SENATE

Wednesday, July 23, 2014

The Senate met at 10.30 a.m.

PRAYERS

[MR. VICE-PRESIDENT *in the Chair*]

SPECIAL SELECT COMMITTEE REPORTS
(Presentation)

Beauty Services Association of Trinidad and Tobago (Inc'n) Bill, 2014

The Minister of State in the Ministry of Gender, Youth and Child Development (Sen. The Hon. Raziah Ahmed): Thank you, Mr. Vice-President. I have the honour to present the following report as listed on the Order Paper in the name of the Minister of Tertiary Education and Skills Training:

> Report of the Special Select Committee of the Senate appointed to consider and report on the Beauty Services Association of Trinidad and Tobago (Incorporation) Bill, 2014.

Thank you.

Judges Salaries and Pensions (Amdt.) Bill, 2014
Retiring Allowances (Legislative Service) (Amdt.) Bill, 2014

The Minister of the Environment and Water Resources (Sen. The Hon. Ganga Singh): Thank you, Mr. Vice-President. Mr. Vice-President, I have the honour to present the following report as listed on the Order Paper in my name:

> Report of the Special Select Committee of the Senate on the Judges Salaries and Pensions (Amdt.) Bill, 2014 and the Retiring Allowances (Legislative Service) (Amdt.) Bill, 2014.

ORAL ANSWERS TO QUESTIONS

The Minister of the Environment and Water Resources (Sen. The Hon. Ganga Singh): Mr. Vice-President, as you would recall, I indicated that the Minister of Health was not feeling well yesterday and I gave the undertaking that he would be here today. Apparently, at this hour of the morning, neither the Minister of Health nor the Minister of Transport is available, so I am unable to answer those questions.

The following questions stood on the Order Paper:

VMCOTT
(Details of)

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

a) whether the CEO contract at VMCOTT was terminated by the new Chairman of the Board;

b) if the answer to (a) is in the affirmative, on what basis was it done;

c) whether the Chief Operating Officer position at VMCOTT was an existing position prior to 2010;

d) whether the Chairman of VMCOTT is an Executive Chairman; and

e) have the Managers at VMCOTT met the minimum qualifications for their positions? [*Sen. A. Singh*]

Health Care Professionals Medical Indemnity
(Details of)

104. A. Could the hon. Minister of Health state whether medical indemnity is provided for doctors, nurses and other categories of health care professionals employed by the Regional Health Authorities in Trinidad in the event they are sued for negligence?

B. If the answer to (A) is yes, could the Minister say if this medical indemnity applies to both legal costs and damages that may be awarded?

C. If the answer to part (A) is yes, would the indemnity apply to criminal negligence as well?

D. If the answer to part (A) is no, could the Minister say why? [*Sen. Dr. V. Wheeler*]

Questions, by leave, deferred.

MISCELLANEOUS PROVISIONS (PRISONS) BILL, 2014
[Second Day]

Order read for resuming adjourned debate on question [July 22, 2014]:

That the Bill be now read a second time.

Question again proposed.

Sen. The Hon. E. George: Thank you very much, Mr. Vice-President. Mr. Vice-President, yesterday when I began my wrapping-up, I was speaking to the matter of issues raised by Sen. Elton Prescott—[*Interruption*]

Mr. Vice-President: Minister, may I remind you that you have 39 minutes left from your original time.

Sen. The Hon. E. George: Thank you very much.

Sen. G. Singh: I gave you 15 more.

Sen. The Hon. E. George: Yeah, I was speaking to the matter raised by Sen. Elton Prescott regarding the issue of the Prison Rules. I had indicated to Sen. Prescott that the Prison Rules from which he was quoting were the old rules, and that since that time new rules had been compiled and the new rules awaited debate, and passing of this particular piece of legislation that we are debating today in order to be laid, but it is those rules that will give effect in part to this legislation so that—we are throwing out the old rules and we are going to be using the new rules to address the challenges in the prison system.

Sen. Prescott did also raise the issue of the Superintendent of Prisons, and as I indicated then, there is no Superintendent of Prisons anymore, it is now the Commissioner of Prisons. I did indicate that the old Prison Rules were honoured more in their breach than in their application, so that a lot of what is stated in those old rules no longer holds and has not held for some considerable time. The old rules of 1938, and whatever minor amendments made to them coming through the years now have to be jettisoned, and we are dealing now with the new rules which will be laid before this Parliament shortly.

I want to say though, Mr. Vice-President, our focus as a Government is really to consider what we can do to make a positive difference in the lives of people, and in my role as Minister of Justice, it is to examine in part what difference we can make in the lives of the inmates in our prison system. And it is: how can we provide an environment in our penal institutions that will help to rehabilitate the inmate rather than make him bitter and more extreme when he comes out? How can we provide a prison environment that is safer and a bit more comfortable and less intimidatory for prison officers who work so hard every day for us and for the wider society, and to make us safer?

So the focus of this legislation is on the rights of inmates and the rights of prison officers, and the onus on us as Government and legislators is to identify ways and means or measures that will protect them and improve their situations, and make them better citizens and positive contributors to national life when the inmates depart the system.

This Government has therefore identified this particular measure brought in this Bill of creation of the Inspectorate of Prisons as one which can work to improve the penal system. You must remember, as indicated earlier on, that the old Prison Rules, which in the past governed the operation of the Inspectorate of Prisons and the operations of the prisons, dated back to 1838, and the most recent amendments—[*Interruption*]

Sen. G. Singh: That was the time of our apprenticeship.

Sen. The Hon. E. George:—dated back over 50 years. Most of the provisions are therefore simply outdated. So as I said in my debate when I was piloting the Bill yesterday, this Bill is one further element in the Government's continued thrust towards the modernization of the criminal justice system of Trinidad and Tobago, and more particularly, transformation of the current penal system to bring it on par with the contemporary international norms and best practices.

That is why it is strange and alarming therefore, Mr. Vice-President, that Sen. Robinson-Regis in her contribution could on the one hand say that the Government is doing nothing to improve the prisons, while at the same time vehemently criticize this legislation with words to the effect that this legislation does nothing, and I am quoting:

> This legislation does nothing to aid or improve the penal system. And again the Ministry is in a holding pattern with respect to the justice system in Trinidad and Tobago.

So I will deal with some of the very misleading comments made by the good Senator in her contribution, and I want to be very accurate in referring to what the goodly Senator had said. I listened carefully as I indicated and took copious notes, and here are some of the questions that Sen. Robinson-Regis proposed:

> As indicated, this piece of legislation does not add to the improvement of the penal system. How will this legislation weed out the bad eggs in the prison officers? The Minister said nothing about overcrowding, about illegal cell phones, about statistics on attacks on prison officers. The Minister said nothing about the concerns of the prison officers regarding special housing, guns and bulletproof vests—and so on, and so on.

I quote again:

> The system in the prison is not being improved by this piece of legislation.

But, Mr. Vice-President, it is precisely by the introduction of pieces of legislation like this that we seek to improve the situation in the prisons. The Senator also referred to the Basdeo Panday-appointed committee or task force, headed by Cipriani Baptiste and

included John Rougier and so on, I think it was in 2001 she suggested. And that the matters raised in that report still continued; and those issues still continue even now, and that is when she did mention that the Ministry is in a holding pattern.

Well, I want to say something, that the PNM had been in a holding pattern since 1963 on matters like these. Since 1963 the PNM has been in a holding pattern in matters involving the prisons and the reorganization of the prisons and the improvement of the prison system and prison life. It says here, Senators, I am saying here, not only Sen. Robinson-Regis but Senators of the Opposition Bench quote liberally from the Deosaran report. They quote liberally from the report of the Inspector of Prisons recently presented by Mr. Khan, and they quote liberally also from newspaper articles and so on, re the current deficiencies in the prison system. But I want to remind them, that in doing their research, and in order to be fair, they must also investigate or check on the reports that have been coming regarding the situation in the prisons as far back as 1963, when they were in power.

So I am saying, the report on the "Prison Organization and Expansion, Trinidad", Ovi Gareth advisor on prison administration—[*Interruption*]

Sen. Robinson-Regis: What are you doing now?

Sen. The Hon. E. George: I will come to that—advisor on prison administration, Colonial Office, London, laid in the House of Representatives since 1963, and that report contains very similar prescriptions to the more recent report by the Inspector of Prisons. There is another report on the commission appointed to enquire into the circumstances surrounding the outbreak of fire at the Royal Gaol on January 01, 1974 when they talk about recent riots. I am saying that there was also a commission appointed there in 1974 and that commission also reported to the then PNM Government.

