite played itself out yet.

So we definitely have to be alert in the economy to look out for when we see speculative bubbles rearing their heads, and very often if we look back at the Clico situation, if we look back at the HCU situation, there were enough triggers as many of us know, to alert many of us if not all, that something was not right, and, of course, we have seen it is not only limited to us. In the big economies, as well the dot-com bubble, the housing bubble in the US which is really at the base of the financial crisis, that came to fruition in 2008/2009.

There is always some kind of unusual economic pick-up in economic activity surrounding the event, and it always hints to a kind of Ponzi scheme arrangement. So, therefore, there are triggers that our regulatory agents are supposed to be looking for in terms of the origins of these things, and timely intervention could always help avert these types of crises. But again, the problem is we need to have the regulatory structure in place, and we have to have the people in the positions

who will actually be able to take action, because it is not good enough to say, well, okay, something is wrong. We need to have the strong people who will be able to intervene and be immune to some extent from political interference. [*Desk thumping*] Because as we have seen, we have witnessed, it is a constant problem, and as I am saying, it is not only a problem in Trinidad and Tobago, it is all over.

So I am not saying that we are particularly more or less corrupt in that respect than any other place, but significantly, we have to have strong, independent people in charge of our regulatory environment, otherwise as I always say, you cannot set a field for bad bowling. You could have as good regulation as you want, if you have people who are not willing or incapable of being independent and taking strong decisions, and that is why I always find that in certain positions, we should almost have a requirement that they be of a particular—people of a particular stature should hold those positions.

In doing my work in different parts of the Caribbean, I have run into that problem where you have—sometimes people try to say, well, a retired Chief Justice or a military person, somebody who has the kind of oomph, should lead certain regulatory [*Laughter*] agencies. I do not know if that is an unparliamentary word. [*Crosstalk*]

Sen. Dr. Mahabir: That is an excellent word, u-m-p-h.

Sen. Dr. L. Henry: So yes, we need to focus on that as well, and not just put people in places who will just be happy to be there, and you know, enjoying the perks of the office and so on, which is, you know, it is difficult, but it is something we should strive for. In other words, get people who are willing to be proactive to avoid these things happening. Of course, this comes from us as the people involved in the politics of the country, that you must be able to have these strong people, and support them when they are required to take strong action, not back away, right?

If we look at the models outside, generally a strong regulator has to be backed by a strong Government. If not, every time the regulator tries to take action, some political aficionado jumps in and says, you know, he is trying to destroy my business, you know. The regulator is at fault, they are being too aggressive toward me, and they complain to the politicians and the politicians call up the regulator and say, back off, right? This is the kind of thing that we hope we could get rid of permanently in our system.

Just a few things I want to say. The Minister also and several speakers mentioned the FCB IPO. I just want to add my two cents on that. Now, two different angles on this, the Rahaman incident with the trade of over the 6,000 shares and the investigation that appears to be going nowhere. The Minister talked about the difficulty in these investigations, in terms of gathering, coordinating and rechecking information.

But I would like him to clarify if he could, when he is just taking his minutes to wrap-up, if the investigation as of today is stalled, because of activities on the part of the lawyers for the people involved, if their lawyers have been able to stymie the work of the Securities and Exchange Commission in terms of their investigation? Because I heard that concern raised in certain quarters that the investigation is not—it has to do with the actions taken by many of the people involved, well, the attorneys of the people involved in the matter, and they are being able to obstruct the investigation.

So if that is the case, I would like the Minister to clarify that and shed a little bit more light on it. He could make the necessary calls if he has to, to help us understand why it is taking so long. We know it is a complex investigation, but we need proper transparency nevertheless, as to what is the state of that investigation. We also hope as I have raised before, Mr. President, that we see an investigation into the Seeterram trade, and the information that I am getting, is that that situation is equally or worse than the Rahaman situation, [*Desk thumping*] and we must have an investigation into that situation.

Given that I was on this committee last year and this year, I do not want to waste my time helping to pass laws, to build the law, and legislation, and as my colleague, one of our colleagues behind me was saying, no enforcement of it. Because we have some pretty clear-cut laws in the Bill, regarding the insider trading and market manipulation and so on. So what is the use of having all those things, if people can just do anything, and not even have an investigation? So we need that and we need it to be done quickly.

There are several other areas that I initially voiced concerns about, that, you know, even though I think we addressed it—oh, sorry, before I move on from this. I heard that whereas Sen. Mahabir talked about two and the Minister talked about two possible foul-ups, I have heard reference being made in the public domain to possibly other people who had conflicts of interest with connected parties. So the two that we know about, the Rahaman trade and now the Seeterram trade, that may not be the end of it. Because I am already hearing, I think it was mentioned on a radio station recently that there may be others who may be requiring some investigation, okay? So do not feel comforted just yet that it is only two people, there may be many others connected, and even though—and we hope that it is nobody directly in politics, but there is definitely some murmurings that there is more to it, more to come, okay?

Now, I also initially with the Bill, I was concerned about things like the timing issue, giving the SEC and the Minister a particular time frame to respond to complaints or to take action. I think we covered most of it in the Bill, but there are still, I am just doing a final check over. I saw there might have been a few places where we could

have been a little stricter in terms of timing, but I think we did most of it. We covered—because that was a concern I had in terms of the original Bill, that we must always have time frames, in terms of when, either the regulatory agency or the Minister will have to act, because one of the things we have been guilty of traditionally is not enforcing or having time frames.

So you apply for something in our laws, and let us say, the Minister has to approve it, and there is no time period in which the Minister has to respond to you. So that was a critical area for us to address, and I think there was some attempt to do it in this revised Bill and so on.

3.45 p.m.

Then, also, one of my main concerns when we came back for the revised Bill in that initial debate was the potential overlap between the Central Bank and the Securities and Exchange Commission and, in terms of the expanding powers that this revision will give the SEC in terms of evaluating risk. So what we were told in the session was that there is some kind of MOU between the Central Bank and the Securities and Exchange Commission, so that you would not have a kind of confusion as to who exactly is the regulator in a particular matter.

I raised the issue at the time of the commercial banks owning brokerage houses so, therefore, you had the Central Bank responsible for regulating the commercial banks and the SEC looking after brokerage houses. So, you had that potential for regulatory arbitrage.

Now, I have not seen the MOU between the Central Bank and the Securities and Exchange Commission, but, hopefully, it is airtight enough so that we would not have this problem. Even though I am still a little bit uneasy, we will support it as we have said, but I am still a little bit uneasy that we have ironed that out properly.

In order to evaluate the risks and so on, I also want to stress one more time and put on the record the importance of giving the resources to the SEC to hire the kind of people that could actually do the work. I know the last time I raised the issue, the Minister said, well, they were in the process of bringing in some more people, but people with the right credentials and the experience because if we are talking about seriously being competitive and making the country a serious capital market in the region and globally competitive and so on, we need to have the right staffing in place.

We know traditionally it has been a significant problem that the SEC was generally under-resourced and understaffed and so on, so we cannot just stop at the legislation; we have to continue to put the resources in place, so that you will have people capable

of actually doing the work. Without that, we are just passing a Bill, as someone said, to satisfy international requirements and it may appear that, again, once we are just doing something to please IOSCO, or whoever, to get membership and, as soon as we get that, we go back to the same old ways of doing things.

With those few words, I thank you, Mr. President.

The Minister of Finance and the Economy (Sen. The Hon. Larry Howai): Thank you, Mr. President, and I would like to thank Senators for the support which the report to this honourable House has received. I want to, in response to the last speaker, Sen. Dr. Henry, acknowledge Sen. Dr. Henry's *Hansard* contribution. [*Desk thumping*] As I said, you know, it was just that Sen. Al-Rawi's record 63 amendments deserve special mention. So it was not intended as any slight, Senator, and I did call out the names of the members, all of whom participated in the preparation of the report and the deliberations of the committee.

I want to say that they emphasized, again, because it has come up, the strength of the financial system in Trinidad and Tobago. There have been one or two areas which the Inspector of Financial Institutions has mentioned—and I know that he is monitoring one or two institutions—but, by and large, all our banks, all our major insurance companies, the non-banks, they are all very well capitalized. They are very strong; they are well managed and, Mr. President, I think, for the record, we need to say that we do have one of the strongest financial systems in this part of the world, in this hemisphere. So I want to emphasize that.

I would like to make mention in passing of a matter which Sen. Al-Rawi raised in respect of the expenditure of the Government. I know we have a difficulty in the CXC with the passes in mathematics. The maths passes—you know, when Sen. Al-Rawi tells me it is $400 billion that has been spent; in four years that would mean that the expenditure would have been $100 billion a year. No budget has been—[*Interruption*] Nearly, all right, nearly, but even if I say $390 billion or $380 billion, it is still way off from—[*Interruption*]

No, perhaps I could say that for—yeah, it is 50, 50, 55 and 65, the numbers, which would be about 225, if you include the four years, and you probably may be including next year's budget also to add to the number.

Sen. Ramlogan SC: No, he probably is talking about his personal wealth.

Sen. The Hon. L. Howai: Well, all right, his personal budget, but, anyway, the thing is that, Mr. President, I just wanted to state, for the record, it is not $400 million or nearly $400 million. [*Desk thumping*]

Hon. Senator: $400 billion.

Sen. The Hon. L. Howai: Okay, thank you for the record there. Thank you. [*Interruption*] It is okay, we have dealt with it. [*Crosstalk*] So I just thought I would, perhaps in passing, correct that.

With respect to the SEC, yes, there has been some criticism of the SEC and of the work of the SEC, but I have to say that, certainly, the professionals of the SEC and the level of professionalism exhibited, certainly in the interactions which we have had with that institution have been certainly marked. It has been certainly very positive and I can speak very favourably of the professionalism of the staff.

I think they now have a little bit more of the capability, of the teeth of the resources to do things that perhaps could not have been done previously. This new legislation certainly gives the SEC the capability to pursue things in a way that perhaps they may not have had before. I do acknowledge that, as certainly Sen. Dr. Balgobin has indicated, it has been sometime since anyone has been charged and convicted in respect of any activity of which the SEC or related institutions may have some jurisdiction. It is something that we are all working on and I think it is for us to, in the Parliament here, give whatever support we can to the SEC to ensure that it can carry out its work.

Again, the issue of the First Citizens IPO has dominated some of the discussion earlier today and, again, I want to emphasize that you are talking about a relatively small number in—I have indicated that there are possibly three transactions out of the 12,000 that perhaps may require some kind of action. From a public policy point of view, we have to always remember what we want to do in terms of the initiatives that we want to implement to see the growth and development of the market. Therefore, whether we will allow three transactions to certainly create a situation where the public policy agenda cannot be implemented is something that we have to pay attention to. One of the things we want to see is the development of that capital market and we need, therefore, to emphasize that as we go along.

With respect of the SEC and the MOU, Sen. Dr. Henry did raise the issue and my information is that the MOU was actually executed on January 06, 2014. So that arrangement between the Central Bank and the SEC—as far as the overall management of the work of regulation between the two institutions and the sharing of information—is something that has already been put in place and is now being actioned.

Again, the issue of time frames for action and for making sure that things happen is something that has come up for question and, again, remembering that we are young in this particular business and the experience and expertise are now being developed, we do look forward and I am sure that nothing is going to be swept under the carpet in any particular way and that the SEC will take all of these investigations to their logical conclusions wherever those may lead.

Mr. President, again, I want to thank Senators for their support. I want to thank the members of the committee and certainly all the technical teams that helped us in bringing this piece of legislation to this point.

With those few words, Mr. President, I beg to move. [*Desk thumping*]

Question put and agreed to.

Report adopted.

Mr. President: Members it is now 3.56 p.m.. [*Interruption*] Minister of Finance and the Economy.

Question put: That the Bill be now read a third time.

Question put.

The Senate voted.

AYES *28*

Singh, Hon. G.

Coudray, Hon. M.

Ramlogan SC, Hon. A.

Howai, Hon. L.

Griffith, Hon. G.

Hadeed, Hon. G.

George, Hon. E.

Karim, Hon. F.

Tewarie, Hon. Dr. B.

Bharath, Hon. V.

Lambert, J.

Maharaj, Hon. D.

Ahmed, Hon. R.

Ramnarine, Hon. K.

Scott, Miss A.

Robinson-Regis, Mrs. C.

Al-Rawi, F.

Baldeo-Chadeesingh, Mrs. D.

Cudjoe, Miss S.

Singh, Mr. A.

Drayton, Mrs. H.

Balgobin, Dr. R.

Wheeler, Dr. V.

Prescott SC, E.

Mahabir, Dr. D.

Small, D.

Abdul-Mohan, Rev. J. E.

Henry, Dr. L.

Question agreed to.

Bill accordingly read the third time and passed.

Mr. President: Hon. Senators, I resume where I was earlier. It is now 3:59:34 and I propose to take the tea break at this point. [*Interruption*] This time it is 3:59:59 and I propose to resume after the tea break at 5.00 p.m., with no prominences.

Hon. Senators: 5.30 p.m.

Mr. President: As the House pleases. We will be back here at 5.30 p.m.

3.59 p.m.: *Sitting suspended.*

5.30 p.m.: *Sitting resumed*.

CONDOLENCES
(JOHN GERALD FURNESS-SMITH)

Mr. President: Hon. Senators, it has come to the attention of the Senate that one of our former Independent Senators has passed away recently, and I would therefore like this Senate to have the opportunity to pay tribute to Sen. Gerald Furness-Smith who passed away recently. Sen. Hadeed. [*Desk thumping*]

The Minister of Tourism (Sen. The Hon. Gerald Hadeed): Mr. President, on behalf of the Government and people of Trinidad and Tobago, I stand here today to pay tribute to one of our very own, a former Independent Senator, John Gerald Furness-Smith, my good friend of more than 40 years.

John Gerald Furness-Smith passed away peacefully on July 04, 2014. He is the third of my very good friends, my comrade and mentor, this year who has left us. First was Mr. ANR Robinson, our President, our political leader; then we had Mr. Karl Terrance Hudson-Phillips and now Gerald Furness-Smith. They all had in common, not just the fact that they were lawyers, but they were all national heroes, exemplars, men of integrity and vision, and they were all patriots. In Gerald's case, he was awarded the Chaconia Gold in 1995 for his services to our country.

Gerald was born in England in 1923 and studied history at Oxford University. He then joined the British Army and was posted in East Africa and India. He was admitted to the Inner Temple as a barrister in London in 1949, and to the Bar in Trinidad and Tobago in 1950. In 1956, Gerald decided he did not want to be a barrister any longer, and was admitted as a solicitor in England in 1956, in Trinidad in 1957 and in Barbados in 1965. He became a partner in the firm of Fitzwilliam, Stone & Alcazar, one of the oldest and largest law firms in Trinidad and Tobago, and his name was added to the company which then became Fitzwilliam, Stone, Furness-Smith & Morgan. Gerald was the senior or managing partner for 19 years from 1982 to 2000. During that time, in 1991, he was appointed Senior Counsel.

He was an Independent Senator from 1981 to 1991 and contributed significantly to the body of learning which comprises the heritage of this institution, the Senate or Upper House of Trinidad and Tobago, of which we are the latest members. Hopefully, all of us would add value to what he and our predecessors did and said, their legacy of dedication, love, scholarship and concern for this Senate and this country of ours.

Gerald retired as a partner at the end of 2000, 14 years ago, but nobody could keep him away from the profession he loved—and to which he had dedicated most of his life—his colleagues and those professionals he had mentored and whose careers he had guided. He remained as a consultant to his firm, and was joint editor of the Trinidad and Tobago Law Reports and served on the Council of the Law Society.

I met Gerald, with whom I shared a first name and a firm friendship, 40 years ago, at the Union Club where we played bridge together almost every day. He was passionate about the game and also about golf, which we also played together over the many years. He helped me with a lot of sound advice, allowing me to pick his brains and remarkable knowledge of the law. He was an expert in every field of law—he was

like a compendium or an encyclopaedia—but he added his personal perspectives which were always very sound. In the last years of his life he specialized in tax law, but in any field—commercial, corporate, constitutional—he really added value to the discussions of this honourable Senate. His departure from the Senate left a void that—and with all due respect to all my colleagues here—has not really been filled as yet. His experience, expertise and ongoing education made him a truly formidable legal force and advocate.

Like Karl Hudson-Phillips and Mr. ANR Robinson, he was very special and his passing, like theirs, ended an era, a special period in the history of our country, where we sought to strengthen our institutions, provide a basis for institutional development, and more than everything else, ensured that the law and its practitioners were respected. They were stalwarts on whose shoulders all the succeeding generations of lawyers now stand, and hopefully will build on.

I want to extend, on your behalf and on my own, the sympathies of this honourable Senate to his wife Joan and to his children and grandchildren. Rest in peace, Gerald. I know that your contribution to our country, coming at a critical time in our history, will always be remembered and will forever be valued. Farewell my friend and colleague, mentor and comrade. This country and I found in you a gentleman in whom we could build an absolute trust, a patriot and an exemplar.

God bless you Gerald. Thank you. [*Desk thumping*]

Sen. Camille Robinson-Regis: Thank you very much, Mr. President. Mr. President, the People's National Movement recognizes with sadness the passing of a former colleague, John Gerald Furness-Smith SC, who served in this esteemed Upper House for two terms from 1981 to 1991 as an Independent Senator.

Whilst I did not have the opportunity to work with Mr. Furness-Smith directly, as I joined the Parliament as a Senator from 1992, I have spoken to many of my party colleagues about him, and they have all remarked on his honourable representation as an Independent Senator, his knowledge of the law as seemingly boundless, and the fact that he contributed admirably to the chambers of which he was well a part.

Mr. President, the hon. Leader of the Opposition, Dr. Keith Rowley, served as an Opposition Senator during the time that former Sen. Furness-Smith served as an Independent Senator, and talked to me many years ago about Mr. Furness-Smith and always viewed him as an exemplary Senator able to see the myriad sides of any issue, and able to arrive at a fair and thought-provoking opinion.

In preparing this tribute today, I took the opportunity to speak to Dr. Rowley again, and he from his interaction with Mr. Furness-Smith had this to say about Mr. Furness-Smith. He said that he contributed selflessly to the development of Trinidad and Tobago via his expertise in law, as a Senator, an editor of the Trinidad and Tobago Law Reports and on the Council of the Law Society. He also said that he was a true and dedicated contributor to public service and overall national development, who was never shy to respectfully express his views on national matters.

He made an immense contribution to the preparation and enactment of numerous items of legislation. He gave selflessly of his analytical legal mind and his invaluable experience as an attorney-at-law and as a citizen of Trinidad and Tobago. That is how Dr. Rowley expressed his opinion of Mr. Furness-Smith, and so I have placed it into this tribute today because he worked closely with him.

Mr. President, in his retirement years, though away from his professional life, Gerald Furness-Smith continued to be an active citizen, acting as a consultant for his law firm and always willing to comment on matters relating to law and public policy, and his contribution was recognized nationally as Sen. Hadeed said, during independence celebrations in 1995 when he was awarded the Chaconia Medal (Gold) of the Order of the Trinity.

His opinions would be missed by those of us who are committed to serving at this level of the nation, and we of the PNM offer our sincerest condolences to his family and other loved ones who would miss him as a husband, a father, an uncle, grandfather and a friend.

We know that his work and his stature as an attorney has inspired and sparked the success of many young attorneys over the years. We offer our sincerest sympathies to his wife Joan, his sons and his grandchildren and we ask that his soul rest in perfect peace.

Thank you very much, Mr. President. [*Desk thumping*]

Sen. Elton Prescott SC: Thank you very much, Mr. President. Mr. President, I too, I am pleased to join in the tributes to the late Gerald Furness-Smith who, as we have already heard, had served in this Senate during the years 1981 to 1991 and who, even before that, had already established himself as one of the outstanding practitioners at the local bar and, more latterly, if I may put it that way—although I am talking about a career that spanned 54 years of which he had only spent a few, six or seven as a barrister, but who latterly had practised as a solicitor in the then bifurcated profession that we had and, subsequently, as an attorney-at-law.

When I came into the practice, the firm of Fitzwilliam, Stone & Alcazar was one of the few very large firms in Trinidad and Tobago, very successful from all appearances, and he led Fitzwilliam, Stone & Alcazar at the time. I believe he continued to do so until quite late in his life, and then retired maybe a decade or so ago and remained as a consultant thereafter. I was not going to say it, but as I looked up I thought I should mention some of the names of large firms that I met in those days: the J.D. Sellier & Company, Hamel-Smith & Company—and I do that deliberately—and Pollonais & Blanc. For some of them the names have changed, Fitzwilliam being one of them.

But, more importantly, Mr. Furness-Smith whom I did not have the pleasure of meeting personally, impressed me by his physical stature, an imposing intellectual only by the look of him and, of course, that was confirmed whenever he opened his mouth. He, like several others of the immediate post-war years, spoke in a fashion that we seldom hear these days in our country from people who are born and grown in Trinidad. It caused you to listen because there was a certain degree of erudition in the way he delivered a measured speech that caught your attention and held it to the very end.

5.45 p.m.

It is to our great regret that we do not have people who pattern themselves in that regard or in that fashion today, but, nonetheless, communication is what it is and, I suppose, one could say, once we have the capacity to understand each other, then people like Gerald Furness-Smith will remain as examples and we will set our own path in Trinidad and Tobago.

Among the things Mr. Furness-Smith achieved in his work in the profession, and I think Sen. Robinson-Regis had mentioned it a moment ago, is that he had been one of the editors of the Trinidad and Tobago Law Reports, which had survived for quite some time, and he had served on the Council of the Law Society.

Then in 1981 he came to the Senate as an Independent Senator and there he made his most public contributions, serving in a number of joint select and select committees, serving in 1982 on the Public Accounts (Enterprises) Committee for a period of five years, and the Standing Orders Committee of the Senate. He was outstanding to the best of our knowledge in areas of the commercial, corporate and constitutional law, and I understand he continued to contribute in those areas long after he had ceased to be in active practice.

More recently, I recall reading that he suffered the tragic loss of a granddaughter, I think I read in the newspapers, a child who quite clearly was adventurous and pursuing her own life in an enviable way, and I am sure that loss might have impacted on him greatly in his winter years. So for that tragedy we must also take note. I do not want to

close this tribute, however, unnecessarily on the low side, so I thought that I could put into the record that he was, notwithstanding all that I have said, a true Trini, and, Mr. President, you would permit me to quote from the *Hansard* of January 29, 1991, when he contributed to the debate on the Supreme Court of Judicature (Amdt.) Bill, a clause which sought to give the President the right to increase the number of judges, and he said, in objecting to it because he thought Cabinet should not really have that authority, he said:

> "…it could be suggested that the Government—and I am not speaking of this Government, some Government in the future which may like to adopt different standards—might think to themselves, well we do not like the judges, we cannot find any judge amongst our present judges who is suitable for our purposes to take certain cases, therefore we will increase the number of judges and put one or two people there who suit us. Now I am not suggesting for a moment that this Government, or indeed the last Government would think of doing such a thing, but our Constitution and our laws have been drafted not for this kind of Government, they have been carefully drafted to protect us in case a different kind of person gets into power at some stage."

And whom does he cite?

> "Some kind of Saddam Hussein, and if that situation—God forbid—ever arose, it is little things which they could exploit, little crevices in the Constitution, to get their way."

But here is the point, he says:

> "All it is asking to do is to increase the number of judges. As it stands at the moment, we know that they are catching hell to find a judge to appoint, let alone appointing extra people but we do not know what the future may hold."

I did not know until today that it would have been appropriate to say "catching hell" in the Parliament. I am certain that Gerald Furness-Smith had not experience many years of "catching hell", and I trust that wherever he may end up in his life now that he has crossed over, that life would be a pleasant experience for him—not life, before death, life after death will be a pleasant experience for him. I thank you, Mr. President, and wish that he rests in peace. [*Desk thumping*]

Mr. President: So I would like to join with Senators who preceded me in giving tribute to the life of John Gerald Furness-Smith. Gerald was in fact a colleague who I knew very well, we practised in the same area of law and, in fact, we served on certain subcommittees of the Parliament to do the Companies Act,

to do the public enterprise system, so that we had a fair camaraderie. You never fell out with Gerald, and the passage that was read by Sen. Prescott was typical of Gerald Furness-Smith.

The reason why perhaps it was not seen as unparliamentary was in fact because of the way he spoke those words, you would not have understood them to mean anything but, you know, to put the best of intentions and inferences upon them. Certainly, he was a man of impeccable character that I knew and I learnt a lot from Gerald. He was a mentor in that sense who was prepared to help his colleagues if he felt that, you know, they were erring on any side, and he always was straight as a die. You could depend on Gerald to speak the truth and to speak it without giving way, as it were, to the consequences of speaking truths.

So he made many sterling contributions here in the Senate, certainly, I recall in those days having read of his contributions here, and there were always matters in which he injected in a very timely fashion within his area of expertise to make sure that in the passage of laws, we got it right. So, certainly, for that sterling contribution we owe him a great debt of gratitude here in the Senate and, of course, in his own profession, the legal profession, it was noted that he was a barrister, started life as a barrister and then learnt fairly early on that the better side was in the solicitors' profession, of which I first qualified in at the time when we had what you refer to as a bifurcated profession, with barristers and solicitors.

So his passing leaves a void, but it also indicates that he was the kind of person who would act as an exemplar, as it were, a gentleman who we could fashion ourselves after and, in fact, Trinidad and Tobago would be better for men like himself serving in the areas where they are competent and capable to contribute. He gave yeoman service here in the Senate and we wish to express our gratitude for that and, ultimately, we would like to ask the Clerk of the Senate, on your behalf, and on my behalf, to express our sympathies on the passing of Gerald Furness-Smith to his wife Joan and to his children and grandchildren. In tribute to Gerald Furness-Smith, I would ask that we stand for a minute of silence.

The Senate stood.

PROCEDURAL MOTION

The Minister of the Environment and Water Resources (Sen. The Hon. Ganga Singh): Thank you, Mr. President. Mr. President, in accordance with Standing Order 9(8), I beg to move that the Senate continue to sit, taking into time the mover of the Bill together with two other speakers, one from the Opposition Bench and one from the Independent Bench.

Question put and agreed to.

Mr. President: We will continue in this matter.

INDICTABLE OFFENCES (COMMITTAL PROCEEDINGS) BILL, 2014

Order for second reading read.

The Attorney General (Sen. The Hon. Anand Ramlogan SC): I thank you very much, Mr. President. Mr. President, I beg to move:

That a Bill relating to committal proceedings in respect of indictable offences by Magistrates and for ancillary matters, be read a second time.

Mr. President, I introduce the Bill entitled the Indictable Offences (Committal Proceedings) Bill, 2014, which would seek to repeal the Indictable Offences (Preliminary Enquiry) Act, Chap. 12:01, which I shall refer to during the course of piloting as the existing law, and the Administration of Justice (Indictable Proceedings) Act, No. 20 of 2011, which I shall hereinafter refer to as the 2011 Act.

It is no secret that the criminal justice system in Trinidad and Tobago is in dire need of reform. In fact, with the introduction of the Civil Proceedings Rules of court, the civil jurisdiction has received the necessary boost in terms of reformation that was so badly required to assist in tackling the backlog that had accumulated in the civil jurisdiction. Unfortunately, the criminal jurisdiction has not been the beneficiary of a similar high-level intervention which combined both substantive legislative change and the procedural change by virtue of new rules of the Supreme Court of Justice. In fact, it is axiomatic that justice delayed is justice denied, and on the criminal justice system side of things, that is unfortunately very much true in many cases.

It has led to inevitable and inescapable, and sometimes indefensible criticisms that are justified about the slow and lethargic pace of justice in the criminal justice system. Law reform initiatives have been piecemeal in coming and there is the need to plant a stick of legislative dynamite in the criminal justice system so we can really open it up and allow for room to breathe so the winds of change can blow through it, and it is in that context I am pleased to present this Bill that will lead to the abolition of preliminary enquiries.

Mr. President, the 2011 Act represented an attempt by the Government to do precisely this, to abolish preliminary enquiries or to restructure it, as some might say. That legislation was based on the St. Lucian model, and at the time it was felt that, by my colleague, the former Minister of Justice, Mr. Herbert Volney, that was the way to go, and the Government had gone with that policy position.

Unfortunately, having reviewed that matter, it having been unanimously passed by both Houses of Parliament, it became readily apparent that there were many shortcomings in the legislation and there were many practical considerations that arose, that needed to be taken into account.

It is with that in mind that I present today a different policy position of the Government with respect to the vehicle that is used to abolish preliminary enquiries, and that is legislation that would be based, conceptually, on the Antiguan model, which has proven itself to be far more effective and simpler to manage with results that have vastly improved.

Mr. President, the preliminary enquiry procedure is one that is largely procedural. It does not contain or confer any substantive rights on the defendant or prisoner and, in fact, it has been rendered largely superfluous, redundant and somewhat otiose in the context of the development of the criminal justice system over the years. The various inescapable criticisms of it has led to the following points: one, it is archaic; two, it is detrimentally mechanical; three, it is purely procedural and it does not add value to the substantive rights along the due process chain; four, it uses up scarce judicial resources; five, it produces no real corresponding benefits to improve the delivery of criminal justice; and six, if anything, it has contributed in no small measure to the delay in having justice, both for the accused and for the public, through the Director of Public Prosecutions.

6.00 p.m.

Mr. President, in removing preliminary enquiries and replacing them with committal proceedings, what you will find is that the change has come, not at the expense of either the prosecution or the defence, but rather it has been a double-edged sword that has sliced into the fleshes of delay and the layers of bureaucratic delay that has plagued our criminal justice system, and it cuts both ways, and it cuts very deep. This is reform that is badly and urgently needed in our criminal justice system. The preliminary enquiries procedure has proven itself to be costly and onerous and burdensome in the dispensation of justice, rather than to assist it in any small way.

If one takes it in the context of the statistics—I have asked whether we could have them—and unfortunately although they are not available, almost every single criminal judge and practitioner you speak to, they would tell you that defendants getting away or being discharged at the preliminary enquiry stage is the exception rather than the norm. When I say the exception, it is a very small figure.