So that this—what we have existing in the prisons today is a function or a result of years and years and years, decades in fact, of PNM neglect. [*Desk thumping*] And the PNM wants us to come in four years and clear up all of it, and wash their hands like Pontius Pilate as if they had no responsibility at all in where this has got to. And then again another report by Mr. Lionel Seemungal QC in May of 1978. I think the PNM was also in power then.

10.45 a.m.

So from 1963 to 1978—[*Interruption*]

Sen. Robinson-Regis: You in power now!

Sen. Hadeed: "What yuh think we doing?"

Sen. The Hon. E. George: There was—[*Interruption*]

Sen. Hadeed: Writing the legislation, that is doing something! That is what we are doing!

Sen. Robinson-Regis: You were doing nothing!

Sen. The Hon. E. George: There were commissions of enquiry into the situation in the prisons and recommendations made for addressing them, and the PNM did absolutely nothing to address them.

Sen. Robinson-Regis: That is not true.

Sen. The Hon. E. George: That is what has us here today. Again, in 1990, there was the final report of the Cabinet-appointed Task Force on Prison Reform and Transformation. The committee's chairman was one Mr. Cipriani Baptiste. That was submitted in 2002. So I am saying that they come here and they speak as Pontius Pilate, wiping—[*Interruption*]

Sen. Robinson-Regis: We are not speaking as Pontius Pilate, we are speaking as the Opposition.

Sen. The Hon. E. George:—wiping their hands—[*Interruption*]

Sen. Hadeed: Like the angel Gabriel—

Sen. The Hon. E. George:—and saying that they are not at all to blame or have no responsibility in this particular matter. But I would go on to highlight some of the things that this Government is doing, as we speak, to address the challenges in the prison. First of all, I want to remind Members that the Prime Minister—and I did start off by saying that yesterday—did appoint the Deosaran committee in response to the challenges that were faced late last year, and that showed the commitment of the Prime Minister and the Government to address directly, [*Desk thumping*] the situation in the prisons.

The Deosaran report did itemize certain matters that had to be attended to, including the issue of the bulletproof and stab-proof vests, the safe houses, the issue of providing 300 beds and improving the lighting, plumbing and toilet facilities in the prisons; the establishment of a use-of-force policy and training of the prison officers in the use-of-force policy—and in respect of that use-of-force policy, I will speak to that a little later on—to discussions having to do with the reduction in the time taken to have court matters of inmates heard, and so on.

So let me indicate where we have reached with some of these matters that were raised in the Deosaran report. In respect of the procurement of the bulletproof and stab-proof vests for prisoners—

Sen. G. Singh: Prison officers.

Sen. The Hon. E. George: Prison officers, sorry—the procurement process is well on the way and a special tenders committee of the National Security Ministry has awarded a contract for it and delivery is expected in September2014. [*Desk thumping*]

Sen. G. Singh: Tick that off.

Sen. Robinson-Regis: Tick what off?

Sen. The Hon. E. George: In respect of the procurement of the 300 beds, the majority of the beds have already been delivered and they are being installed as we speak. [*Desk thumping*]

Sen. G. Singh: Tick that off.

Sen. Robinson-Regis: Send the Attorney General to see if they are really delivered.

Sen. The Hon. E. George: The improved—[*Interruption*]

Sen. Hadeed: Licks passing. Go and check. Licks passing.

Sen. Robinson-Regis: What licks?

Sen. Hadeed: Licks passing. [*Crosstalk*]

Sen. The Hon. E. George: The improved lighting and the improved plumbing is being attended to—[*Interruption*]

Sen. Robinson-Regis: Now, today—

Sen. The Hon. E. George: The water lines supplying the remand prison were changed from three-quarter to two-inch with the assistance of WASA, and additional water tanks and so on were installed, and pumps, so that now that matter [*Desk thumping*] of the issue is also attended to.

Sen. G. Singh: Tick that off.

Sen. Robinson-Regis: This is dynamite!

Sen. Baldeo-Chadeesingh: More water for the prisoners!

Sen. Robinson-Regis: This is dynamite!

Sen. Hadeed: Three-quarter-inch pipe there since 1498.

Sen. Baldeo-Chadeesingh: Actual accomplishment.

Sen. Ramlogan SC: Give them some fireworks there, man. "Dey want dynamite."

Sen. Robinson-Regis: Dynamite!

Sen. The Hon. E. George: The matter of the installation of the cell phone jammers and grabbers, the special tenders committee of the Ministry of National Security has approved the specifications and—[*Interruption*]

Sen. Robinson-Regis: It is on its way—September.

Sen. The Hon. E. George:—and they are now going to supply—[*Interruption*]

Sen. Hadeed: It will be.

Sen. Robinson-Regis: September?

Sen. Hadeed: It will be.

Sen. The Hon. E. George: Listen carefully "nuh". And they are—[*Crosstalk*]

Mr. Vice-President: Mr. Minister—Senators, we left here a few hours ago but, apparently, I thought you were tired, but you seem to be more energized now when you work late. So please allow the Minister so that we could get on with the business of the House. Thank you. Please, Mr. Minister, continue.

Sen. The Hon. E. George: Thank you very much, Mr. Vice-President. The special tenders committee is awarding the contract for this via the process of selective tender for these cell phone grabbers and jammers. Several issues had to be addressed in respect of how this will operate and the Telecommunications Authority of Trinidad and Tobago was intimately involved in addressing this particular matter. [*Desk thumping*] So now we have cleared all of the hurdles and we are now proceeding with that.

Sen. Robinson-Regis: What is a cell phone grabber?

Sen. The Hon. E. George: The request for tender for the supply of the body scanners have also gone out and that, too, we expect to come in short time. Let me say that in respect of the goodly Sen. Camille Robinson-Regis issue, with the care—whether the Minister is attending to matters involving—and the provision of prison officers with guns, apparently people do not listen to matters when I speak, for example, on television. I went on television several times with this particular matter and I did point out that under the Firearms Act, the person assigned responsibility to awarding guns to our population—anybody in the

population—is the Commissioner of Police. It really has nothing to do with the Minister, or the Government. [*Desk thumping*] So it is just playing cheap politics and trying to gain cheap political points to ask whether the Minister is doing anything about giving guns to the prison officers. That is just cheap politics because I am certain, having been in Government over a considerable period of time, Sen. Robinson-Regis knows that, but, again, it is just to play cheap politics here in the Senate that you refer to that.

Sen. Robinson-Regis: They asked. I am asking on their behalf.

Sen. The Hon. E. George: Yes, you are asking on their behalf, very good.

Sen. Robinson-Regis: Yes, I am. We represent the people.

Sen. The Hon. E. George: So that we are, indeed, taking care of the issues—[*Interruption*]

Sen. Robinson-Regis: What about the housing?

Sen. The Hon. E. George:—that the prison officers raised. On the issue of housing, recall that there is 10 per cent of the houses constructed by HDC awarded to members of the protective services, which includes prison officers, and that is being attended to. [*Desk thumping*] It is an ongoing process at the Ministry of Housing and Urban Development.

The matter of special housing: I am aware that discussions have taken place between the HDC and the Commissioner of Prisons and decisions have been taken regarding the consigning to the Commissioner of Prisons a number of homes which can be allocated to prison officers on a temporary basis—this is already in place—so that prison officers can be accommodated. Prison officers whose lives are under threat can be accommodated in these homes.

So, I am saying that all of these things, progress is being made on them as we speak, so that when the cheap politics is played in here by Members on the opposite side regarding the action that the Government is taking and suggesting that the Government is doing nothing about these things, is just very, very far from the truth. Again, it is just, you know, they have to play their cheap politics so they come here and they do it very, very freely.

Sen. Robinson-Regis: It is not cheap. This is expensive politics.

Sen. The Hon. E. George: I indicated yesterday that, far from this piece of legislation—as my goodly friend, Sen. Robinson-Regis had said—not helping in improving the prisons and so on, I said yesterday, and I reiterate, that this is one

of the prongs in the efforts of Government to deal with this entire system. Remember, it is a multifaceted problem and we have to attack it on several different fronts. I did indicate that this legislation is just one of the several fronts that the Government is using to attack this particular problem.