In fact, in the famous case of Prof. Vijay Naraynsingh and his wife Seeromani Naraynsingh, because of the evidential threshold test that is used in the Magistrates' Court, the magistrate, although he had freed Prof. Narynsingh, felt compelled to say in his reasons that the State's case, the prosecution's case, was tenuous, but nevertheless he felt compelled to commit him to stand trial for murder. Thankfully, that matter was disposed of in a relatively short time frame, but in the ordinary scheme of things, that person committed on "tenuous evidence" would have had to spend a very long time.

The idea here is to cut out and eliminate the preliminary enquiry, but to have that justice delivered up front to the person, so that they may have their day in court in a much quicker time frame. As I indicated, the 2011 legislation was an attempt to deal with the endemic delay that has permeated the criminal justice system. It has had a crippling and paralyzing effect on the delivery of criminal justice. It is no secret that the pace of criminal justice is notoriously lethargic, and something has to be done about it.

It is in that context that we are today at a most critical juncture in the ebb and flow of the development of our criminal laws, that we come here today, a full 97 years later, after we passed our first law in 1917 to introduce preliminary enquiries. We come here today, almost 100 years later, to change that law. That astonishing statistic by itself tells us that we are long overdue with this reform, and it could not have come sooner. I am, therefore, very pleased on behalf of the Government, led by the hon. Prime Minister Kamla Persad-Bissessar, to pilot this revolutionary change that has been talked about for such a long time. [*Desk thumping*]

Mr. President, in the 2011 legislation, we had the concept of criminal masters, and I will come to that to show why we had this change. When we passed that 2011 law, we all know what transpired after. It had the blighted section 34 experience, if I may use that, and that is before the courts, but it also contained several provisions which, upon review, the Criminal Bar Association pointed out would be very difficult to implement.

It is against that backdrop that I moved to set a committee in place to review the legislation. Having reviewed it, I felt it was sufficiently important to get someone, respected by all sides, from the criminal bar, who had a unique and peculiar scope and breadth of experience that would make that person useful to have to review this. The person I had selected was none other than the late criminal justice consultant, former Independent Senator, former President of the Law Association, former senior magistrate, former prosecutor, law lecturer, author of the most authoritative text on criminal procedure, and that is the late Miss Dana Seetahal SC.

Miss Seetahal was the consultant retained by my Ministry in this matter, and I want to place on record my profound gratitude for the hard and many, many, many, late hours

of work she put in to arriving at this particular destination with this Bill. Her experience as a defence lawyer and a prosecutor and a legislator was invaluable in this exercise.

Mr. President, permit me to take you now to the shortcomings of the 2011 Act. The first one was that that Act introduced a new tier in the administration of criminal justice. What was that new tier? The concept of criminal masters. The idea was that the criminal masters would case manage the criminal case as it arrives from the Magistrates' Court.

The problem there is judicial talent is very scarce to come by. We are advertising for lawyers in the Ministry of the Attorney General and you cannot even find lawyers to come and fill those positions. People feel that the law school is churning out a lot of graduates and there might be a saturation in the profession, far from it. In fact, I mean, I recently advertised three senior-level positions in the Ministry of the Attorney General, and in one case we had two applicants, in the other we had none and in the other we had none.

Part of the reason for that could very well be the terms and conditions that obtain in the public service, because you really will not get lawyers over 10 years call to come and take up positions quite easily in the public service. Yesterday we dealt with salaries review and pensions and all of that; it is inextricably linked to that, but it also highlights the fact that you are competing with a robust and aggressive private sector. You are also in a situation where many lawyers have, in fact, left and gone to greener pastures elsewhere.

To be in the service of the Judiciary, it requires a particular kind of personality type and a particular kind of disposition. You have to accept that you will be expected to live a hermit-like existence. You have to accept that you will not be able to mix and mingle as freely as you would like, and for any Trinbagonian that is an invisible price tag that some feel you can never compensate them for, and I have every sympathy for that as well.

So the first point is in the recruitment exercise to get those criminal masters. That by itself is a serious challenge that we will face as a government. The second is the Act did not contain any provision for the resolution of a disagreement on the part of either party, in respect of the election to deal with the matter summarily or indictably. In other words, if the prosecution said we wanted a summary trial, but the defence says we want to be tried indictably before a judge and jury, the Act did not provide a dispute resolution mechanism as to how to treat with that, because the master did not have any jurisdiction to resolve that issue.

So yes, you abolish preliminary enquiries, but one, probably, you gave them an election. One party elects to go by summary trial with a magistrate alone, and the other says judge and jury. The Act did not cater for how to resolve that dispute. The second was where you had a case of multiple accused, and the defendants could not agree among themselves as to which process they wanted to utilize, whether they wanted to try to have a summary trial or a trial before a judge and jury. In a case like that, what do you do?

It also did not cater for where the statement of witnesses for the prosecution did not conform to the admissibility requirements of the Act. So that that was a clear lacuna, whereby if the statement did not conform with the admissibility requirements, the Act did not make clear provision for that.

Another problem was where the indictment is filed and the accused was before a master and the sufficiency hearing was not concluded. The indictment is filed, so immediately it triggers judge and jury, but you are still before the magistrate with the sufficiency hearing. Bearing in mind that the case flow management procedure before the criminal master was one that had to take into account the representations of both sides, and could have had several adjournments until the master was satisfied that the case management was completed, and you go to a pretrial hearing to fix a date for trial as the case might be, if necessary.

A huge problem with it that no one picked up on, was the question of the admissibility of witness statements for children. The Act did not make provision for the admissibility of evidence for witness statements from children. That omission could have been catastrophic. It could have resulted in the inability to conduct prosecutions involving indictable offences committed against a child who is a virtual complainant, or it could have resulted in the exclusion of evidence from a child in a matter where the child's evidence was critical as a witness for either the prosecution or the defence.

That is just the framework that led to the policy change and the decision to bring this new legislation. It was a combination of the shortcomings that existed in the law that we passed, as well as a need to review the conceptual model upon which the legislation was fashioned, to make it easier, more user-friendly and simple and effective in accordance with the Antiguan legislation.

One may ask why did we opt to go with the Antiguan model, instead of the St. Lucian model. The first point that was raised by Miss Seetahal on this particular issue was the fact that the Antiguan model had been tested all the way to the Privy

Council, and the Privy Council has already ruled on the constitutional validity of that particular piece of legislation. You therefore had the intellectual comfort of knowing that the final appellate court had already adjudicated and pronounced on the constitutional validity of that particular law. One was in virgin territory with respect to the St. Lucian model, and it was felt, why take a risk that may not be worth it?

The second issue is that with respect to the criminal masters, we had conversations with several magistrates, several criminal practitioners. There has been a lot of consultation on this matter. What was indicated to me was that the magistrates we have are a very strong cadre and they have the requisite knowledge and experience to deal with case management, but the problem is they do not have the time to deal with it. So if you abolish preliminary enquiries, they will now have all this extra time on their hands. Why bring in and introduce for the first time a new tier—criminal masters—when the very same function of the case management can be performed by the magistrates themselves?

In fact, some magistrates pointed out, "Well, look, we have been doing case management all this time, you know. That is what we do. When we adjourn matters, when we give directions, we are, in fact, managing the case. So that if you give us some rules and you put it in a particular framework, well, then, we are the best persons to administer that"; and I think there is much merit in that, Mr. President, which is why we have decided to go with that.

In the case of *Hilroy Humphreys v The Attorney General*, Privy Council Appeal No. 8 of 2008, the legislation was tested against the Attorney General of Antigua and Barbuda. What the Privy Council had to deal with was whether the abolition of preliminary enquiries, the right to cross-examination and so forth, was something that interfered with someone's constitutional rights. What the judicial committee said, and I quote:

> The abolition of preliminary inquiries was not unconstitutional as cross-examination at the stage of preliminary enquiry was merely a system of criminal procedure which may differ unduly without being unfair.

They were of the view that the new committal proceedings in Antigua and Barbuda operated as a mere filter system, and the accused was still entitled to have a fair hearing where he was permitted the widest breadth of cross-examination before a judge and jury, when the case comes up before the High Court.

The defence in Antigua have the option—after being served with the evidence of the prosecution, which is all in written statements—that they can make submissions on

the law, if they so desire, and there is now no longer any right to an oral hearing or cross-examination. That really is the heart and the concentric base of this Bill.

6.15 p.m.

Mr. President, in the other place someone had raised the issue of why are we abolishing cross-examination? And I want to make it clear that it is not that we are abolishing cross-examination, but we are simply deferring. There is a deferral of the right to cross-examine and that will now take place before the judge and jury at the trial in the High Court.

What is being abolished is a preliminary procedure that allowed the defence two bites of the cherries. I mean, it is a known complaint that in the preliminary enquiry the defence really was given an unfair opportunity to have sort of a dress rehearsal for the real song and dance when the trial takes place. You know what the prosecution is coming with, you know who the witnesses are, you have tested them on a preliminary basis, you know where the points of vulnerability are, and then you can deal with that and you can strategize how to deal with that in the interest of your client at the trial during the interregnum.

Now, the Indictable Offences (Committal Proceedings) Bill, 2014 seeks to remove the preliminary enquiry system, and introduce a system of committal proceedings in our judicial process, whilst maintaining some of the relevant provisions of the existing law.

Mr. President, this Bill, Miss Seetahal was directed to have stakeholder consultations with the team that I had put in place which she led, and we had consultations with the Judiciary, the Criminal Bar Association, the Director of Public Prosecutions, the Ministry of Justice, criminal justice consultant Moira Mac David SC, as well as various members of the legal profession.

The consultations were wide, they were deep and they were quite extensive, and I want to thank all those who participated in this exercise. Of course, as with any consultation exercise you are bound to get a number of recommendations. One cannot always accommodate all because sometimes the very recommendations themselves conflict with each other. So one has to resolve whether, if you have recommendations from the Criminal Bar Association that conflict with recommendations from the office of the DPP, what do you do? If you have recommendations, as we did indeed have, in conflict from the Judiciary and the office of the DPP and the Criminal Bar Association, what do you do?

So, we have in fact bent over backwards to accommodate the recommendations that were in fact made, and I will take us through them. But I am proud to say that at the end of the day, I think the Government has arrived with a piece of legislation that is, by and large, going to be quite beneficial to the improvement and enhancement of the criminal justice system.

I go straight to the Bill itself. Clause 1, of course, deals with the short title of the Act.

Sen. Robinson-Regis: Sorry I just want—

Sen. The Hon. A. Ramlogan SC: Sure.

Sen. Robinson-Regis: If I may, I just want to ask one question—not to stop your flow. Could you indicate the length of the consultations? If you have that information, you know, over what period?

Sen. The Hon. A. Ramlogan SC: Yeah. Sure.

Sen. Robinson-Regis: Thanks.

Sen. The Hon. A. Ramlogan SC: I can have my staff check that for me with the CPC's department, but I know that it took place over a period of several months. I would rather suspect that it is between four to six months, but I will get the actual time if necessary; that is fine.

But having said that, permit me to say for the record that the question of the abolition of the preliminary enquiries, that has been with Trinidad and Tobago on the drawing board for over 15 years. In fact, in the Ministry of the Attorney General the Law Reform Commission pointed out to me that some 17 years ago they were asked to present a paper on the abolition of the preliminary enquiries—and stakeholder consultation, this issue has been ongoing to the point where I am afraid we have reached the stage of consultation paralysis, and I did not wish to engage in analysis paralysis which is why I am here to actually present and pilot.

Sen. Robinson-Regis: Thank you.

Sen. The Hon. A. Ramlogan SC: Mr. President, in clause 1 there is the short title. Clause 2 is the commencement clause, and clause 3 is the interpretation clause. Clause 4 deals with the justices of peace to have concurrent jurisdiction with magistrates. And that is something we are all familiar with in the existing law, but there is a redraft because what we have done, even in the existing law where we retained certain provisions, we have improved upon them.

So, we now have, for example, in section 2(2) of the existing Act, that has become a stand-alone provision with additions in respect of requiring where a search warrant, summons or warrant has been issued by a magistrate, an endorsement should be put on the search warrant, summons or warrant, which would direct the person arrested to be brought before a magistrate or where a thing has been seized for it to be brought before a magistrate.

Now that redraft is an important redraft. I think it came from members of the Bar because they complained that when you serve the summons, oftentimes people complain that, you know, the police did not tell them when to come to court. So that you miss your court date, as the case might be, and the magistrate is put now in the unenviable position of trying to decide, well who to believe and so on. To avoid all of that, we have now catered for it to simply be part of the endorsement, so that it will be clear to the person who receives it, well, look, you have to come to court on X day as the case might be. So it is for an avoidance of doubt.

Clause 5 deals with compelling the appearance of an accused person. It is an empowering clause, similar to section 3 in the existing law that allows the magistrate to issue summons or warrants and to compel a person to appear before him in an indictable offence.

Part II of the Bill sets out the requirements for a search warrant, summons and warrants and utilizes sections 5 to 11 of the existing law as the basis for this particular part. So it has an analogue in the existing law.

Clause 6, the "power to issue a search warrant". We have modified that. I mean, the existing law, of course, is that the magistrate has the power to issue a search—"warrant where he is satisfied by proof on oath that there"—is something in some place—"building, ship, vessel, vehicle, box or receptacle"—relating to an indictable offence. That warrant we have now provided can be—"executed on any day at any time."

Mr. President, recognizing that in the execution of a search warrant, other legal items, not on the warrant, may be seized, the Bill, by the new subclause (3), now requires anything seized or detained whether specified in the warrant or not, to be brought before any magistrate who under subclause (4) is empowered to detain it or cause it to be detained.

The intention is that the thing detained or preserved until the conclusion of the committal proceedings is for the purpose of evidence at trial. This really simply allows for the preservation of the evidence, but there is a unique innovation in that the magistrate will now have the power, where the person is not committed to

stand trial, to direct that the thing seized not simply be returned to the person; you are not committed to stand trial, so you are freed. But the magistrate now has the power to retain possession of the thing seized instead of restoring it for you, if it is that it constitutes material evidence in the commission of another criminal offence that the police may be investigating.

Now, that is a very useful provision because oftentimes the police have, in fact, indicated that when they have evidence that is being restored to an owner, that evidence may be relevant to the commission of another criminal offence, and therefore, they wanted the magistrate to have the power to continue the retention of the evidence.

Now in subclauses (9) and (10) we have empowered constable X executing a warrant to seize and retain anything which is valuable to the investigation. But the Criminal Bar Association felt that the clause should make an important exception, with which we agreed. And that exception is to exempt documents that are privileged—subject of legal privilege.

Now this is an important innovation because legal privilege can be tied to the question of self-incrimination. It could be tied to a man's right to be presumed innocent, and really, properly speaking, it ought not to be the subject of any search warrant. So, we have, in fact, exempted documents that are subject to legal privilege.

Secondly, the Criminal Bar Association also recommended that there be a different regime to apply for computer systems. Now, of course, Mr. President, I was naturally quite happy about that, being myself the subject of the "emailgate" investigation, but I witnessed first-hand the need to have a proper established and clearly defined protocol and procedure to deal with the seizure by the police of people's equipment as it relates to computer systems and so forth. Because when the police seize that, unlike anything else they can seize, the technology is such that, you know, you can have anything implanted, embedded in the system, and I mean, you are now put to the unenviable task of having to do the Aristotelian's impossibility of having to disprove a negative.