I spoke also to the fact that only last week a Note was taken to Cabinet to introduce into the prison system, measures that will address the use of drugs by prisoners, and the trafficking of drugs by prisoners. We also have the parole legislation which we are pursuing, the Bail (Amdt.) Bill, the new justice policy, the electronic monitoring. All of these are measures which together, combined and put into place, will address the challenges that we face in the prison system.

The goodly Sen. Al-Rawi, in his contribution, spoke to the issue—and so, too, did goodly Sen. Camille Robinson-Regis—spoke to the matter of prisongate. All I will say about the matter of prisongate, which is a term that they use—I am not very clear about what it really means—but so far as I am aware, the Director of Public Prosecutions has put a committee in place to address this particular matter. I simply await its report and I have no further comment to make on that particular matter.

Sen. Robinson-Regis: The amount of things you waiting for.

Sen. The Hon. E. George: Yeah, well you have to go and ask the DPP.

Sen. Robinson-Regis: Me, "papa"?

Sen. The Hon. E. George: Well, exactly. [*Laughter*]

Sen. Al-Rawi spoke to the matter of the qualifications that were not included in the legislation. [*Interruption*] Let me say, Mr. Vice-President, that all of the Members opposite and also Independent Senators, did refer to this. Let me say, too, that when the matter was debated in the other place, this matter was also raised and at the end of the debate it was agreed that if the matter came up in the Senate and there was a cogent argument presented for inserting qualifications in that particular section, the Government would be very, very amenable to doing so. So I want to say to Members opposite that we have no problem in pursuing an amendment in that regard. In fact, the AG had passed to me a proposed amendment which we would consider when we get to the committee stage. That amendment seeks to insert the particular qualifications.

I should say also, to be quite honest and also to be fair to the persons in the Ministry who did advise me on this, that they had suggested that if in the debate it was found that these academic qualifications should be included, consideration would be given to doing so, and we really had no problem. I did not go on to read

that particular piece of the advice that had been given by the legal people in the Ministry, but I indicate that it was there and I just omitted to make mention of it. So that the Government was already disposed to agreeing to an amendment involving the inclusion of an academic qualification for the Chief Inspector of Prisons and Deputy Chief Inspector of Prisons at clause 11.

So, Mr. Vice-President, Sen. Al-Rawi spoke to matters involving the Maximum Security Prison and so, too, did Sen. Diane Baldeo-Chadeesingh, and the fact that the MSP is there 25 per cent utilized and the issue of the Carrera prison. I just want to say in response to that, that work is ongoing at the MSP. It is a foreign contractor that has been procured to address that particular challenge of bringing the MSP up to speed so that we can accommodate more persons there. It is the intention, once that work is completed in September, that we would begin to move the prisoners at Carrera away from Carrera and into the Maximum Security Prison.

So I am saying—I had said it before, but I want to repeat it because it seems not to be registering—that, yes, there has been some delay in the closure of the Carrera prison, but the closure of the Carrera prison is dependent upon the completion of repairs, the electronic upgrade and so on, of the MSP, and once that is completed—and the contract, as I indicated, has been awarded, and the work is going on by the foreign contractor.

11.00 a.m.

There is also training involved for prison officers so that they can operate the prison, the electronic mechanisms and so on. So that matter is being attended to and we hope that once that work is completed in September, the removal of those inmates from Carrera will take place.

Sen. Al-Rawi spoke to the matter of the ECRC and saying that it is just standing there unutilized, but I want to report in respect of the ECRC, that $2 million per month in rent is just a complete lie—I do not want to say "lie"—what is the word?

Sen. G. Singh: Fabrication.

Sen. The Hon. E. George: Fabrication.

Sen. G. Singh: Falsehood.

Sen. The Hon. E. George: A complete fabrication and a falsehood. There is no $2 million a month being paid for the rent of that facility. The ECRC houses approximately 140-odd inmates who are on the point of release, and so they are being groomed for release.

So when the Attorney General spoke to the fact that when he went there the prisoners were in good order, looking at a television programme and so, he was quite right. Because when they are in that facility and about to leave—you have six months to go, three months to go, a year, two years to go on your imprisonment term—you are on your best behaviour. So that it makes sense for the ECRC to be in excellent condition.

Physically, it is very, very clean. It is also a fact that the prisoners will be on their best behaviour. So they will sit in a very orderly fashion and look at a movie and so on. So, I do not see how that could be a problem for those opposite. In fact, they should be welcoming the fact that we could go to the ECRC—which is located on the Churchill Roosevelt Highway in Wallerfield—and see the prisoners or the inmates there behaving very, very well in anticipation of their departure from prison life. [*Desk thumping*]

In fact, the Commissioner of Prisons and his team should be congratulated for having that facility in such a pristine condition, and have the inmates behaving so well. All we want to come here and talk about is riot? If it is riot we are very comfortable talking, but once it is good behaviour we have a problem. I do not understand that. [*Desk thumping*] Let me also say that the intention is to purchase this facility. I said so in this Parliament already, so I do not know why the issue is coming up again. The intention is to purchase this facility, use it and improve it and so on, so that it can assist in the rehabilitation of the penal system.

Sen. Al-Rawi also spoke to the matter of the British legislation catering for oversight in the choice of Inspector of Prisons. Sen. Al-Rawi always gets involved in legalese, but for persons not legally trained, like myself, the British legislation does not contain any qualification.

Sen. Al-Rawi: That is what I said.

Sen. The Hon. E. George: But—and that is what I said, and I still think that I am correct in that regard. To go to issue of oversight and so on is just carrying it a little bit beyond what I was concerned with here.

Sen. Wheeler spoke to the matter of the—[*Interruption*]

Sen. Ramlogan SC: Oh yeah, a very distinguished contribution.

Sen. The Hon. E. George: Yes. He was short, but he did make the point that the ability of the Minister to remove the Chief or Deputy Chief Inspector should be fettered to some extent, and we are willing to consider that particular suggestion. Of course, Sen. Wheeler also raised the matter of the qualification issue, and I indicated that we are amenable to agreeing with that.

I dealt with Sen. Baldeo-Chadeesingh's matter. She raised the qualification issue and she also spoke about the matter of the vacating of Carrera, and that was the substance of her contribution.

I did refer also to Sen. Prescott who was next in line in speaking and, as usual, Sen. Prescott's contribution is always more perceptive than some others, in particular on the Opposition Bench, including Sen. Al-Rawi—[*Interruption*]

Hon. Senator: Especially.

Sen. The Hon. E. George: Especially Sen. Al-Rawi, always more perceptive. Sen. Al-Rawi was all over the place yesterday. He spent about two minutes dealing with the Bill and the other 58 minutes of his contribution was dealing with some Permanent Secretary's personal business. Just wasting the time of the Senate. Getting involved—in my view, just in poor taste. But anyway, that is expected of the people of the PNM.

Sen. Mahabir did make a very significant contribution and it is precisely why this legislation is here. Is the punishment of the prisoner the fact that he is being sent to prison or is the punishment just being in the prison? And, as indicated, this is precisely what we are after. We want to ensure that the punishment that you get is the matter of your freedom being taken away by you being sent to prison. But, the rehabilitative process is one that we are focusing on in the Ministry, and I think that Sen. Mahabir was right on the button in underscoring that there are rights that the prisoner has to being treated properly when he is in prison, and that includes the environment in which he is placed should be such as to ensure that his safety and health are not threatened—both his physical and mental health are not threatened.

The Senator suggested that he would have liked to visit the prison. I have no problem in saying to the Senator, choose the time and date and I will see if I can ask the Commissioner of Prisons to accommodate you. Let me say this though. I have visited the prison on several occasions, and quite apart from the horror that Chairman Deosaran, chairman of that team, highlighted, my own concern was that there are so many young people in the prison, and for me remembering how I was when I was young that I would be involved in—[*Interruption*]

Sen. Ramnarine: That was not so long ago.

Sen. The Hon. E. George: Well it was not so long ago—cricket, football and music, and my books and so on. I abhor, when I consider it—suppose now I was in there and I could not avail myself of all of the opportunities that are on the outside and I am there in the prison. I could not play football with a team, I could not go to party, I could not read my books, I could not study, for me, that is what affected me the most; that here you have young men in the prime of their life who

are in prison. My own drive as a result of that experience is to seek to make their stay in the prison as comfortable as possible, and that is why I am pushing very, very hard in support of the Government's thrust towards restorative justice and I am trying to see how I can, as far as possible, improve their lives in the prisons. That is what affected me the most, the taking away of the freedom of young people in the prime of their lives and perhaps at their productive best, and it is a considerable loss to the society.

So when we sit here, or stand here, and speak on matters involving the prisons and do not focus on the welfare of the prisoners and, by extension, the prison officers—because if the prisoners are more comfortable, then the work of the prison officers is also easier—it is not about us and about us standing here and preening our feathers and trying to sound eloquent and so on. It is about the people that we are here to serve. Always remember it is about the people that we are here to serve [*Desk thumping*] and my commitment is to seek to address that matter. The matter of the Inspectorate of Prisons being brought to this Parliament and seeking the approval of the Senate, is precisely to aid in improving the lives of the prisoners in the prison system. [*Desk thumping*] Sen. Mahabir also spoke, saying that there must be a process by which the Minister could remove the Appeal Tribunal.

I want also to thank Sen. Vieira, particularly, because I think he too hit the nail on the head when he took a human and constitutional rights perspective and spoke about reforming the inmates, and again this falls in with the Ministry's thrust toward restorative rather than retributive justice. His suggestion was that we have to reform the inmates, we must treat them well, improve their conditions and prepare them for a return to society and to become good contributing citizens of the society. He understood the difficulty of what he termed "failed institutions". Well, I would not go so far as to say that they are failed institutions, but to suggest that we have to make the systems work better and we have to make people accountable as Sen. Drayton said, because in her contribution she focused on the fact that largely accountability is not a function of persons of these agencies. So I want to thank Sen. Vieira for his very insightful contribution.

Sen. Small—I am sorry, it was Sen. Small who spoke about the matter of the failed institutions. Sorry. But again, it was very close to Sen. Vieira's. So that is why I mixed up the notes. Sorry. It is Sen. Small who spoke to the matter of failed institutions. It is Sen. Vieira who spoke to the issue of human and constitutional rights and the perspective of reforming the inmates and so on. So, Sen. Small having been a public servant, will understand the difficulties faced sometimes in getting these agencies in the public service to move. It seems always to present serious challenges in terms of getting action.

The bureaucracy is very difficult to turn, or the wheels of bureaucracy are very difficult to turn. I did indicate that, in response to Sen. Small, we did take a Note to Cabinet regarding the introduction of a drug rehabilitation programme in the prisons. Sen. Small did refer to that, but he did speak to that the Government consider a programme of conditional release. I am saying that the matter of the parole legislation will address some of that, the matter of the electronic monitoring will also address some of that. So that this conditional release issue is a matter that is in active consideration and, in fact, remember that the electronic monitoring Act was passed.

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

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

Question put and agreed to.

Sen. The Hon. E. George: Thank you very much, Mr. Vice-President, and to my leader and to Members present for giving me this extra time. I want to speak here, Mr. Vice-President, on a matter that was raised yesterday and which is highlighted in the *Guardian*: "Uproar over Judiciary's role in drafting the prison law".

11.15 a.m.

Now, I am trying to get the exact quotation in the *Hansard*, but let me make it quite clear that when I was saying thanks and giving appreciation to the input of various stakeholders in this legislation finally reaching the Parliament, I did refer to the input of the Judiciary. Let me make it quite clear that at no time was the Judiciary involved in the actual drafting of the legislation, but we did consult with certain agencies who we considered stakeholders in the matter.

For the record, let me say that I regret if at all my comments here created an embarrassing situation for the Chief Justice and the—but the fact is, that was not the intention at all, but simply to say that we attempted to consult with stakeholders in order to get inputs into what would finally become the policy out of which the Bill was drafted. So, I want to clarify that in no way was what I was saying intended to indicate that the Judiciary was acting out of step with what they were supposed to be doing or not doing and so on. So I just want to lay that on the table.

So, Mr. Vice-President, we are willing to consider the proposals that have been presented, in particular the proposal regarding the insertion of the qualification criteria for the Chief Inspector of Prisons and Deputy Chief Inspector of Prisons and to consider the issue of the authority of the Minister to dismiss virtually the Appeal Tribunal if that is also of some concern.

So, in closing, I want to say thanks to all of the agencies that were involved in the drafting of this particular Bill, the legal people in my Ministry, the Chief Parliamentary Counsel and his team and so on, for this. Also, for the input of all my colleagues, Senators, even those who were critical, and to say that we hope that when we go to the committee that we will be able to sort out those areas of contention, and that we will eventually be able to pass this Bill which is a significant pillar, in my view, in the improvement in the justice system and the penal system, and which will bring this country into a more modern age of how we address our challenges of our prison system and our justice system, and be important in promoting the strategy towards restorative justice rather than retributive justice.

Mr. Vice-President, I beg to move. [*Desk thumping*]

Question put and agreed to.

Bill accordingly read a second time.

Bill committed to a committee of the whole Senate.

Senate in committee.

Clauses 1 and 2.

Question proposed: That clauses 1 and 2 stand part of the Bill.

Sen. Al-Rawi: May I enquire, through you, Mr. Chairman, to the Minister, when the proclamation is intended to take effect?

Sen. George: I did indicate, in my piloting of the Bill, that there are some infrastructure matters to attend to, as well as some personnel matters to attend to and when—you have to ramp up in order to be able to do this. So, that ramping-up will have to take place in terms of bringing human resource in, as well as providing accommodation and so on for this agency.

Sen. Al-Rawi: Sure.

Sen. George: I cannot say at this time how long that will take, but the proclamation depends on that and I did say so in my presentation.

Sen. Al-Rawi: Sure, my apologies, I may have missed it and just looking for the opportunity to clarify. Hon. Minister, whilst I appreciate the predicament that you are in, would you mind, and perhaps you have said this already, some of the infrastructure to be put in place, does that include the hard cast of prisons, et cetera and officers?

Sen. Ramlogan SC: "Yuh doh allow that in committee stage, you know."

Sen. Al-Rawi: I understand, it is just a quick question.

Sen. George: No, we are dealing with the Inspectorate of Prisons. Are we not?

Sen. Al-Rawi: Yes.

Sen. George: And that is what we have to set up.

Sen. Al-Rawi: No, I meant in terms of the physical bodies of prison officers and prisons, just those two points: whether the issues to be put in place included those, relative to proclamation in clause 2?

Sen. George: Well, not really. The recruitment of prison officers and so on is a matter that is ongoing. It does not fall under this at all.

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

Question put and agreed to.

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

Clause 3 ordered to stand part of the Bill.

Clause 4.

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

Sen. Al-Rawi: May I? Just a few observations perhaps for the Minister's clarification. Hon. Minister, in clause 4 which proposes an amendment to section 2 of the Act, in subsection (c), and this is on page 1, I am looking at the use of the term "Commissioner of Prisons"—[*Interruption*]

Sen. Ramlogan SC: We are on clause 4 and you are talking about clause 5.

Sen. Al-Rawi: No, clause 4, section 2, page 1. Right? So clause 4, subsection (c), AG, I am looking at the descriptions of "Commissioner of Prisons" versus "Prison Commissioner" and I just wonder from a use of terminology perspective—insofar as we had had some confusion with the PCA, the entity, versus the PCA, the internal division in the police—I wondered if it was prudent to use terms which are so interchangeably similar, that is "'Commissioner of Prisons' means" and "'Prison Commissioner' means". It is to avoid a conflict of terminology, particularly in the mind of the public or persons who are users of the Bill. So, there was that first observation.

The second one, perhaps, Minister, you can address this, is relative to "service provider". Minister, is the "service provider" definition meant to articulate with some other new provision that is being put in? Is that where we come down to the new sections 19, 20, 21? Perhaps, you could clarify.

Sen. Ramlogan SC: Chairman, clarify I think on the issue of the "Commissioner of Prisons" and "Prison Commissioner", I think the rationale for the distinction, if you look at "Prison Commissioner", it excludes, as it were, the office of the Commissioner of Prisons. So I think that is why they have that distinction.

Sen. Al-Rawi: Could you help me, AG, in understanding, perhaps, how it is used in the new Act as it may be amended? Maybe, that could help to clarify whether we may be unwittingly causing some confusion.