I mean, it is a rather unenviable position in which one would find oneself. Imagine that your whole life now is on your cell phone, your computer, your laptop and someone gets a hold of that, it is a very frightening proposition, not only for what you might have in terms of your work—sensitive, confidential information—but also more so in light of the very real practical possibility that it is very easy to plant something on it. And how are you going to disprove it?

So the regime that one has in place obviously must cater for you to have an IT rep of your own choice, so that when the device is being examined by the police to which you can have an objection, they can be overseeing and looking after your interests. The retention policy of the police service, and all of that. This, of course, will be dealt with in the cybercrime legislation which will address this matter specifically.

In clause 7 we come to the complaints being in writing. We have introduced a redraft—JPs or magistrates cannot refuse to issue summons or warrants on the ground only that the alleged offence is one for which an offender may be arrested without a warrant.

Now this is an update of section 6 of the existing law which now provides that where a complaint is made to a magistrate or JP that an indictable offence has been committed by any person whom he can compel, the complaint must be in writing.

Now, we had a point of departure with the Criminal Bar Association at this point. They had asked that the complaints be typewritten, and it was felt that, you know, if for almost a century we have had it as an option to be written—you know, written can include typewritten as the case may be. But there are many poor people in this country who sometimes, you know, they do not have ready access, and they may wish to put it in writing, why deprive them of the opportunity?

There is a famous case from the Supreme Court in India where the court ruled on the validity of a constitutional petition which was written, I believe on, I think, a mere scrap of paper, and indeed in some cases on even a napkin. And they have ruled that it did not matter how one accesses the court, the important thing is that not how they access it, but who accesses the court of justice and why. We have maintained that provision.

Mr. President, in clause 8, "Warrant in the first instance", we have introduced a statutory criterion that must be considered by the magistrate or justice of peace in the grant of a search warrant—sorry, a warrant in the first instance. And the clause would now provide that the magistrate in issuing of a warrant should take into account the following: one, the nature and seriousness of the offence; two, the likelihood of the accused trying to evade service of the summons; three, the character, antecedents, associations and social ties of the accused; and four, any other factor which appears to be relevant.

Now the third one, the character, antecedents, associations and social ties of the accused; that is put in because it is high time we look at the raw reality that confronts us. When you have a man coming into court and he is seen surrounded by five of his bandit partners, and the magistrate knows every one of them is on a charge, and some of them have previous convictions, and that is whom he is associating with. The police "eh" charge nobody jointly, but the magistrate ought properly upon hearing the prosecution about the man's antecedents, his social ties and connections with the criminal underworld, that is, in our view, respectfully, a relevant consideration to which the court must have regard. In fact, chances are they have already taken it in account in the subjective consideration when they exercise judicial discretion. But we felt it sufficiently important to put it on a legislative footing, and that is why it is there.

Subclause (6) is new. It empowers a magistrate to issue a warrant where an oath is made substantiating the matter or the complaint to his satisfaction. We have dealt with provisions—we have introduced provisions to deal with the question of evading service where you find the defendant is trying to avoid the police and so on.

Clause 9 deals with the "Issue, contents and service of summons". And in this matter the office of the DPP said that we should not allow the law to remain that you can serve the summons and simply leave it with any person because the word "person", the DPP pointed out, could include a child. And a child may not be able to comprehend the significance of the warrant that they are receiving, or the summons, and therefore, we have amended it to accept this recommendation to say that it should be left with an adult. So the word "adult" will now replace the word "person". This is yet another small but practical innovation that we think enhances the integrity of the procedure.

6.30 p.m.

Clause 10: "Warrant endorsed on bail". That remains practically the same where the magistrate granting the warrant is imposed to grant bail, and endorse the warrant with appropriate directions. The subject can be taken and released on bail subject to the duty to appear before the court on such date and such time as may be specified in accordance with the relevant sureties and conditions.

Clause 11 deals with the "Disposal of person apprehended upon warrant", and there is no change to that in the existing law.

Clause 12 deals with "Irregularity in summons, warrant, service or arrest", and essentially it seeks to do away with any arrayed technicalities that existed in law.

So, in that regard, when irregularity or defect, whether in substance or in form in respect of the complaint or the warrant exists and there is no variance between the charge contained in the summons or warrant and the charge complained in the complaint, or between them, and the evidence adduced by the prosecution at the committal proceedings, such irregularity or defect would not be allowed to affect the validity of the proceedings. So this seeks to do away with the arrayed technicalities that allow for fertile exploitation by innovative defence lawyers during the course of the criminal trial.

So although these provisions would allow for a defective summons or warrant to be nevertheless held valid, it deems the proceedings to be valid notwithstanding that. I mean, if the magistrate is of the view that the accused person is somehow prejudiced or disadvantaged by the irregularity, such that the ends of justice favour the accused person being given an opportunity to be heard, he can in fact adjourn the proceedings and take the appropriate course of action to allow the accused person to be heard.

So, we have sought to balance the scales of justice by having on the one hand, the ends of justice not being defeated by legal technicalities that do not affect the substance of the case. So we have not allowed form to trump substance, but at the same time, we have protected and preserved the integrity of the rights of the accused so that if they wish to make a case to the magistrate that they need time to address a certain issue, the magistrate has that power so that they will not be unreasonably disadvantaged.

Clause 13 deals with "Remand of the accused" and subclause (2) is a new subclause which provides that they are not to be remanded "unless a complaint on oath was taken or a warrant…issued under section 8". Subclause (4) reflects section 14(4) of the existing Act with amendments. It provides where the magistrate is satisfied that the accused who has been remanded is, by reason of illness or death, unable to appear before the court on the adjourned date, he may in the absence of the accused order them to be remanded for a further 28 days.

This was in fact a recommendation, I believe, by the Criminal Bar Association, who felt that we should not limit it to illness or accident. So we have in fact added the words "or other sufficient cause". I think that was a very practical recommendation from the Criminal Bar Association, and it is one we have taken on board because it will result in the enhancement of the administration of criminal justice.

Now, I take you to Part III of the Bill, the heart of the Bill, Mr. President, which deals with the committal proceedings itself.

In clause 14, we have the introduction of the new procedure which will replace the existing preliminary enquiries. Statements of witnesses in support of the prosecution's case, all of the documentary exhibits and a list of the exhibits will now be filed in the

court and will be served on defence counsel. It will be served either on the defendant or his legal representative. The utility of tendering these things into evidence is manifold. It saves time in that the court does not have to hear witnesses' testimony live.

Oftentimes, I remember in my days when I used to go to the Magistrates' Court, it was a frustrating experience to see evidence being taken longhand and the clerk has to write every single word. I mean, such a laborious and painstaking exercise really, it is archaic and obsolete and does not belong in any modern criminal justice system. Then I also can tell you, many times if you had an appeal, when you read the notes of evidence taken by the clerk and certified by the magistrate, sometimes you really wanted to know if you were in the same court because sometimes there were some errors and it was difficult to resolve it, because, of course, once certified, it constitutes a valid recording of the evidence and you had to live with it.

Now, the witness statements may become evidence in chief solidifying the case tendered against the accused, and it allows for both parties upfront to know what is the case they have to meet and it allows for a sense of identification and narrowing down of the relevant issues. It had a practical value in that witnesses who had to leave the jurisdiction, their witness statement can now be tendered instead and it will not affect the trial. This will obviously decrease the amount of time from charge to trial and hopefully to conviction or acquittal.

If one looks at the Antigua and Barbuda provisions, it speaks to committal proceedings being instituted. We have in fact copied that. The DPP had recommended that we use the word "commenced" rather than "instituted" to avoid any doubt, and as a result of that, we have in fact departed from the Antiguan model. We have accepted this recommendation from the DPP and we have included that suggestion in the Bill. So we will now in fact be referring to "commenced" instead of "instituted".

Clause 15 deals with the rights of the accused person to file statements and exhibits in reply. So that when they receive the prosecution's evidence and witness statement, they may now reply within the time prescribed by the magistrate and they will do the same thing, file their own witness statements, exhibits attached, list of exhibits and they will serve it on the prosecutor.

Clause 16: committal on written evidence and documentary evidence only, which really disentitles one to an oral hearing except in very, very exceptional circumstances. I think the Judiciary did in fact raise one issue with this matter. They raised as a concern the purpose of the use of the words "on consideration" because we say that the magistrate "on consideration" of the evidence will make the decision.

We, on our part, did not see any great concern with that, "on consideration". The concern of the Judiciary was that if you use the words "on consideration", it could give rise to the possibility of an oral hearing, but we did not share that view. "On consideration" of the written evidence, really, simply means "on consideration" of it. I do not see that it will allow for an oral hearing, or that it mandatorily involves that by way of implication. So, in that regard, we did not accept that recommendation. We did not share that view.

May I at this juncture say, Mr. President, that of the 10 concerns submitted by the Judiciary for us—of which this is one—we took on board eight out of the 10 concerns raised. So we treated with eight out of 10, some of which I might add conflicted directly with some of the recommendations we received from the other stakeholders, and perhaps this might be an appropriate juncture to address Sen. Robinson-Regis' query about the consultation period. The report from Miss Dana Seetahal and I will quote from it; it says that:

"Drafts and Consultation timeframe

4. There have been at least thirteen (13) drafts prepared before the final version was sent to Cabinet on April 16, 2014. Many of the redrafts came about consequent on comments/consultations by various stakeholders."

And our attempts to incorporate those concerns and treat with them. It took place over a six-month period and I can tell you the dates of the drafts which went through, but I think time does not permit that. All I can say is that it took place over a six-month period when there was a lot of discussion and toing and froing. So it took place over a six-month period.

Sen. Robinson-Regis: Thank you.

Sen. The Hon. A. Ramlogan SC: Yeah. Clause 17: Opportunity to show why new order should not be made. It will provide for the magistrate before making an order of commitment on the application of either side, by way of submission given to the prosecutor or the accused, they will be given an opportunity to show cause why the committal order should not be made.

Clause 18 deals with adjournments and that is an old provision that we have retained.

Clause 19 deals with "Admissibility of statements in committal proceedings" and that too has been retained. The requirement for the statement to be sworn before a Justice of the Peace, who authenticates it by a certificate, is one that received some discussion. I do not know how my colleagues feel about it, but

there was the feeling that there is no need for the statement to be sworn before a JP. People felt that it was somewhat superfluous. The Criminal Bar Association was of the view that it would be an additional safeguard, so that although initially we had removed that requirement for a JP to authenticate it, we reinstated it on the insistence of the Criminal Bar in an attempt to find consensus on common ground. So that is in fact there.

You would recall that I had earlier indicated the 2011 Act did not deal with the evidence of children. The clause before you, Mr. President, that is clause 19, in fact deals with that now. So a child where under the age of 18 where required to give a statement, that clause requires that a statement be recorded in the presence of an adult of his choice. It states the age of the child and that the adult was present with him when the statement was given by the child.

The honourable DPP felt that this did not go far enough and that we should enhance it to provide some greater protection. We have agreed with this and the suggestion has been incorporated. So now:

> "…where a statement is made by a child under"—the age of—"fourteen years…"—the—"statement must be supported by"—an affidavit of—"a probation officer, child psychiatrist or any person qualified to make an assessment of the child to assist the Court to determine whether the child is possessed of sufficient intelligence to justify the reception of his statement as evidence and"—that he—"understands the duty of speaking the truth."

Now, I think this is one of those issues where the Judiciary—there was a divergence of opinion. The Judiciary felt that the court was in a good enough position to assess the child. The DPP had indicated that perhaps there should be some external aid in the form of the probation officer. We erred on the side of caution and we went with the recommendation of the DPP. I think it is important that children's evidence is carefully guarded and that the integrity of the evidence is protected.

I have seen in the courts how sometimes children in real life and in the courts can be manipulated very easily. Children are very vulnerable and you see it particularly in the matrimonial courts in divorce cases and custody battles and so on, where you see children are caught between the parents, and either or both sides are trying to influence the mind of the child. But the child's mind is very pliable and easy to influence and, as a result of that, I err on the side of caution to go with the DPP.

I did not agree with the suggestion from the Judiciary that this is going to be depriving the court of a power it has because the court retains the final say. But these are aids along the way to reaching that point where the judges can make that decision. Another reason that I decided to go along with this suggestion by the DPP is really because of personal experience as a father. You know, it is oftentimes said that intelligence is not a substitute for experience in matters of real life, and one can describe parenting with the embellishments of English literature as well as they want, but at the end of the day that kind of intelligence and writing is not a substitute for experience, and you can in fact have judges, and we do in fact have judges, who are not parents and who are not married even and I think that the suggestion by the DPP was a good one and it was on that basis I parted ways.

I feel very strongly that that kind of experience and expertise is required to protect integrity of the trial process and to ensure that the evidence of the child is one that comes with the safeguards that will only enhance the administration of criminal justice. So that would be, of the two recommendations we did not accept, that would obviously be one of them.

6.45 p.m.

Mr. President, we have also included a specific provision in cases where persons need an interpreter, so that again was a recommendation of the Criminal Bar Association, and we have included that. We have seen in recent times, Mr. President, a number of brothels have been raided by police officers, and these raids whether planned, pre-planned, coordinated, orchestrated, conspirational or otherwise, the fact of the matter is, you do have complaints as to what takes place after the raid being worse than what took place before the raid. And the reality is we need to ensure that persons who are not Trinidadians and whose native tongue and language may not be English, that they too are sufficiently protected, in the same way as we would want for our own citizens to be protected when they visit foreign countries. It is to that end that we have, in fact, made special provision for interpreters to be available to assist defendants who may be arrested.

Clause 20 deals with the exhibits being marked and delivered. Clause 21 is the existing provision which deals with "Notice of alibi, and that is fairly easy to deal with. So in terms of notice of alibi, we know that by filing the notice of alibi at the commencement of the committal proceedings, that allows for people to know beforehand what is the defence you are going to be raising. It also discourages people from making up things and concocting and fabricating defences. I mean, oftentimes in the criminal courts people raise the defence of alibi, saying "dey

was by dey girlfriend. Dey was by dey mudda" and so on, and to be quite frank, the girlfriend did not exist at the time, you know. "Sometime de girlfriend come" into the picture after. And, you know, people pay to lie and all sorts of things to say "ah was by meh house, dey was by dey grandmudda, all kinda ting". So that is a good provision that we have retained.

Clause 22 deals with "Further evidence", we have retained that. Clause 23, "Statements, documentary exhibits and list of exhibits to be signed and stamped" by the magistrate. Again, a necessary procedural protection, so that there can be no tampering with the record of evidence, because the magistrate will sign it and stamp it. So that when the committal proceedings are over, and the file goes to the High Court, there is that signed, sealed and delivered stamp from the Magistrate.

Clause 24 deals with the "Final decision on committal proceedings". You can commit, you can discharge and you can make any other order. Clause 25, "Committal for trial in custody or on bail". So that when you are committing the person, you can grant them bail, you can remand them in custody, you can make any order that you think fit in the interest of justice.

Clause 26 deals with "Committal of discharged accused person", and that is where the DPP applies to a judge of the High Court, and signals his intent to do so for a warrant for the arrest and committal of the accused person. I mean, the rights of the accused will be protected, Mr. President, by this high level of judicial oversight, whilst the public interest in ensuring that the guilty or prosecuted will not be defeated by the effluxion of time alone. The request, of course, from the DPP should be made within 21 days and within three months after records of proceedings have been obtained by the DPP, so it is either/or. Once the—we have retained the right to have the committal proceedings reopened, if fresh evidence becomes available.

In clause 27, the DPP may prefer an indictment without committal proceedings in certain cases, and this is going to be a very useful provision. Where at the end of a coroner's inquest, the coroner certifies that he is of the opinion that there are sufficient grounds disclosed for making a charge or indictment against a person under section 28 of the Coroners Act, then that is a position where you will not—the DPP can indict.

The second instance is where more than one person is charged, and the co-accused has already been committed to stand trial, and it is desired that they are to be both joined in the same indictment. The third is where a serious or complex fraud is involved. The fourth is where the evidence discloses a prima facie case,

but the magistrate is unable to commit it because he dies, retires or resigns. And finally, where the crime is one of a violent sexual nature, where there is a child witness or an adult witness who may be subjected to any threats of intimidation or even elimination.

You know, Mr. President, in the old system, if you were doing a preliminary enquiry, and the magistrate fell ill or died, you had to start doing over—you had to start over all afresh. Could you imagine in some of the PIs we have, in the airport matter, in Mr. Panday's case, et cetera, could you imagine what would happen, God forbid, if the magistrate retires, resigns or became—you know, died or suddenly became ill, that they could not continue? You have to start that all over, and it may have already lasted seven/eight years, and you have to press the restart button. So this is a much needed provision, and I think one that will serve us well.

Clause 28, you have a right of appeal to the Court of Appeal. Clause 29 deals with the "Transmission and custody of documents and exhibits relating to a case". Of course, we have provided that the complaints, statements and other documents and exhibits received by the DPP will be kept by the DPP until the indictment, and then transmitted to the Registrar who will keep them and produce them at trial in court. These provisions ensure that a proactive approach towards the filing of indictments is to be adopted, and ensures that the present unacceptable position of prisoners languishing years before their cases get to court, can actually become a thing of the past, I hope.

Clause 30 deals with statements being lost or destroyed, where evidence is lost or destroyed, and it deals with the best-evidence rule and the giving of secondary methods of evidence.

Clause 31, the "Use of certified copies of statements". Clause 32 deals with "Fresh evidence", and it allows for new evidence to be admitted at the committal proceedings, rather than simply striking out the proceedings as being null and void. I think that is a very useful provision because, instead of discharging the accused, if the prosecution comes into possession of evidence that can strengthen or bolster its case, then the provision to reopen the case and hear that evidence is one that is useful, and clearly in the interest of the administration of justice.

Now, with respect to the secondary-evidence rule regarding certified copies, photocopies and the like, that obviously is important. We have had instances in this country where exhibits have disappeared—remember the infamous incident, rats ate the cocaine. [*Interruption*] We have had the disappearance and loss of exhibits when the police station that kept the exhibits in San Fernando on Harris Promenade years ago caught fire and burnt down, even the arms and ammunition you could not identify them.

Mr. President: Just letting you know, Attorney General, you have another four minutes.

Sen. The Hon. A. Ramlogan SC: Another four? Thank you, Mr. President.

So clause 33 deals with the DPP's ability to refer the case to be dealt with summarily, and the rest are really provisions that are in the existing law that we have retained in the interest of continuity because it is relevant.

Clause 44 deals with "Reading of statements at trial". Subclause (1) provides at a trial in the High Court—sections 15C, 15D and 15E, you will have the right to read the statement, and it is only admitted where the court considers it to be in the interest of justice, having regard to the content of the statement, the risk that admission/exclusion would result in unfairness to any party in the proceedings, and any other relevant circumstances, and that is as a result of where a person may not be available in person to testify. So, Mr. President, I believe the rest are consequential amendments, and rather purely administrative.

Now, it is obvious that the main concern for the implementation of this will obviously be the question of infrastructure. Now, to some extent, given the low rate of acquittals or persons being discharged at the PI, to some extent, the High Court has already had to cope with all of the cases that have gone through the PI stage. We have been in discussions with the Judiciary and the judicial arm of the State to create the necessary infrastructure to deal with the obvious avalanche that will come with this. There is an obvious need for more appointments of judges, more courtrooms.

The DPP has already had—we have approved some 37 new lawyers, so he has had the additional staff, but we have to find accommodation. We are working right now on providing a new building for the Office of the DPP, that is in closer proximity to the Hall of Justice. The Government has taken the decision that the library in Chaguanas, which is being constructed, will be converted to a court building. So we will have a new branch of the Supreme Court in central, through the Chaguanas library, which they have already visited, and the feasibility shows that it can be repurposed and redesigned for a court.

The Hindu Credit Union complex in Chaguanas, the Judiciary had paid a visit, and indicated that it can be used by the administration of justice, and it is our intention to perhaps use that as a coroners court, subject to Cabinet approval. So that with respect to the creation of new courtrooms and new judges, that is a matter that will be attended to. Of course, sourcing judicial talent is a matter for the Judicial and Legal Service Commission.

With respect to the Office of the DPP, the accommodation issues are being ironed out. We are looking at new premises in Tobago, San Fernando and Port of Spain. So we are treating with those issues in an attempt to create the level of infrastructure that one requires.

The Forensic Science Centre, that is currently undergoing intensive care work and upgrade. My colleague, the hon. Minister of Justice, will speak more to that because obviously that too will have a role, and an impact on the success or failure of this new legislation.

But permit me to say in closing, Mr. President, this 1917 legislation, almost a century later, that we are about to change, the time has come, the time is now, and if we do not restructure and abolish preliminary enquiries, we will retain a feature of our criminal justice system that serves no useful purpose, that contributes to the backlog, without us seeing the hard picture in front of us in terms of trials. The Chief Justice has been bemoaning the fact that the delay in the administration of justice on the criminal side is something that we have to tackle as a country. It is reaching the stage where if it has not already interfered with and violated people's constitutional rights, we are skating on thin ice.

So it is my respectful view that if we all join hands in this as stakeholders, to tackle this problem frontally, bearing in mind that the Rules Committee of which I am a part, chaired by the hon. Chief Justice, we have already made new rules of criminal procedure which was the start of the criminal—this is what took place, the revolution that took place on the civil side. I think that we are in good company with the Antigua and Barbuda legislation. I think this legislation, Mr. President, is one that will help us to dynamite the logjam, and tackle the delay in the criminal justice system that has become so endemic.

With those few words, I beg to move, and thank you. [*Desk thumping*]

Question proposed.

Mr. President: All those wishing to join the debate may do so now.

Sen. Faris Al-Rawi: [*Desk thumping*] Thank you, Mr. President. Mr. President, I rise with pleasure to contribute to the Indictable Offences (Committal Proceedings) Bill, 2014. Mr. President, déjà vu has a funny way of working in this Parliament. This is not the first time that we as a Senate have sat to discuss this. Indeed, the hon. Attorney General is correct, preliminary enquiries have—as a filter to weeding-out frivolous or vexatious prosecution, and in defence of witnesses, in defence of persons accused, sorry—have, in fact, stood part of the laws of England since 1555 in the Marian statutes.

Indeed it was the Lord Jervis Act, if I am correct—yes, it is—that we saw in 1848, Sir John Jervis. The Indictable Offences Act of 1848 in England which was incorporated and brought into the laws of Trinidad and Tobago, by the Prisoners Counsel Act of 1836. It is true to say, therefore, that these laws have been in existence for some 459 years in England, and some 178 years in Trinidad and Tobago. Not just 97 years on the statute books themselves, because the common law would have operated and the rules of counsel would have operated then.

It is true to say that we have been in active reform of the criminal justice system. We have as a Parliament, sat on many occasions to deal with the respective elements that interarticulate in the criminal justice system, be it the remand period of 28 days moving from 14 days as it did, be it the Bail Act, be it the improvement of the emoluments and conditions for judges mysteriously managed by the Salaries Review Commission as it has done for the last 15 years—[*Interruption*]

Sen. Ramlogan SC: We missed you yesterday, man.

Sen. F. Al-Rawi:—be it the Supreme Court of Judicature Act.

7.00 p.m.

Indeed, Mr. President, we as a Parliament saw this Government come into power in 2010 with a bright, bold manifesto telling us that they were going to create a Ministry of Justice. First time Trinidad and Tobago had a Ministry of Justice. We had a gentleman who sat as a judge in the assizes come off the Bench, join the Government, be appointed as Minister of Justice by the Prime Minister and, in fact, in 2011, we saw, by Act No. 12 of 2011, five pieces of legislation vested in the Ministry of Justice. They were the Criminal Injuries Compensation Act, Chap. 5:31, the Justice Protection Act, Chap. 5:33, the Deoxyribonucleic Acid (DNA) Act, Chap. 5:34, the Community Service Orders, Chap. 13:06 Act, the Police Complaints Authority Act, Chap. 15:05.

Indeed, we have, as a Parliament, in the period 2010—2014, witnessed appropriation each year from the Consolidated Fund by way of the budgets, appropriation by way of supplementary appropriation, again, from the Consolidated Fund, and further supplementation each year, 2010, 2011, 2012, 2013, 2014, to the Ministry of Justice. We have, as a Parliament, seen $2,242,747,040 given to a Ministry of Justice. We have seen Herbert Volney, past Member of Parliament, stand as Minister of Justice. We have seen Christlyn Moore mysteriously made to disappear after Tobago fell like the thud that it did when the tree, the TOP, fell down into the bottom of the Buccoo Reef, disappeared from the Parliament.

We have seen Sen. Emmanuel George, "Minister Extraordinaire" as he is, serving in many capacities, in many Ministries, now sit as Minister of Justice. We have seen the People's Partnership, ably assisted by Sen. Tewarie, Minister of Planning and Sustainable Development, produce another book, bright yellow colours all over it:

"Achievements

Government of the Republic of Trinidad and Tobago

Aligned To Government's Framework For Sustainable Development Commitments

Review of Government's 2010 Official Policy Framework"

This is not a publication by Sen. Tewarie alone, you know, Mr. President, this is a publication by the "Government of the Republic of Trinidad and Tobago".

When a Parliament is convened, when a Government is appointed, the first person appointed is the Prime Minister, second to comprise a Cabinet is the Attorney General then Ministers are selected. Reasonable then to assume that Sen. Tewarie and Sen. Ramlogan both sit in the same Cabinet, yet we have this particular publication coming out of Sen. Tewarie.

"Policy shift 3

The crime and personal security issues will be decidedly improved and the justice system overhauled resulting in faith that justice will be done and seen to be done."

Policy shift 3, page 27. We notice detection rates in this country consistently falling from 36 per cent down—this publication says "11%" in 2013. I can say with certainty that for homicide and that element of serious crime, it is down to 3 per cent. Statistics mysteriously missing for "Baseline 2010" in this publication. Sen. Tewarie's publication reads:

"Actual Achievements"

Page 31:

"Legislation to improve the Criminal Justice System include:"

Top of the line:

"Administration of Justice (Indictable Proceedings) Act 2011 - An act to abolish Preliminary Inquiry…assented to and awaiting Proclamation

Construction of Six (6) Purpose-built Supreme Courts of Judicature…:

Pre-construction activities completed for the following Courts:

Trincity (4 Courts)

Carlsen Field (8 Courts)…

Sangre Grande (8 Courts)

Penal (8 Courts)

Malabar (7 Courts)

Roxborough (2 Courts)"

Taxpayers' money paid for this. These policies are adopted by the Government as the policy of the Government of the Republic of Trinidad and Tobago.

The hon. Attorney General comes here today, quite contrite, mind you. He is wonderfully polite when he is contrite. He wants us to just ease on by certain events. He used some very interesting language today, "dynamiting logjams". He said "consultation". He said it has been on the statute books since 1917, 97 years. He is pleased to pilot this Bill by this Government led by Kamla Persad-Bissessar talked about. He said there is a problem with criminal masters. He skipped over the Indictable Proceedings Act of 2011. He called it, mind you, the "blighted section 34 happened". Spent exactly 30 seconds on that. He said there were a couple of shortcomings. He proceeded to list the shortcomings. He then said, look, this is a conceptual policy shift. We are using the Antiguan versus the St. Lucia model. He said St Lucia had not yet been tested constitutionally in uncharted waters, if I paraphrase. Antigua had the comfort of having the Privy Council review its position. He said, this is going to logjams—dynamite logjams.

Mr. President, I printed off the hon. Attorney General's submission to the Senate on Tuesday, November 29, 2011 and it was almost as if the hon. Attorney General was debating today, for the first time ever, the ballistic solution to the criminal justice system difficulties that we have. In 2011, the hon. Attorney General said at page 516:

> "Mr. President, this is part of a powerful package of legislation from the People's Partnership administration in less than two years aimed at revolutionizing the criminal justice system consistent with our pledge to the people of this country to deliver more cost-effective justice in a more expeditious time frame. Permit me to quote…"

And he quotes from the manifesto. He then says at page 519:

> "You see, the reform of criminal justice in the country, is not—to put it in context, what they are upset about is the fact that we have been bringing the kind of legislation that has been lacking in the country for a long time. Imagine the Minister of Justice, in the short space of time that we have been here, we have abolition of preliminary enquiries; the DNA Bill; electronic monitoring…"

He said further on:

> "Four pieces of legislation—and you will hear the same speech. You could cut and paste Sen. Al Rawi's contribution for all those debates."

That is what he said of my contribution. I will come to that in a moment. He said:

> "You see their problem…"

—and he is referring at page 522, meaning the PNM.

> "…they cannot face up to the facts, because while they were dilly-dallying and dancing ballet with the technocrats with the report ready in their hand, they could not bring it to the Parliament…the PNM suffered from 'analysis paralysis'."

Said that today as well. He said, Mr. President:

> "This new procedure…"

Page 527:

> "This new procedure proposed by this Bill will replace what was a protracted, cumbersome preliminary enquiry procedure, and introduce a more concise, a more methodological and streamlined process by virtue of what is now called the sufficiency hearing.
>
> The sufficiency hearing will allow for the transfer of indictable matters to a High Court judge within weeks of the first appearance. This, of course, will reduce the pretrial waiting time, and hopefully, it will crystalize those pretrial issues that will allow for the early resolution of those issues and that will move the case along."

He said, at page 529:

> "Now, Mr. President, the delivery of justice on time—efficiency, transparency and accountability—those are the watchwords. The knock-on benefits are numerous to mention. You know what is the problem in the magistracy? Right now, when you appeal—which is your constitutional right—the appeal cannot be listed to be heard because the notes of the trial have to be transcribed."

He said at 531:

> "Furthermore, magistrates have to give reasons for their decisions…you are lucky…" he said, if it goes ahead.

He said at 532:

> "The hon. Minister of Justice has brought to Cabinet and we have already approved—and the end-user, the judicial arm of the State—a design and the hon. Minister of Justice is going to build more courts. We recognize we need that as well. That is going to take place."

He said at 532:

> "It is said that the magistrates at the preliminary enquiry stage have been expressing frustration about their conditions in having to go through all of this."

He said:

> "This People's Partnership is committed to good governance…we recognize that in the fight against crime in this country, the administration of criminal justice, the criminal justice system, is an important and effective tool in the fight against crime."