Sen. Ramlogan SC: Well, I mean, it seems to be fairly clear. There are two different definitions and they mean two distinctly different things. I mean, the Commissioner of Prisons is the person holding the Office of the Commissioner of Prisons. The Prison Commissioner is a person acting or holding the office, anything below that the Deputy Commissioner Assistant Commissioner of Prisons. Is your concern the fact that the words "Prison Commissioner" could be easily confused with "Commissioner of Prisons"? Is that it?

Sen. Al-Rawi: Yes.

Sen. Ramlogan SC: Yes.

Sen. George: I am advised that the Prison Commissioner would apply to the deputy commissioner or assistant commissioner when they are—are completely distinct from the Commissioner of Prisons and in particular when they are part of a tribunal and so on in doing their work.

Sen. Al-Rawi: So the average—I am just looking at it from a user perspective. I am just wondering if it is that we intended to indicate the subordinate factor of the persons other than the Commissioner of Prisons. It seems a little bit confusing to use terms to indicate a subordinate which is just a reversal of words of the principal. So the principal is Commissioner of Prisons and the subordinate is the Prison Commissioner. It just seems a little odd, Minister.

Sen. Ramlogan SC: It really is to refer to them when they are acting in a disciplinary capacity or as a commission. So the word "Commissioner" really applies to qua when you are a member of that commission, so the commissioner arises out of that.

Sen. Al-Rawi: Sure.

Sen. Ramlogan SC: And I think when you look at it from that perspective, there can be no room for confusion because it is not involved in the operational or administrative aspect of the prison service but only when they are sitting in that adjudicative capacity.

Sen. Al-Rawi: AG, thank you. The thing is that both phrases are "Commissioner", so you have "Commissioner of Prisons" and "Prison Commissioner". The distinction between the two is that you drop the "s" on "Prisons" and you put it first. So, are we translating what we want to translate is my simple question.

Sen. Robinson-Regis: If I may, AG?

Sen. Ramlogan SC: Sure.

Sen. Robinson-Regis: If that is, in fact, what you are trying to indicate, perhaps, the definition should include that fact, because you are saying that it could be used—[*Interruption*]

Sen. Ramlogan SC: In the capacity?

Sen. Robinson-Regis: Yes, when they are operating in that specific capacity. Maybe if you put that in the definition, then you would be able to distinguish between the two.

11.30 a.m.

Sen. Al-Rawi: AG, perhaps, I could just, if you allow me this opportunity. The mischief that I want to paint—

Sen. Ramlogan SC: The draftsman is saying look, they feel comfortable with it because the capacity is spelt out in the substantive provisions of the Bill itself and they do not see any room for confusion. If we change this the consequential amendments are going to run into the rules and everything else that we have already dealt with. I think we will rest on this. As a matter of fact, we are comfortable with it as is because it is clear when you read—it may not be clear when you read it in a vacuum by reference to the interpretation section in isolation, I take that point. But when one reads it as part of the Act, then the capacity is clear and the distinction. There is no room for any confusion there.

Sen. Al-Rawi: Just the last thought I would ask you to consider and I understand that you have stated your policy but I just want to share with you the mischief that is itching in my mind. I see and I did overhear slightly the side talk there. I understand that the "Prison Commissioner" is meant to indicate the persons who are acting in the delegated capacity, either the subordinate by way of office who is the Deputy Commissioner of Prisons, or the assistants. The mischief that has the potential to crawl out is where the person who is receiving the instruction of an assistant in that delegated capacity, which this law proposes, rolls up and says: I am the Prison Commissioner. Somebody unsuspecting may not appreciate, from an outside perspective, that this person is actually the assistant to whom a delegated function is given, albeit that the function under this proposed law is that he has all the functions of the Commissioner of Prisons. So that, the right to challenge somebody for acting beyond the delegated power—[*Interruption*]

Sen. George: May I interrupt there? It is only when they sit in as a tribunal. What instruction will they give sitting as a tribunal to a subordinate?

Sen. Al-Rawi: Thank you, hon. Minister. That is exactly it. If "Prison Commissioner" included in its definition there the fact that you are talking about the person qua tribunal appointee, then that takes care of it entirely. If that is the intention, then the intention is not expressed in the definition of Prison Commissioner. I would have no problem with that because you would have been describing the function of the person, which is distinct from the example that I was just giving, and the example that I was giving was to demonstrate the potential for a mischief to happen.

Sen. Ramlogan SC: I think we are comfortable with this when one reads it with the substantive provisions in the Act it becomes very, very, clear. I do not accept that someone who is acting as a delegate of the Commissioner of Prisons, in whatever capacity, given that it is not the Commissioner of Prisons, can be misunderstood, because the extent of the delegation would be made clear by virtue of the function that they are asked to perform on behalf of the Commissioner.

But the point here, I think why they use Prison Commissioner is because it can include several persons or other persons, but the important distinction here is that it excludes the office of the Commissioner of Prisons. To those in the prison service I want to say as well, and those who are familiar with the public service, there are many offices that you have these terms "kinda" interchange. But what they do know is that on the establishment, there is only one office of Commissioner of Prisons and the Prison Commissioner here, the capacity will be made clear by virtue of the rules and the substantive sections in the law. So we are comfortable with that.

Sen. Prescott SC: Mr. Chairman, I am very uneasy having heard all of this discussion. If the Commissioner of Police is ever referred to as the Police Commissioner in Trinidad and Tobago, it is by at least 90 per cent of us, and we are not afraid to say that they are one and the same. If we call the Commissioner of Police, the Police Commissioner everybody knows what we are talking about. So may I ask, where does the Prison Commissioner function as a commissioner? And if that really is not a confusion in the mind of the Attorney General and the hon. Minister, perhaps we could find some other term to identify these persons. It could not be merely a matter of expediency to say well we would have to make changes in the rules and the other things. The man simply could not be the Prisons Commissioner.

Sen. Ramlogan SC: I am nonplussed about it because it is really a definition section that has to be read with the parent Act. What the draftsman is telling us is that this is a matter of drafting style and this is how they do it and the rules itself make extensive reference to this.

Sen. Prescott SC: And he is an official on a tribunal? So we could call him the Tribunal Commissioner?

Sen. Ramlogan SC: I know, the problem is that the consequential work that they do. It is not only a matter of expediency but it is also that it is clear when one reads it.

Sen. Al-Rawi: AG, we have a problem.

Sen. Prescott SC: You would probably feel as uneasy as I do about this.

Sen. Ramlogan SC: I see the point.

Sen. Al-Rawi: AG, we have a huge problem. I think, perhaps, there may have been a little miscommunication along the line. We were just told a little while ago that the Commissioner of Prisons is the person sitting in the tribunal.

Sen. Ramlogan SC: Can I just ask—did you have a proposal in mind?

Sen. Prescott SC: I do not know why you would have wanted to introduce the title. The Prison Commissioner, that is not the Deputy Commissioner.

Sen. Ramlogan SC: It is a matter of drafting style. I will instruct the draftsmen to take a second look at it. Can we, in the interest of time move on and we will come back to that.

Sen. Prescott SC: And, therefore, in short, could the draftsman just simply accept that there is a person called the Deputy Commissioner, and let us leave it there. That would need no definition whatsoever.

Sen. Ramlogan SC: Sorry, you mean in terms of—

Sen. Prescott SC: You propose to call the Deputy Commissioner the Prison Commissioner. It might be easier for us all to accept that the Deputy Commissioner is the Deputy Commissioner, that the Assistant Commissioner is the Assistant Commissioner.

Sen. Ramlogan SC: I will speak to the draftsman about it. It may very well be that Sen. Regis' point of defining it by reference to the capacity or the function, the function to be performed, might be a useful one.

Sen. Robinson-Regis: Look at section 26.

Sen. Al-Rawi: AG, when you are having your conversation, would you just raise one final issue with your team, the last point that I had asked you to raise when you are having that discussion? Perhaps, I may have got it wrong, but I thought I heard a while ago that the Prison Commissioner, that is the second term used, would be the person when they are sitting in the tribunal, et cetera. Right? That is what I understood.

Sen. Ramlogan SC: In some cases.

Sen. Al-Rawi: Right. Just to point out that in section 26, there is no circumstance where that could in fact be the case, because an appeal tribunal established under subsection (1), is to hear an appeal from the Commissioner of Prisons. So it cannot include him to hear his own decision, and if you look at subsection (3) of 26, it says that it shall consist of one person who shall be a retired judge or attorney-at-law. So there would be no circumstances where an appeal tribunal, under subsection (1), which hears an appeal from a decision against a prisoner in disciplinary proceedings conducted by the Prison Commissioner could ever be heard by the Prison Commissioner.