He said:

> "Detection and investigation, yes, we are concentrating on that…training of police officers…"

He said at 533 continuing:

> "Those who wish to pour scorn and those who wish to snicker about it, we say we know"—what—"we are doing"—is—"the right thing, because we are standing up for the interest and defending and protecting Trinidad and Tobago and the rights of all citizens, because the right of a democratically elected government stands as the fulcrum beneath the rule of law in our society. Law and order depends on it."

He said:

> "Mr. President, in improving the criminal justice system and in operationalizing the changes that we have made, it will take some time, but these pieces of legislation"—that—"we have brought to this Senate, they are ballistic missiles that strike at the very heart of the problem, and we know it is not a small step but a big step in the right direction.

> The hon. Minister of Justice—the design brief for the new courts…has gone out. The courts are designed with the breadth and scope of his experience as a criminal judge, as a prosecutor, as a defence lawyer, all rolled into one, and we know when we come out with these architectural solutions, not only will they be aesthetically pleasing, but they will also be functional and utilitarian in how they…"—look.
>
> "It took us a long time. As I said…"—commencing—"…94 years…" et cetera.

He lauded Minister Herbert Volney. The Government knew what it was doing and we as a Parliament, every Senator present in this House, on November 22, 2011 and on November 29, 2011, we as a Parliament passed unanimously after hours of debate and meticulous inspection of the law presented to us then as a Bill which became enacted as Act No. 20 of 2011. We specifically took the undertaking of the Minister of Justice and the Attorney General of the Republic of Trinidad and Tobago and we passed into form what became Act No. 20 of 2011.

We know, Mr. President, the Government gave undertakings that and Minister Volney, in specific order in his contribution, specifically said that he would not be proclaiming this law, that this law would have to be done only after the creation of criminal proceeding rules, after the courts had been built. He, in fact, went on to say, if I am not mistaken, Mr. President, that it would take a good four to five years.

7.15 p.m.

He was vex with "meh". He said he has a young wife to go home to. Al-Rawi likes to keep him here late in the night going through the law, if you remember him. Sen. Hadeed says the same, let us hope he does not fall by the same sword. Anyway, Mr. President, the fact is we went through it because it had significant benefit for Trinidad and Tobago and we as a Parliament, in particular, on the fulcrum of three very important issues in that Bill, unanimously agreed to Act No. 20 of 2011.

What were they? Number one: we were not abolishing preliminary enquiries, Mr. President, we were restructuring it. We were removing the significance of oral hearings and cross-examinations, which would create delay in the system, archaic methods by which evidence is recorded. We were removing that and reforming the system.

We were also, Mr. President, very specifically introducing very tight time frames for the prosecution to act within. The prosecution had to act with expedition. Section 27 of that Act No. 20 of 2011 said, if the DPP did not file his indictment within 12 months, the accused could knock on the door of the court and say, "Discharge me".

Section 34 was the biggest dynamite to the logjam. It provided, essentially, a limitation period for crime. And why did we as a Parliament, based upon specific representations and undertakings of the Government, agree to that?—knowing that it would come into effect only after the system was properly done. We took the Government at its word it would not be proclaimed. And we agreed to put the dynamite to that logjam because, as recent as June 14, 2014, there is newspaper coverage of a constant recurrent theme of the Chief Justice. The Chief Justice is quoted in a story of June 14, 2014:

"Archie: Abolish preliminary enquiries and jury trials"

He said, Mr. President:

"There are currently more than 500 pending murder trials in this country…"

He was:

"Speaking at the 'Dana Saroop Seetahal Symposium: Re-engineering the Criminal Justice System'…held at the Noor Hassanali Auditorium…"

And basically the hon. Chief Justice was reflecting upon the heavy case load: the fact that if you took every judge of the High Court, put them to deal with the backlog of matters going to the Assizes for murder only, it would take every judge more than 10 years to deal with the system. He went out on a limb, one could say.

I told you, Mr. President, a short while ago, that the Attorney General said, in his contribution back in November 2011, you could cut and paste Al-Rawi's submissions, every one in the debate. The reason he said that is that I specifically raised to the hon. Attorney General then, that I could not understand how the Government was going to replace 56 magistrates who do this kind of work with four criminal masters. I said there is a difficulty, conceptually, in getting there.

Mr. President, you would know that the hon. Chief Justice even in the annual report of 2012/2013, the hon. Chief Justice noted, in the Magistrates' Court, a total of 130,872 new matters were filed, whilst 86,986 matters were disposed of. This means that there was a marked increase in the work of the magistracy in 2012/2013.

So, 131,000-odd new matters and only 87,000 disposed of; add a backlog of 50,000-odd each year, and what do you get, in the Magistrates' Court alone? Hundreds of thousands of cases not disposed of, if you take a 10-year period. And that was why we as a Parliament said, let us give real thought and real action to dynamiting logjam in the criminal justice system.

We do know, and history tells us, that this Government deceitfully, surreptitiously, wickedly—some say on the outside; of course, I cannot say that here—proclaimed section 34. In fact, they proclaimed sections 1, 2, 3(1), 32, 34 and the Sixth Schedule of Act No. 20 of 2011.

Section 1 was short title and commencement; 3(1), definition section, sections 32 and 34. Section 32, we know, was the ability, I believe, to make rules—yes, Rules Committee. Section 34, now clothed in infamy for all time, was the section by which you could discharge someone after 10 years. That section constituted a betrayal of the trust of this Parliament and every Senator sitting and a direct breach of every member of the Government because they and they alone sat in Cabinet twice, not once, to proclaim that law.

They and they alone instructed, as a Cabinet, the President of the Republic of Trinidad and Tobago to proclaim that law. We know the consequences of that, Mr. President; but what shocks me, the Attorney General having disappeared as he is wont to do, is that the Attorney General of Trinidad and Tobago has not bothered to tell us why Act No. 20 of 2011 cannot be retooled.

I will say why, Mr. President. The Judiciary of the Republic of Trinidad and Tobago specifically, in its annual report 2012/2013, went through, at page 32, chapter and verse as to its undertakings to operationalize the Administration of Justice (Indictable Proceedings) Act, No. 20 of 2011. The Chief Justice went down to the hiring of masters, the courts, the training, the money that would have been spent—two-point-something-billion dollars in the hands of three Ministers of Justice—not a word on how the money is spent, in substance, in relation to this Bill. In absolute contradiction to what was published under Sen. Tewarie's hand, not a blade of grass has been cut in respect of any one of the courts, bold and blazoned in yellow in this horrible publication by the Government. [*Desk thumping*]

And you know why? I raise it time and time again. Never answered by the Government, complete and total breach of the tendering rules under the Central Tenders Board Act. That is why nothing has happened. Yet $2.5-odd billion in the hands of successive Ministers of Justice; not a word, not a drum beat, not a whisper, not a sound. Contempt for the people of Trinidad and Tobago. [*Interruption*] Yes, he did and he gave me a very good tune. And it is always interesting to note that the Leader of Government Business, Sen. Maharaj—as I take your crosstalk—does not seem to extend himself as far out a neck-reach as others in this Parliament do; bats in his crease quite carefully, he does.

So, Mr. President, the hon. Attorney General comes here today, glides over all of the deceit that this Government puts down and rests at the feet of people of Trinidad and Tobago, does not tell us why he cannot amend Act No. 20 of 2011; not at all. He tells us, in his observations, a few things, all of which can be fixed; but, more particularly, when you take Act No. 20 of 2011 and you compare it against this Bill, there are a lot of similarity between the Bills. But dare I say, I shudder to think that this Bill went through 13 iterations. I find it hard to believe that this Bill could be the product of 13 iterations and I will tell you why.

There is a lot to say on a clause-by-clause analysis. Let me start off at the beginning. Act No. 20 of 2011 proposed the repealing of the Indictable Offences (Preliminary Enquiry) Act. This Bill does the same. Act No. 20 of 2011, section 2, specifically section 2 said:

> "This Act shall have effect even though inconsistent with sections 4 and 5 of the Constitution."

Why? Because it breached the right against self-incrimination. It dealt with lock-up albeit by due process coming before a judge or magistrate. It infringed property rights, but this Bill does the same thing. This Bill does the same thing and the reason why a section 4 and 5 exception, calling in aid section 13 of the Constitution would have appeared in Act No. 20 of 2011, is because it breached sections 4 and 5 rights. This Bill does the same thing. So 13 iterations later, we get a Bill in this Parliament and there is absolutely no section 4 and 5 rights exception. Why?

Not a word from my learned friend, the hon. Attorney General, the titular head of the Bar. But I want him to note, not only because the last Act, Act No. 20 of 2011 has it, but because you are repealing saved law, that is the preliminary enquiries, as he called it, the original law, the existing law. If you are repealing law that was saved and you are replacing it by new law which abrogate sections 4 and 5 rights, you must have the exception as we have in Act No. 20 of 2011. You must. Thirteen iterations later this Bill does not have it.

Let me give you another example. If we look to clause 45 of the Bill, clause 45 of this Bill says, Mr. President, quite interestingly that—permit me to get it:

> "No person shall print, publish, cause or procure to be printed or published, in relation to any committal proceedings under this Act, any particulars other than the following:
>
> (a) name, address…occupation of…accused person and any witnesses;"

Section 31 of Act No. 20 of 2011 quite properly said:

> "No person shall print or publish or cause or procure to be printed or published, in relation to any sufficiency hearing, any particulars other than the following:
>
> (a) name, image, address and occupation of an accused who:
>
> (i) has attained the age of eighteen years…
>
> (ii) not charged with an offence under the Sexual Offences Act; and
>
> (b) a concise statement of the charge…"

Not a mention of a witness. We knew, when we passed section 31 of Act No. 20 of 2011, that the current law allows for what appears in clause 45, but we removed it because we know, without witnesses, there is no conviction because there can be no witness to a crime giving evidence.

And in a society like Trinidad and Tobago, where witnesses are murdered, as we saw happened with the gentleman in the LifeSport Programme, allegedly coming forward to give evidence against alleged wrongdoing inside a Ministry of Sport-run programme—running wild through Trinidad and Tobago, we know that witnesses are murdered. So, quite properly, Mr. President, in Act No. 20 of 2011, we excluded witnesses, but yet the Attorney General brings it forward, 13 iterations later, and he has the gall to say Dana Saroop Seetahal, three months, not a word on her murderers. Cameras all over Port of Spain, but why should people be afraid of CCTV cameras in Trinidad and Tobago?

The message in Trinidad and Tobago is if you want to be protected, roll the joint of marijuana, smoke it in front of the camera and say, "It wasn't me". That is the message. Nobody saw it. It never happened. [*Desk thumping*] Thuggish behaviour, protected by this Government; protected by the Prime Minister of Trinidad and Tobago, the head of the National Security Council. That is the message, SC as she is.

7.30 p.m.

That is two clauses alone, Mr. President. This Bill, significantly longer than Act No. 20 of 2011, proposes a whopping 50 clauses. Act No. 20 of 2011 had 30—if you permit me—37 sections I believe it was. Here is where Sen. Prescott would be asking me, how many, and he is not volunteering—35 sections—35 sections versus 50—but, Mr. President, I can tell you from a side-by-side comparison of Act No. 20 of 2011 versus this Bill, a massive amount of procedural protection is missing in this Bill, 13 iterations later.

Mr. President, when we look to the Bill, we see clause 4 of the Bill which is the equivalent of section 10 of Act No. 20 of 2011. Clause 4 gives concurrent jurisdiction to justices of the peace and magistrates, whereas section 10 of Act. No. 20 of 2011 give it to masters and judges. We see, Mr. President, that section 6 was the near equivalent of section 5 of Act No. 20—clause 6, sorry, of section 5 of Act No. 20 of 2011, that is where the magistrate is satisfied by proof on oath may issue a warrant.

Clause 6(4), the near equivalent of 5(3) of Act No. 20 of 2011; clause 6(3), near equivalent of 5(3); eight, the near equivalent to subsection (8), of 5(4). Clause 8 of the Bill, the near equivalent of section 6 but, Mr. President, let us look to another startling issue.

We had a very interesting position in section 23 of Act No. 20 of 2011. Section 23 said in the Act which we will have to repeal if this Bill becomes law—and I pray that it does not—in the poor evidence and rationale given by the hon. Attorney General. Section 23 provided a standard of proof for preliminary enquiries. Section 23 of this Act sets out in detail what the standard of proof is; no such thing in this Bill. Nothing, Mr. President, to tell us what the standard or burden of proof is.

We look to clause 9 of this Bill and when we compare it against section 7(1)(b) as to the specifics of what a summons should include, nothing of the kind, giving us the kind of comfort that we should see having passed law already on the very issue of preliminary enquiries. Clause 9(2)(b), near equivalent of section 7(3) of Act No. 20 of 2011; no equivalent.

We look, Mr. President, to clause 9(5) of this Bill, near equivalent of 7(8); no equivalent. But, Mr. President, there is a dangerous exclusion. Look at clause 11:

> "When any person is apprehended upon a warrant, he shall be brought before a Magistrate as soon as practicable…"

Section 8(6) of Act No. 20 of 2011 said he should be brought without delay, and if he is brought with a delay the police should explain why. Why have we taken that out? Why are the procedural safeguards out? What on earth clause 12 of the Bill means against section 15 of the Act? It is staggering to me. I just do not know why they would chose to include in subclause (3)—listen to this language:

> "Where a Magistrate is of the view that any irregularity, illegality or defect mentioned in this section is such that the accused person has been thereby deceived or misled, he may make any necessary amendments, and, if it is expedient to do so, adjourn, upon such terms as he may think fit, the further hearing of the case."

What does that mean? What does it mean, Mr. President?

When we look to clause 13 of the Bill and we see that in comparison against section 16(5), we just need to know how that stands side by side, but when we get to clause 14 of the Bill, the committal proceedings, and we compare it against section 11 of Act No. 20 of 2011: why are we removing all of the safeguards for the expedition of a quick committal proceeding? Why? Section 11 of Act No. 20 of 2011 prescribes strict time frames for the prosecution to act; for the DPP to act; for the judge to act. All of that is missing on this occasion, and why? Not a word; not a drumbeat; not a sound. Nothing! We are not deserving as Parliament of even hearing that from the lips of the hon. Attorney General.

The hon. Attorney General, also in clause 16 says to us:

> "A Magistrate holding committal proceedings may commit an accused person for trial before the High Court on a charge for an indictable offence where he is of the opinion, on consideration of all the evidence filed under section 14(2) alone or…15(1), that there is sufficient evidence…"

But why remove the standard of proof to section 23, as I said before, that Act No. 20 of 2011 provided? Why? Why not provide certainty as to the standard of proof so we know what the threshold is. Why?

Mr. President, when we look at clause 17 of the Bill:

> "Before making an order under section 24"—that is where you may commit, discharge, et cetera—"the Magistrate shall, on the application of either side and by way of submission orally or in writing, give the prosecutor or the accused person, as the case may be, an opportunity to show cause why the order should not be made."

It allows for oral representation; it allows for submissions; it may not allow for cross-examination, but it certainly does allow a position for a no-case submission or for some form of contest, Mr. President. Is that really shrinking the section?

Look at clause 18 for the adjournment of proceedings.

> "A Magistrate may adjourn…proceedings…"

And compare that to section 16 of Act No. 20 of 2011, Mr. President. Section 16 is a materially better-worded clause compared to clause 18 of this Bill. It, in fact, allows for a much more fluid understanding of the precision of what is required to be considered by the judicial officer.

Mr. President, when we look to clause 19 of this Bill, I run into serious problems. The whole clause is confusing. When you compare clause 19 against Part II of Act No. 20 of 2011 and Part III—Part II which is the section that dealt with initial hearings and Part III which dealt with sufficiency hearings in clause 11 onward and 19 onward of Act No. 20 of 2011 and you compare that to section 19—it just does not add up, Mr. President. It is confusing.

In subclause (3), where is the presence of the child advocate? Where is the ability for us to tie in the measures that we spent a lot of time in passing in the Children Bill which lies in the wasteland of the Government's non-proclamation? They could hurry up and proclaim section 34, but we cannot get full operationality of the Children Act yet. [*Desk thumping*] Not a word; nothing said by this Government. Sen. Coudray can testify to that. She said precious little in this Parliament if anything at all on it.

Sen. Coudray: Nobody overspeaks like you.

Sen. F. Al-Rawi: Nobody overspeaks. They say the lack of participation; I must excuse the Government for not speaking because I contribute on every Bill. [*Desk thumping*] So, I must reward not speaking by condescending to an argument that because you bother to do your homework on every Bill, you are overspeaking.

Hon. Senator: Shame!

Sen. F. Al-Rawi: I mean, shameless, Mr. President. Shameless!

Sen. Coudray: You do not listen.

Sen. F. Al-Rawi: I am hearing in crosstalk, "you do not listen." In November 2011 when I spoke, and I cautioned the Attorney General about the capacity of criminal masters—three of them because Master Parry Durity was on pre-retirement leave—to do the work of 56 magistrates, the Government was bellowing and beating its chest like a big large 800-pound gorilla, saying: "They know best, consultation. We check everybody. Minister of Justice is the best." But today we are here replacing masters with magistrates for no other apparent reason than, there are more masters than magistrates—I mean, more magistrates than masters—and yet I hear in crosstalk from one of the most silent Senators of this Senate, from Sen. Coudray, "Yuh doh listen."

Sen. Coudray: "Yuh doh listen." [*Desk thumping*]

Sen. F. Al-Rawi: Here we go again. Incredible! I wonder if they even listen to themselves, Mr. President. I truly wonder, but anyway.

Mr. President, when we look to clause 20 and we compare that to sections 13 and 14 of Act No. 20 of 2011, what are we saying there, Mr. President? This architecture of this Bill supposes that the DPP has to be the constant conduit of transmitting documents up and down all over the place; registrar to have some documents; Clerk of the Peace to have some documents; police to have some of the evidence—evidence everywhere. All over Trinidad and Tobago evidence there. No centralization of resources; not a word of the Chief Justice's constant recommendation for the reform of the criminal justice system by way of passage of the ability of the court system itself—as was done in New Zealand and elsewhere—to have repositories of information to coordinate system to have evidence safeguarded, kept in custody, easily transmitted.

We are leaving it in four different places, wherever the magistrate chooses—currency for instance or drugs for instance, Forensic Centre per se; Clerk of the Peace in the Magistrates' Court; DPP's office; and also in the High Court Registry—four places, but there is to be smooth operation of this system. Are we really going forward, Mr. President? Where is the explanation for that? Why is it that the CPR is not being better organized as a comparison for this type of system? That I cannot understand, Mr. President, quite unusual.

Mr. President, look at clause 21 of this Bill and compare it against sections 13 and 14, both of which, sections 13 and 14, deal with the issue of alibis as clause 21 does, and tell me which language is honestly better and more thoroughly thought out? Dare I say that Act No. 20 of 2011 definitely had a better thought process and clarity in terms of procedure than the current sections on alibi lend themselves to.

Mr. President: Hon. Senators, the speaking time of Sen. Al-Rawi has expired.

Motion made: That the hon. Senator's speaking time by extended by 15 minutes. [*Hon. D. Maharaj*]

Question put and agreed to.

Sen. F. Al-Rawi: Thank you, Mr. President, thank you, Sen. Maharaj. [*Desk thumping*] I am sure that Sen. Coudray appreciates that I sometimes poke fun at her just to simply get a reaction out of here.

Sen. Cudjoe: She said "aye".

Sen. F. Al-Rawi: But anyway, I thank her for the "aye" as well. [*Laughter*] Unless we had a little picong in this Parliament it would be a very dreary place. The hon. Attorney General taught me that quite well. [*Crosstalk*] Well, I have watched you target me in many other places, Sen. Coudray, "So yuh cyar fraid fire if yuh want to give it". Yeah, yeah, threatening me for two years now about being a target, but I am waiting for you, do not worry.

Mr. President, when we look at clause 22 and we look at section 22 of Act No. 20 of 2011, clause 22 of this Bill says:

> "A Magistrate, on application by the prosecutor or the accused person, may permit either of them to file further evidence…"

We look at that and we compare it to section 22 of Act No. 20 of 2011, and we look at the prosecutor where he wishes to adduce further evidence, inclusive of a witness who has not yet given a statement. This clause is a shade narrower than section 22 of that is, and I invite the hon. Attorney General to look at that.

7.45 p.m.

Clause 24, under discharge and committal in Part IV of this Bill, does not make it expressly subject to clause 17, which it ought to be, which is the right to address before a conclusion and decision is given by the magistrate in this instance. When we look at clause 26 and we compare it to section 24 of Act No. 20 of 2011, why is the comparator of the DPP making a written request not there? When we look to, a little bit later on, the fact that section 29, proceedings after committal—sorry, here we go—clause 26(5) of the Bill, for some reason, has left out the 28-day provision that the comparative section in the Act No. 20 of 2011 had, which was the 28-day prescription time to act.

It left out subsection 24(6), where you would make an ex parte approach to the judge, that you had three months to do that. It left out subsections (7), (8), (9), (10) and (11). Mr. President, all of those subsections in section 24 of the Act No. 20 of 2011 are significantly better. This is where you are inviting the DPP to apply to a judge to reconsider a position, and that the request must be made within 28 days of the discharge of an accused, that the application shall be ex parte and within three months.

> "Where an application is…the Judge shall—
>
> fix a date for the inter partes hearing…; and
>
> order that…the application be served…
>
> An accused who is apprehended …shall be committed to prison…
>
> At a hearing…where the Judge is of the opinion that the evidence as
>
> given…was sufficient…"

It goes on, puts in the right of appeal.

All of these time frames which, dare I say, the PNM thought to be a golden product in Act No. 20 of 2011, all of those time frames which compel the prosecution to act with alacrity have been removed from this Bill, and so the question is, are we really just doing a minor tinker with the current law, the original existing law, by simply removing oral hearing and longhand taking of evidence by way of note taking and simply putting a paper route? Is that all that we are doing? Is that sufficient?

How does the Government explain the fact that it considered logjam destruction necessary under section 27(3) of Act No. 20 of 2011? That is where if you do not prefer an indictment within 12 months that the accused can apply to be discharged. In other words then, make the prosecution chase a deadline, put him under an obligation, and section 34, which would have allowed for a statutory period of limitation to operate for certain offences. How do we explain that being laudable in 2011 prior to the proclamation and release of certain people? Prior to that it was laudable, it was something to be encouraged, strongly advocated, but in this iteration, 13 iterations of this Bill later, it finds no place and no mention. Why? Why does it not?

Mr. President, the transitional sections are also inadequate in this Bill. When we look to the transitional sections that come later down, there is no issuance, for instance, for an accused who began under the old system and stuck in a preliminary enquiry under the old system to elect to move under the new system, there is none. But we had that in Act No. 20 of 2011, 13 iterations later, that is left out as well. Why, Mr. President? I have no idea. The Attorney General did not tell us.

Mr. President, I really do not think, with all due respect, that clause 44 goes as far as it should. Clause 44 is a potential golden clause. Clause 44 basically says, where a witness is not in Trinidad and Tobago that you could take special-measure evidence, in other words then, video evidence, et cetera. Well what about if someone is in witness protection in Trinidad and Tobago and you wish for them to give evidence remotely? It is called, Mr. President, in its crudest form, anonymous witness evidence. Why is that left out? We gave that as a suggestion to the hon. Attorney General in the talks that we had with the Government of Trinidad and Tobago in our 11-point plan.

Witnesses are the crucial element to prosecution and conviction. That is why we have moved from a detection and conviction rate of 36 per cent to 3 per cent. It is so because the Government dismantled SAUTT, sent them on their merry way,

which did a yeoman service to encouraging witnesses to co-operate because they felt safe, Mr. President. [*Desk thumping*] With that gone, where is the tool that we could easily put into clause 44 of this Bill to allow for the birth of anonymous witness evidence?

It is not something new, it is done in the United Kingdom, it is done in the United States, where the judge and the lawyers may have access to the person giving evidence, but the voice modulation happens or the face is slightly blurred to the accused, protecting the witness. That is not there. Would the gentleman who was murdered under allegation of knowing what happened in the LifeSport Programme, would he still be alive if he had clause 44 to rely on, as I recommend it ought to be amended? I do not know, perhaps the Prime Minister can tell us, perhaps the Minister of Sport can tell us. I do not know.

Mr. President, I wish to raise two issues in the short time that I have. The time has come in Trinidad and Tobago for a public defender system. The time has come in Trinidad and Tobago for the DPP's department to be significantly improved. The time has come for the equivalent of the VIPER system as is used in the United Kingdom or the PACE system as is used in England to come into effect here. We need to pay our lawyers and our prosecutors properly to attract talent.

The hon. Attorney General has many a time said, quite properly, that to find the resources is an incredible difficulty in Trinidad and Tobago, but there is no mystery as to why we cannot find resources. We cannot find resources because the Salaries Review Commission is in analysis paralysis. They have not made recommendations to find any favour with anybody in the public service to allow for the Attorney General's Department, the CPC, the Chief Parliamentary Counsel, the Law Revision Committee, the lawyers that work on disparate terms and conditions, separating themselves by up to $6,000 to $10,000 a month, doing the same work; the SRC has no consciousness of this.

Albeit that I missed the debate yesterday, where I missed the opportunity to put my two cents in, if I was permitted, in relation to the abdication of duty of the SRC. I must complain, yet again, that they have done us a gross disservice to the legal officers at the Ministry of the Attorney General, Ministry of Legal Affairs, on contract ad infinitum; cannot get a loan at the bank because they do not have secure jobs, but it translates to the Immigration Division as well.

Last night when I came into Trinidad at about one o'clock in the morning, I met a young Immigration Officer who told me that he is still on an acting position, and every single month he has to go and beg and cry and plead to get his

salary. No kind of movement. He is required to take a car at a loan of $3,800, earning $4,500, so he has $700 disposable income to live, to mind his family, feed his children, because his travel allowance, his other terms and conditions, he just cannot get.

We have a Minister of Labour and Small and Micro Enterprises Development, as I will say, as I have said before, parading up and down Trinidad and Tobago acting as Prime Minister right now, almost as if he is in charge of some labour movement, bringing a gross misrepresentation—not he himself but the statistics produced out—to say, "This Government has dealt with the most number of trade disputes and collective agreements in the history of Trinidad and Tobago". Well I put a lie to that last week when you were not here, when I demonstrated that the PNM, in its four-year comparative figure, had 450-odd collective agreements registered versus this Government's 120, and I could name all. I have a list of every single one from the Industrial Court—mamaguy, distraction, deceit.

Mr. President, there is no mystery as to why people in Trinidad and Tobago are striking and protesting, and I want to say something, we in the Opposition speak. I raised last week that there was no nitrogen at the airport and that the fire services were putting the planes and the airport security at risk. The Fire Chief answered supposedly to say that was not true. I have evidence that the nitrogen was put in—I spoke on the Tuesday, nitrogen went on the Friday and Saturday it was filled. Thankfully it was done. [*Desk thumping*]

We raised the issue, Mr. President, of criminality in the LifeSport Programme, allegations of serious criminality, Minister of National Security versus Government, cannot find any resolution between them. The Minister of National Security, newspaper reports coming out over and over again of corruption, rampant corruption. I call upon the Government of Trinidad and Tobago, not only to investigate something which will produce nothing, because they waved a flag three months ago and said, "We are coming to check if you have 30 workers there three months from now". What you expect? Call the DPP in, call a forensic audit in the proper affairs, but, Mr. President, we must treat our employees better than we are.

The attorneys that work for the Office of the Attorney General, I would make a special plea for, the attorneys at the Ministry of Legal Affairs, the young Immigration Officer and everybody like him that sat at the airport at 2.00 a.m. in the morning, working for $700 disposable income, cannot get his benefits, we make a plea on their behalf, Mr. President. I can commit to taking a very long time in the committee stage because there is a lot that I would like to say, clause by clause, in relation to this Bill.

I look forward to Sen. Coudray's robust contribution in this debate, and I thank you for the opportunity to contribute to this debate, [*Crosstalk*] not before I say, as I end, that this Government, long on talk, quick to shoot from the hip, will not do its homework when required and then wants to gloss over, just gloss over the tragedies that they have laid at the feet of the people of Trinidad and Tobago, and for that, Mr. President, they will be judged as badly as Brazil was judged in the routing that they suffered—God help them as the host nation—7-1. I wonder if the general election will look like that for the UNC. I hope the Prime Minister wears the same yellow shirt she wore at that match in Brazil, that she is going to wear again, so she will bring the same luck to this Government. Mr. President, I thank you for the opportunity to contribute. [*Desk thumping*]

8.00 p.m.

Sen. Elton Prescott SC: Mr. President, I thank you very much for this opportunity to contribute to the debate on the Indictable Offences (Committal Proceedings) Bill.

It took me quite a long time to ascertain what the true purpose of this piece of legislation was, coming as it does three years after the Indictable Offences (Preliminary Enquiry) Act, No. 20 of 2011. Like all of my colleagues, I recall that we were presented with that piece of legislation as one which was quite revolutionary, and which had, as its very clear purpose, addressing the significant backlog—logjam I think was the word that was used—occurring in the Magistrates' Court because of the preliminary enquiry system that we had, which had been in existence since 1917. So that one wondered whether in 2014 we were addressing the management deficiency that we had seen in the Magistrates' Court, and this might well be yet another attempt at it. The 2011 attempt being something that I had supported down to the last, if I may subtly refer to what had transpired thereafter. [*Laughter*]

Sen. Ramlogan SC: You remain true to your faith.

Sen. E. Prescott SC: But life goes on, and we now have before us this particular piece of legislation.

I want to make some observations from it. I am in a complimentary mood about it because every effort that is made to change what we do for the better is something that I would applaud. But I do want to make some observations which I hope would be taken into account, and which, when we get to the committee stage I will probably find the time to expand on.

It appears to me that one of the measures now being proposed for removing the logjam is to eliminate hearings, that is to say, having the accused person appear before the magistrate. But I am not certain that that is exactly what we have, because throughout the legislation you would see references to the word "hearing". It can be found in clauses 20 and 18, as though there is some chance that an accused person may have the right to be heard at this stage.

I am very much in favour of maintaining that right to be heard, and if, indeed, the framers of this legislation intended to take away that right to be heard, then we all know that sections 4 and 5 of the Constitution have to be addressed and, therefore, this Bill in itself needs to be adjusted to take account of legislation that seeks to arrogate those rights. So in the event it is intended that the accused person continues to have his right to be heard, it does appear to me that we must address it squarely.