Sen. Ramlogan SC: No, but that is understood. That is not what we are saying. The appeal board will comprise a judge, or a magistrate or an attorney-at-law with 10 years' experience but it will exclude, obviously, the Prison Commissioner, because they would have been, in the first instance, people who would have dealt with it.

Sen. Al-Rawi: Okay, so it is the step before. So AG, the Prison Commissioner that is referred to here is the step before it gets to tribunal?

Sen. Ramlogan SC: Yeah.

Sen. Al-Rawi: I see, thanks.

Sen. Ramlogan SC: Can we move on?

Mr. Chairman: Are we deferring clause 4?

Sen. Ramlogan SC: Yes we will defer clause 4.

Question put and agreed to.

Clause 4 deferred.

Clause 5.

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

Sen. Al-Rawi: Hon. Minister, just a question for you on clause 5, which proposes an amendment to section 9 of the Act. Section 9 of the Act deals with landing at Carrera without authority. Is it at all proposed, insofar as there has been some public statement that Carrera is no longer functional. Is it proposed that Carrera will continue to be an asset of the prison service?

Sen. George: Well until it ceases to be, we have to cover it.

Sen. Al-Rawi: Okay, thank you.

Question put and agreed to.

Clause 5 ordered to stand part of the Bill.

Clause 6.

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

Sen. Al-Rawi: If I could invite you, hon. Minister, to consider, in clause 6, clause 6 proposes a repeal of section 10 of the Act, which is aiding escape, and it really amends that section by introducing the culpability that should be prescribed to people who are in fact members aiding and abetting, who are protective service members. We include a prison officer, a police officer, a member of the defence force and then we prescribe the fines there.

I wondered, insofar as sometimes the cases have demonstrated that officers of the court may be involved in this—and I do not mean judicial officers. I mean attorneys-at-law and I mean persons in the employ of the court itself, the Marshal of the Court, somebody else. Insofar as we have prescribed prison officers, police officers, a member of the defence force, did we want to broaden the net so that officers of the court are also caught by the provision?

Sen. Ramlogan SC: No, I think the accent here was deliberately on those who are directly charged with the operational care and custody of the prisoners, rather than anyone you might be involved in an administrative or other capacity. But, in any case it will be an offence in any event if those persons were to do it, but the accent here was on these persons.

Sen. Al-Rawi: I am satisfied with that. Thank you.

Question put and agreed to.

Clause 6 ordered to stand part of the Bill.

Clause 7.

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

Sen. Al-Rawi: AG, I was just wondering, where we have lifted these fines from? So we moved from $200 to $5,000 in section 9. This clause 7, which prescribes an amendment to section 11 of the Bill says that your assault, obstruction, resistance, et cetera, runs you into a potential fine of $15,000 and one-year imprisonment. Did this come from any matrix as to where we are? As a Parliament in this particular session, we have seen a wide variety, a million dollars here, $7 million there, $5,000. Where does this come from? Is it matched up to anything in particular?

Sen. George: He is indicating that there is a schedule by which they are guided in instituting these scale of penalties.

Sen. Al-Rawi: So there is a degree of harmony then?

Sen. George: Yes, that is what he is suggesting.

Sen. Al-Rawi: Is it with the Criminal Offences Act, perhaps, or something else?

Sen. Ramlogan SC: I think what happens is that the Office of the CPC, they take a look at the overall picture and they ensure that it is commensurate with the offence. But these are matters really, it is a matter of policy as to what you think their threshold should be for the violation of the criminal code, as the case may be.

Sen. Al-Rawi: Thank you.

Question put and agreed to.

Clause 7 ordered to stand part of the Bill.

Clause 8.

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

Sen. Al-Rawi: Just a question on clause 8, insofar as we are amending section 12. Section 12 of the Act deals with interfering with a prisoner and there is some interesting language, if you permit me, in that old law.

> "Any unauthorised person holding intercourse or interfering with a prisoner while in any prison or public place is liable on summary conviction to a fine of two hundred dollars.

We are removing $200 and we are prescribing $10,000 and imprisonment for one year. I honestly did not understand what the concept of intercourse here meant. Is it the carnal version or is it meant to be speaking. It is purely oral, right?

Sen. Ramlogan SC: Yeah. Well "ah" did not want to use the word oral given the nature of the query, but what I would say is that it is in the ordinary and natural plain use of the English language. It means human interaction.

Sen. Al-Rawi: Okay, because I know that there are some reforms apace to deal with, as Minister Volney as he sat, dealt with conjugal rights and visits to prisoners and that is the context in which I have raised it.

Sen. Ramlogan SC: "Nah". That is to fish and fowl.

Sen. Al-Rawi: Okay, thank you.

Question put and agreed to.

Clause 8 ordered to stand part of the Bill.

11.45 a.m.

Clause 9.

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

Sen. Al-Rawi: I had a thought in respect of clause 9. Clause 9 proposes an amendment to section 13 of the Act, the term "officer" used there, "use of firearm by officers". Now, this is the clause that permits the use of force without consequence to officers. What I noticed was "officer" itself is not a term which is defined in the Act. [*Interruption*] I know, I thought that that was wise, but we do have prison officer defined.

So the Parliament then, in 1900, had some views as to allowing for a wider approach of immunity and not to confine it only to a prison officer. So where we are now qualifying that it is only prison officers having charge of prisoners, who may use firearms, are we now—insofar as we have put them specifically in an amendment further up, defence force, police, et cetera—are we now taking away a specific immunity which they may have had, whilst they are in lawful custody of a prisoner?

Sen. Ramlogan SC: I see the point. I do not think we are, because they would be covered by the general protection afforded to them by the Police Service Act or the Defence Act, as the case may be. But if they are called upon to quell a prison riot, or to, you know, assist the police, like the guard and emergency branch, for example, they would be covered by the protection of that law.

Sen. Al-Rawi: But would we not be running into a potential argument on behalf of a witty lawyer that Parliament specifically intended to remove this immunity in section 13, by diluting the potency of the word "officer"?

Sen. Ramlogan SC: Well, I do not know, I mean, I do not know that they had in mind in 1900 when they passed the law, what you said. I think they probably meant prisoner officer there as well, but let me just confirm and see—[*Confers with advisors*]

I mean, I do not think it matters much because they will be covered under the general law, and I do not think they can say that you have jettisoned the functions of the police service which would include, you know, general law and order by virtue of an amendment here that seeks to include prison officers. But I suppose, you know, if it will make us happy, we can just leave it out. It does not really affect the thing. I understand why the draftsmen did it, but it may very well be that we can leave it out. Can we, in the interest of—it adds—and it does not detract or anything. So I think we can take that out. All right?

Sen. Prescott SC: Attorney General, before you concede—

Sen. Ramlogan SC: One second. Sorry, Elton. Sorry Senator, yes.

Sen. Prescott SC:—the point, if we leave the word "prison" out in section 13, would there now be two categories of persons—an officer and a prison officer as defined in section 4?

Sen. Ramlogan SC: Yeah.

Sen. Prescott SC: So that a prison officer who uses firearms might find himself in some difficulty because he was not captured by 13?

Sen. Ramlogan SC: No. Well, they did not before.

Sen. Prescott SC: I wondered whether it just could not be said that in legislating as they did in whatever year this was, 1947.

Sen. Ramlogan SC: It was 1900.

Sen. Prescott SC: They were just a bit casual about the use of the word "officer" and—

Sen. Ramlogan SC: I think so, that was my impression.

Sen. Prescott SC: So I would say, let us say the man is now called a prison officer, instead of saying leave this clause—

Sen. Ramlogan SC: That was the impression I got, and would you agree with me that the general protection afforded to police officers and others would—

Sen. Prescott SC: I thought you were on good ground, your concession was—

Sen. Ramlogan SC: It is not—I did not think it mattered because even if you had it in the converse, it would not, you know—

Sen. Prescott SC: I am in support of keeping it.

Sen. Ramlogan SC: All right, well, let us keep it and move on.

Sen. Al-Rawi: AG, I just raised it as a thought in my mind in interrogating the legislation.

Sen. Ramlogan SC: I think it does not matter. It would not make a difference either way, but I understand why the draftsman wanted to do it. So we leave it as is, Chair.

Question put and agreed to.

Clause 9, ordered to stand part of the Bill.