Clause 5 of the Bill, if I may invite your attention to it, says:

> "Any Magistrate may issue a summons or warrant under this Act to compel the appearance before him of any person accused of having committed…offence..."

But you would note that the language is written in a discretionary fashion. It is a matter which the magistrate may or may not do. He may issue a summons or a warrant and compel the appearance of the person before him. That may simply be the style of the drafter. Maybe the drafter did intend to preserve the right to appear and to speak and to be heard. [*Interruption*] I should like very much—thank you very much, Mr. Attorney General—I should like it to be given some serious attention.

You will note the language in Chap. 12:01, in the good old 1917 legislation, at section 10—but, you know, age has its advantages. You would come to know that eventually. [*Laughter*]

Sen. Ramlogan SC: What are you relying on?

Sen. E. Prescott SC: I have proof.

Mr. President, Chap. 12:01, the Indictable Offences (Preliminary Enquiry) Act, says at section 10:

> "When any person is apprehended upon a warrant, he shall be brought before a Magistrate as soon as practicable after he is arrested, and the Magistrate shall either proceed with the preliminary enquiry or postpone the enquiry to a future time..."

That is clear language that says bring the person before the magistrate, and other parts of the legislation confirm that it is intended that the magistrate shall eyeball the accused person. He shall have him before him and then he shall deal with the preliminary enquiry. I am happy to see preliminary enquiries go. I think everybody will be, because they were long and dreary and subject to great manipulation by those who practise in that court. Not only those who practise, but the accused persons themselves, because there are many of them who know precisely how to manipulate proceedings in the Magistrates' Court to their own advantage, and come out every so often for an airing, and four and five and six years or more later, they are still before the magistrate, and the preliminary enquiry is incomplete.

Having got an assurance from the Attorney General that he would look again at that provision in clause 5, I shall not continue on it. I had planned to spend a considerable amount of time dealing with it, let me go forward then. The second thing is, hon. Attorney General—Mr. President, through you—there is a reference to statements made by children being used in the committal hearings, and that is to be found at clause 19(3), but it is a sort of limited provision. We have been there before; we have made provision for children to give evidence in preliminary enquiries. We need to ensure that children understand the gravity of an oath. We need to ensure that they are free from intimidation when they give their evidence, and so I laud the introduction in the legislation of an opportunity for a child—not an opportunity—a mandatory provision that a child should give a statement in the presence, either of a probation officer, child psychiatrist or some other person qualified to make an assessment of the child, to assist the court to determine whether the child is possessed of sufficient intelligence to justify the reception of the statement, and understands the duty of speaking the truth.

I seem to recall, when I was doing criminal law or studying it, that the child had to understand the gravity of an oath also. It was not just a question of the duty of speaking the truth. The child had to understand what it was to speak the truth. Some children do not know what it is to speak the truth because nobody has told them, or they certainly do not know when is the right time to do it.

So if you would put that into the things to be considered and see if there is no other language which might suffice to make that point more clearly.

Sen. Ramlogan SC: To make sure that the child understands the consequences?

Sen. E. Prescott SC: Precisely. If you tell a lie, you will go to hell. I understand you could use "hell" in here, so I am using it. [*Laughter*]

Sen. Dr. Mahabir: "Hell" is a perfectly legitimate word. It exists.

Sen. E. Prescott SC: Once again dealing with persons who might need the help and protection of the court, I thought Sen. Al-Rawi was going there. There is a provision in the Bill that speaks of persons who cannot read or write getting some assistance, and not only that, persons who appear without counsel saying, "I want to plead guilty". I think those are ideal opportunities for the State to provide for a public defender who will appear for such a person.

If I may skip to the provision that says if he wishes to plead guilty and he has an attorney-at-law he may indicate to the court that he wishes to do so, and then a certain other procedure applies. But it does not say what the position is if he is not represented, and one would think that that opportunity is being taken away from him. A man who has the desire to plead guilty is probably doing it based on something that he knows, his conscience perhaps. He needs protection where it is a case of treason or murder, and that is granted, that is provided for.

What that person would benefit from, if he pleaded guilty early, from day one, might be an accelerated treatment, accelerated sentencing and getting out of the court system rapidly. The fact that he could not afford an attorney-at-law now works against him, if I understand the provision in this legislation clearly. So, Mr. President, through you, this too is an area that I will ask the Attorney General to revisit. It is clause 34 in the Bill, and I would read that part of it into the record, so that those who may look at it later on may see what I am talking about. It says in clause 34:

> "In committal proceedings, except when the charge is one of treason or murder, if an accused person who is represented by an Attorney-at-law informs the Magistrate that he is guilty of the charge, the Magistrate—shall…"

make a formal statement to him asking him whether he wishes to have witnesses and telling him that he will now commit him for trial or for sentencing. Depending on his response, the matter then goes down that road and he gets his hearing early.

This, therefore, tells us by implication if that person is not represented by an attorney-at-law, he does not appear to have the opportunity to benefit from the accelerated hearing. I suspect that you may find that we can provide some assistance to such a person, and since the objective is to clear the logjam, then this will certainly add to that management exercise.

I know what you would want to do is to look at the data and see how many persons really come to the Magistrates' Court saying, "I wish to plead guilty". But if you set up the environment for persons to plead guilty, they may well weigh the disadvantage of sitting there languishing for 10 years, with the odd chance of not getting bail, against dealing with it up front. It used to be said that the English—when he was held by a

policeman, usually would say, "It is a fair cop. Take me down, let me go and plead guilty and get rid of it", because he was not inclined to put up a defence only for the purpose of benefiting from the failings of the system. If we remove the failings of the system, lighten the path for the accused person, we may well find that people begin in Trinidad and Tobago to say, "I am guilty".

I chuckle because I know that is not necessarily the case. It might take a generation, but we will sit and read of it.

Sen. Ramlogan SC: Hope the plea bargaining that we are bringing would help with that.

Sen. E. Prescott SC: That should add to it considerably. Thank you very much.

Once again, I am dealing with persons who might be indigent and persons who cannot help themselves. In clause 19, we deal with persons who cannot read or speak—well no, cannot read or write. I suppose that means read or write in English. We also speak of persons who cannot speak English. I think that persons who cannot read or write are properly addressed in clause 19 in that, the statement will be taken and a declaration will be added to the statement to the effect that the person confirms that the statement is true and that he made the statement with some understanding of what is being written.

But I should like to add that such a person should be assisted—pardon me, let me put it differently. I would like to suggest that the declaration by the person taking the statement should confirm that it was that person's view that the accused person understood what was being read to him. A person who cannot read may well have given a story and then have the story read back to him by the person who composed it. But "composed" is the word I want to use, because the person making the statement may well have put his own language in there, and the poor blighter who is accused does not quite understand the subtle distinction between the words used by the composer and himself.

So there needs to be someone who can verify, by way of a declaration, that he having read it to them—and that person not being the composer—was satisfied that the accused person understood what was written and confirmed that it was true, that it was really what he would have liked to say. The same could be said of an interpreter. It does not appear that clause 19(7), which deals with a person speaking through an interpreter, requires that the interpreter should himself declare that he read the statement back to the person and the person appeared to understand it. I think that is an essential part of what we should do for an accused person.

Sen. Ramlogan SC: I wonder if those things are matters we can deal with administratively?

Sen. E. Prescott SC: I am quite sure that we can deal with them even at the committee stage, but I need to put them on the record now.

8.15 p.m.

The provisions for alibi, it appears, have existed for quite some time, but I do not see us treating with the accused fairly if, as it appears the legislation now does, it removes the right for him to say at anytime that "I have found the information that I wanted in support of my alibi". He has given a notice that he is unable to give material particulars.

There was a case in England of a man who said, "I was on a bus going to"—let us say—"Glasgow" or some other place. He knew no one on the bus. He said, "I was not there". And many, many years later, long after he had been tried and found guilty, somebody was able to step forward and say, I recall sitting next to this man on the bus. I am saying this to say that a person who has not been able to provide you with written particulars of an alibi, may well find when he comes to the trial, that somebody remembers seeing him where he said he was at the time. [*Crosstalk*] And one should like to be able to say to him, squarely through the legislation, that it is still available to him to satisfy the jury—assuming that we still have jury trials, to satisfy the judge—that the alibi is worth hearing. It may suffer from age, but nonetheless, that opportunity should not be taken away from the accused person. [*Crosstalk*] May I continue?

Hon. Senator: You all are interrupting my colleague. They are interrupting my colleague. I want to hear scholarly discourses on the law.

Sen. E. Prescott SC: Mr. President, there is another aspect of the Bill that I am noting, and I am wondering if it is deliberate. It appears that a person may now get his own bail when he is committed. And granted that I have not been practising in the criminal courts at all for some years, is that what we really intended? That upon committal, the person may sign his own recognizance and go about his business? If so, look at clause 36 and confirm that in your closing-up, please, through you, Mr. President, to the Attorney General.

If it is being introduced, it is a salutary change in the way we do things because people are more and more able to satisfy the judicial authority that they will turn up. The idea behind granting bail is to ensure that the person will turn up at the trial, and there are people who will much prefer their freedom during the period between committal and the trial, unless it is a matter of very, very, very

grave circumstances. You can go about conducting your business on the basis that you have put up a surety of your own, your property or what have you, and you will turn up at the trial. Some offences really do not require this going out there to find some professional bailor or some relative who—usually it is some old great aunt who has a little house there, and everybody thinks that she has no need of it, and she puts it up for the bail, and poor thing, suffers if something should go wrong.

I have two more points that I wish to bring to your attention. In clauses 30 and 31 of the Bill, we have dealt with exhibits being lost or destroyed. And quite unlike what has been applying since 1917, we seem to be saying that there will be no need for new proceedings if the exhibits have been lost or destroyed. And I am very sceptical about a procedure that allows for that. [*Crosstalk*] If the exhibits have become lost or destroyed, clauses 30 and 31 contemplate the person in whose custody these things were, these documents were, to come forward and say—let me read what he says. He may—

> by testimony of the officer in whose charge the document was last entrusted; and
>
> "the fact that the document is a copy may be authenticated—
>
> where the document is a private document, by"—some—"secondary evidence;…"

Simply get on with the trial. The custodian has lost the goods, the exhibits, whether accidentally or otherwise, and he needs to come forward and do one thing, satisfy a magistrate—a judge, pardon me—by his oral testimony that it is lost. Now, that is not difficult to do. No matter how wise, how sagacious the judge may be. I am wary that to simply provide all the documentation having been lost, all that is necessary, to continue the proceedings, as opposed to go back. Now, I know that we want to save time, we do not want to go back before the magistrate, but look at that again, and tell us whether there is not another way to deal with it.

If you look at the Indictable Offences (Preliminary Enquiry) Act, Chap. 12:01 in section 26, you will see that it says the following:

> "Where, after the preliminary inquiry into the complaint has been concluded, the deposition of any witness is lost or destroyed, the preliminary inquiry may be re-opened or a fresh preliminary inquiry may be held into the complaint for the purpose of taking the deposition of the witness."

I am thinking that can be a measure we can use. I know we do not want to be retracing our steps in having more than one proceeding in relation to an old offence, but I do not think that rushing forward on the basis of the testimony of the custodian would be a satisfactory position. So I am recommending a slightly different approach that allows for the evidence to be presented once again, even if it were secondary evidence, before that judicial officer, and not before the trial.

Penultimately, and I heard it from Sen. Al-Rawi, it is glaring in this piece of legislation that we have not determined what the criteria are or what elements are necessary to determine what is sufficient evidence. I think the words "sufficient evidence", the phrase, is rather too mundane, and is not a satisfactory or adequate replacement for the term "prima facie". A prima facie case has been known for ages, clearly what it says. We know what it means and there is no reason why we should not keep it.

And, Mr. President, in 1917, it has been used—in the 1917 Act, pardon me—because it seems as though these changes came about some time in 1961, but the court then, doing the preliminary enquires, was expected to make a determination that there was a prima facie case made out on the evidence. That is sufficient evidence to put the accused on trial for an indictable offence.

And then again in 2011, again in section 23 of that Act, it says:

> "For the purposes of a sufficiency hearing,"—for sufficiency hearing, read committal proceedings—"a *prima facie* case against an accused is made out where a Master"—read magistrate—"finds that the evidence, taken at its highest, is such that a jury, properly directed, could properly return a verdict of guilty."

There are people, I have heard it here, that people say "you talk too much". Put this in. It is not talking too much. I am sorry, Senator. Put these words in. Let us go back to prima facie case, and let us tell the whole world what we understand to be prima facie. [*Desk thumping*] I was not being flippant. I remembered just hearing somebody saying, "yuh talk too much". So, I am saying, this is not a case of talking too much. This is not superfluity, it is not redundant, it is a very, very pertinent piece of legislation. I recommend it to you.

Section 23 of the Administration of Justice (Indictable Proceedings) Act, 2011, reborn in this fashion might make us feel happy that we did not waste our time going through all the stages of that particular piece of legislation.

And finally, and I am only saying this because I could not avoid it. I like being the language police from time to time. If you look with me at clause 27(e) of the Bill, you would find the following. It is something about the use of the word "elimination" that struck me. You seem to remember it, hon. Attorney General. [*Crosstalk*] Clause 27 says:

> "Notwithstanding anything in this Part…the Director of Public Prosecutions may prefer an indictment whether or not committal proceedings may have been conducted in the following instances:"

And it sets out some of those instances. The magistrate has become infirm and cannot continue. The co-accused—the co-offender has committed to stand trial. So you have found the co-accused, you put him up, you go to trial immediately, and then this. He may prefer an indictment where:

> "in respect of offences of a violent or sexual nature and where there is a child witness, or an adult witness who has been subjected to…elimination."

I suspect that if you are subjected to elimination, there will be no trial. Am I right?

Sen. Ramlogan SC: Well they might refer to the process leading up to it.

Sen. E. Prescott SC: Well, okay. So here is the language. It is already here; 1917 was not a bad year after all. It might not be 1917, but if you look at section 23(8) of Chap. 12:01, you would find him saying, instead where the adult witness is somebody who has been assessed as one subject to elimination. So somebody makes an assessment that you might "ded". [*Laughter*] Right?

Hon. Senator: You might die.

Sen. E. Prescott SC: No, "ded", that you might "ded". Not that you have "ded" already. [*Crosstalk*] Mr. President, I thank you very much. I support this legislation. [*Desk thumping*]

ADJOURNMENT

The Minister of the Environment and Water Resources (Sen. The Hon. Ganga Singh): Thank you, Mr. President. Mr. President, in accordance with—well I gave the undertaking to the House to end the proceedings early this evening.

I beg to move that this Senate do now adjourn to Tuesday, July 15 [*Crosstalk*] at 10.30 a.m. and on that occasion, Mr. President, we will deal with Bill No. 2 on the Order Paper and hopefully get to Bill No. 4. [*Crosstalk*] No. A Bill entitled an Act relating to committal proceedings in respect of indictable offences by Magistrates and for ancillary matters will be dealt with subsequently. So that therefore, if Members of the Senate wishing to make recommendations for amendments, please do so that therefore, they can be incorporated and facilitate an early end to our period to deal with this Bill. So therefore, we will welcome amendments recommended by the hon. Members of the Senate. In those circumstances, Mr. President, thank you.

Question put and agreed to.

Senate adjourned accordingly.

Adjourned at 8.27 p.m.