Clause 10, ordered to stand part of the Bill.

Clause 11.

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

Mr. Chairman: Minister, do you have a circulated amendment to clause 11, that you need to explain?

Sen. George: We have a circulated amendment that includes subclause (3)(c), to now state that:

> "The Chief Inspector of Prisons and Deputy Chief of Prisons must at (c) be an attorney-at-law of at least 10 years standing or the holder of a bachelor's degree in criminology and at least five years' experience."

Sen. Dr. Mahabir: Mr. Chair?

Mr. Chairman: Yeah, yeah, I know also. I am reminded that you also have an amendment; yes, Senator. Sen. Mahabir also has an amendment to clause 11. Have you seen it Minister?

Sen. Ramlogan SC: I have not seen Dr. Mahabir's amendment.

Hon. Senator: It is being circulated.

Sen. Ramlogan SC: Oh, it is being circulated. Whilst we receive that, Chair, may I just indicate for the benefit of the Senate and for the record, the reason no qualifications were put is because most of the legislation elsewhere in the world on this particular issue does not, in fact, contain a qualification. I had specifically asked about this because at the LRC level, when we dealt with this matter— [*Interruption*] I specifically asked about this at the LRC because I had raised a similar point about the absence of the qualifications.

What they indicated was all of the legislation they had looked at were similarly drafted and did not, in fact, contain a qualification. In fact, I asked them to bring it for me this morning, and just for the record, I would like to indicate to you. For example, in Canada, the Corrections and Conditional Release 2014, the correctional investigator, this is what it says:

> "The Governor in Council may appoint a person to be known as a Correctional Investigator of Canada.
>
> A person is eligible to be appointed as Correctional Investigator or to continue in that office only if the person is a…citizen ordinarily resident in Canada or a permanent resident within the meaning of subsection 2(1)…"

And it goes on to salary. So there is no qualification in Canada; that is the first one. In the United Kingdom, we have the Prisons Act 1952. And it says:

"Her Majesty may appoint a person to be Chief Inspector of Prisons."

That is it, no qualifications in the United Kingdom. In New Zealand, in the Corrections Act 2004:

"• Inspectors of corrections, section 28: The chief executive must appoint as many suitable employees of the department as inspectors of corrections as are required for the purposes of this Act."

Ireland, and basically everywhere they have looked, they deliberate—the Parliament deliberately left it without specifying any qualifications, but that is not to say that we cannot do it. As I indicated, I raised this point myself at the LRC. It may be that we feel sufficiently strongly that we would want to put in the qualifications, but I suppose when you insert qualifications, you really, you handcuff yourself.

Sen. Vieira: Stymie

Sen. Ramlogan SC: You stymie it. You handcuff yourself. Look, 10 years ago there was no discipline—there are many disciplines that have emerged in academic life that 10 years ago were not there, and new courses are being offered all the time by universities. When you put it here, you know what happens? You have to come back to Parliament and bring an amendment Act, to amend it to insert qualifications, and we have had that problem.

In fact, the reason the DNA law in this country did not work was because we put qualifications and nobody could have—when we advertised the jobs, nobody had the qualifications; they could not apply for it. So we had to come back and redo it. So I mean, I want us to consider before we go to the amendment even we have circulated, which is in the interest of the dynamics of the debate really, you know, to at least consider the fact that in every single country they have looked at, there is no requirement for qualification in the substantive law.

Sen. Vieira: AG, I tend to agree with you, and I support that position because you do not want to micromanage and overlegislate. I suspect, well, I would expect that the responsible powers would have their own criteria which would evolve over time, and that criteria could be transparent, but it would be adaptable to meet the needs of the time, and circumstances as they evolve.

Sen. Ramlogan SC: Indeed.

Sen. Vieira: And there is always other recourse if people act capriciously or they act unreasonably. So I tend to favour that.

Sen. Ramlogan SC: I mean, I want to say as well, I mean, before we dumb down Trinidad and Tobago as a country that is not able—as a maturing, functioning democratic society—to handle its own governance, and affairs in a proper and mature manner, I just want to point out that the Inspector of Prisons, for example, we have traditionally appointed an attorney-at-law in that position who has conducted themself well. It has never created a problem for us. I mean, you know, so to legislate on the assumption of mala fides, I think is a wrong approach with the greatest of respect.

I mean, in discussion—I want to say as well, whilst I await Dr. Dhanayshar Mahabir's amendment—in discussion on this matter, I called, for example, several prominent persons at the University of the West Indies and so on, excluding Dr. Mahabir because he is a Member of the Senate. But, in calling them you would be surprised at the list of qualifications they started coming up with. But every single person I called had a different take on this, and came up with disciplines that they felt would be relevant, that I did not include in the amendment, and that—you will be surprised if I called here. I mean, from whether it is, you know—everyone.

Sen. Vieira: The point is that when you legislate specifically, you thereby exclude, which is a bad thing, because you may have to have other people with specifications and qualifications.

Sen. Ramlogan SC: I want to say, Dr. Mahabir, I have now seen your amendments—sociology, social work, criminology. I just want to tell you, sometimes as well, we come up with practical difficulties. Trinidad is a very small society, the talent pool is very small, and when you advertise these positions, sometimes you would really want a person with the personal attributes and character that that person has, and that—combined with the qualifications that they have—gives you the right person for the job.

Now, I say this because recently I had to interview some persons and so on, to have a little preliminary discussion with them. I was amazed, the person who had the most qualifications on paper, beyond what I was looking for, the personality of the person was very introverted, very withdrawn and I really could not see them functioning in that capacity at all.

The person who did not have the post-grad qualifications and all of that, and who had the bare minimum, their personality was one that was conducive to the functions that that job had to perform. The person had, you know, in America they have different university systems where they have a minor and a major in the same degree and so on.

Now, when we put this here, so "ah man applying for de job, he has ah" major in sociology, but he has a minor in something else, would not satisfy this. You see, how does one get around all of this? The permutations for academic life and the university courses that are being offered are so endless, that I want to suggest, pause and consider whether or not we should amend it at all.

Sen. Al-Rawi: Okay. [*Interruption*] AG, could I ask you to consider this. I too took a tour around the legislative models that exist. I looked at England, Ireland, Canada, et cetera. Whilst the legislation—you are perfectly correct, the legislation does not prescribe qualifications, they have voluntarily subjected themselves to scrutiny by the Parliament, by select committees of the Parliament. Now, we have seen in the police service here in Trinidad and Tobago, in the choice of a Commissioner of Police how disastrous that could be if it is over—

Sen. Ramlogan SC: Because we legislated it; that is the point.

Sen. Al-Rawi: Okay, right**.** So whilst we have seen that experience, and whilst that could actually be fixed quite simply, it is not true to say that the legislation does not have a balance or a filter for perspective. Now, we have in the vast majority of legislation coming to this particular Parliament, we have prescribed certain qualifications, et cetera.

Sen. Ramlogan SC: And it is causing problems.

Sen. Al-Rawi: If you just allow me. So whilst we have done some degree of prescription, my concern inside of here is that the absence of a filter for a post as important as this, which has quasi-judicial ramifications. You are dealing with persons who are deprived of rights, et cetera. Whilst that may be the case, I think it necessary to have some degree of at least minimum qualification inside of there; that was the first point.

The second point was whether we could look to get some clarity on what "a person of good standing is". And thirdly—

Sen. Ramlogan SC: A person of good standing means somebody "who eh sitting dong".

Sen. Al-Rawi: And thirdly—

Sen. Ramlogan SC: "Ah mean, we use it all de time, man, come on."

Sen. Vieira: And there is a lot of case law—

Sen. Ramlogan SC: There is a lot of case law on that, man. [*Laughter*]

Sen. Al-Rawi: Then thirdly, is the issue of the Prison Rules which will come. So the Prison Rules 2014 will provide certain necessary coordinates with this particular law. But, of course, we have not had the chance yet to see it. The Minister has said that they are being consulted, there is consultation on those rules, et cetera. We would have seen the 2010 rules which were produced prior, but because of those three factors inside of there, our position is, respectfully, that we have some degree of qualification. I thought that Dr. Dhanayshar Mahabir's prescription was quite interesting, perhaps even a blend of the two may work.

12.00 noon

Sen. Ramlogan SC: Can I say this? Dr. Mahabir, it is not that I disagree with you in terms of the disciplines that you have cited. And what I want to say is the Government's policy position on this matter is that we will consider the insertion of qualifications if necessary in the regulations, but we are prepared to say, for the record, that the kind of person you would want to consider for an office such as this would obviously be someone like an attorney-at-law with seven to 10 years' experience; someone with qualifications and experience in sociology, criminology, social work, and the list can go on.

For example, I see Sen. Rev. Joy Abdul-Mohan wanting to join and I think, for example, you may have someone from the clergy who may have done a lot of social work, but who does not have a degree because they are too busy actually helping people. They may be eminently qualified from an ecumenical perspective and a social work perspective, but they do not have a degree. So I am very reluctant to put any qualification here that will handcuff us to a qualification without reference to a person, because I am seeing where qualification without reference to the person can pose problems. Sen. Rev. Abdul-Mohan, for example, will make an excellent person for this, or anybody else who has done that kind of pastoring and mentoring of young persons.

Sen. Rev. Abdul-Mohan: Can I speak now?

Sen. Dr. Mahabir: I would like to join in as well since it is my amendment.

Sen. Rev. Abdul-Mohan: Age before beauty? [*Laughter*] I just want to bring something to the table that could perhaps create a middle path. Because there was so much discussion on the terminology of "good standing", I did some research and consulted some English professors who are very, very humble.

Whenever the term "of good standing" or "in good standing", either one, is used, it means, therefore, it is a combination of qualifications and expertise within that particular organization but, at the same time, it includes good character and trustworthiness. So to be persons of good standing or in good standing will take care of qualifications and everything else.

Thank you.

Sen. Ramlogan SC: I think that is the point Sen. Vieira was making before.

Sen. Vieira: That is why you do not want to over legislate because you are safer going to the wider case law.

Sen. Ramlogan SC: Good standing is a term of art that has acquired a legal definition and meaning. The dimension of it is such that it incorporates not only that, you could require a police certificate of good character; you could look at the qualifications; if you are an accountant or a lawyer, you need to be in good standing with your professional body. So issues of probity and integrity will arise, it covers a wide expanse and the full array of things that you would want to consider for this. But Sen. Dr. Mahabir, perhaps we have pre-empted you, Sir.

Sen. Dr. Mahabir: Yes, thank you very much, hon. Attorney General and Minister of Justice. The reason for the amendment, you see, is based on the premise that the Minister of Justice is creating an entirely new institution. We do have an Inspector of Prisons, but what he is building is a new institution, and based upon the amendments circulated, it is the Government's stated policy that there will be restoration and rehabilitation, so that the penal system now—this is the Government's stated policy objective—is that it is going to focus on restoration and rehabilitation.

It would mean, therefore, that the institution that you are building now from the ground up will have to be characterized by this approach to how the prison system is now organized and managed; that you are going to look at the Inspector of Prisons as an individual who understands the various types of individuals who have found themselves in the prison system, the society in which they operated, the various reasons as to why they may have committed the crimes and, therefore, the different types of programmes which would be amenable for the various different types of criminals.

It is in this context, since you want to build a strong and vibrant rehabilitative institution, which does not now exist—and I think that would be the legacy of the Ministry of Justice. It would want to build an institution in an environment where many of our institutions are failing. I am simply putting for consideration that the Government places an individual at the head here who is in sync with the rehabilitation and the restorative path of the programme and an individual who comes to the job with a certain amount of technical expertise in this area.

Now, if it is not the focus for restoration and rehabilitation and reintegration in society, then an attorney-at-law will do. Attorneys-at-law are not really trained to rehabilitate people. Criminologists are not trained to rehabilitate, but individuals

who are trained in sociology have been trained in their various theories of criminal behaviour to understand all the causes of crime and the social context in which the crimes have been committed and then to promote and propose remedies and programmes.

So I think this individual will be ideally suited to build the organization, an individual who has been in social work. So a clergy person who has been trained in social work might be an ideal individual for this as well, but I think if, in fact, we are going to leave it open, my fear is that the character of the institution that we are trying to build is going to be lost and if we can get it right at this time.

The Minister of Justice did indicate that he was in agreement that the principle of penalty now is that simply going to prison was going to be the punishment. Prison was going to be a rehabilitative institution and, in that context, I am simply proposing that we need to get the culture of the new institution right and these are the individuals who seem most appropriate to building the new culture of rehabilitation.

Sen. Prescott SC: Mr. Chairman, I, too, wish to join and I am supporting Sen. Dr. Mahabir's amendment. There are other reasons which he could have elaborated on, if he wished. If you look at the proposed section 20(1), it speaks to a managerial experience. This person must manage the inspectorate and one imagines that would suggest that the person ought to have had some kind of training and work experience at managerial level which we are not focusing on in section 20(3).

When I was making my contribution, I pointed out that the minimum standard required in subsection (3) would not exclude the parlour keeper or the former inmate who has reformed himself. Certainly, we do not want to have such a person in. If you leave—

Sen. Ramlogan SC: You do not want to have, sorry, what?

Sen. Prescott SC: You do not want to have such a person being your Chief Inspector of Prison.

Sen. Ramlogan SC: As whom? Former inmate?

Sen. Prescott SC: The former inmate who is now reformed.

Sen. Ramlogan SC: He would not satisfy the good standing thing.

Sen. Prescott SC: Of course, he would have good standing.

Sen. Ramlogan SC: No, no, no.

Sen. Prescott SC: I am saying that today there is such a person in the society and he is in good standing. Nobody dares to suggest that he is not in good standing. I ask you to consider an honoured prisoner has good standing in the prison. Where should this person have his good standing? In his community? Amongst penologists?

We are not establishing a standard from which we wish to begin the Trinidad and Tobago Inspectorate of Prisons. Let us start where we want to finish at the very least. We do not want to start with the minimum qualifications that 3(a), (b) and (c) require.

Sen. Ramlogan SC: It is precisely because you do not want to exclude persons who, with the vision and foresight, we think now may be inappropriate and who subsequently might turn out to be appropriate. We are all on the same page in terms of what the character and the nature of the prison inspectorate should be about. The issue here is whether we should put it in legislation as to what the minimum requirements should be.

My concern is that if we do that, we handcuff ourselves to the qualifications as opposed to the individuals. You mentioned the former inmate, for example. You may very well find that a former inmate may be in good standing and you may very well find that the former inmate who acquires good standing may be the best person for this job. Look at Vision on a Mission and Wayne Chance. They are the ones who understand the prison system best and they may very well be the best person.

The point I want to make is the formulation that you have here—

Sen. Prescott SC: All Wayne Chance needs is some training, you know, in sociology or criminology.

Sen. Vieira: AG, I just want to say that, again, I think "persons in good standing" is clear. It would exclude a person with a serious—

Sen. Ramlogan SC:—with a conviction for a serious crime.

Sen. Vieira: It would exclude a bankrupt; it would exclude a person—

Sen. Ramlogan SC:—of unsound mind.

Sen. Vieira: In any event, when time comes for recruitment, I anticipate that there would be some criteria they depend upon and that could change. If we put it in the law, we are going to stymie ourselves. I very much accept what you are saying and the concerns you have, but there is a danger in micromanaging.

Sen. Drayton: Could I just make one suggestion? Can we then have an undertaking that some broader guideline or definition will be included in the regulations?

Sen. Ramlogan SC: I can give a commitment that this is an issue that the Government will consider when we are making the regulations and we will give some consideration to it and, if appropriate, we will include it.

I want to say as well that, you know, there are some universities now, for example, they are offering degrees in rehabilitative and restorative justice.

Sen. Dr. Mahabir: It is a related field.

Sen. Ramlogan SC: It is a related field. Now, you do not have to propose an amendment, but somebody like that might be ideal and then there would be other courses. So, I want to rest on this matter.

Sen. Dr. Mahabir: In a related field.

Sen. Ramlogan SC: I hear you, Sir, but, Dr.Mahabir, you would be surprised to know how much litigation things like that generate, you know.

Sen. Small: AG, I just want to join in quickly. I accept Anthony's argument, but I also reject it. I accept it from the legalistic point of view, but I reject it from the point of view of what this institution is intended to do. In the legislation, if you look at 22(b), one of the things it says, under (ii), is that they investigate and report on programmes, facilities, to promote rehabilitation of prisoners and youth offenders.

So what is the focus of the organization? Because the name "inspectorate", my learned colleague, Sen. George, would know, when I think "inspectorate", I immediately think hard things. But I am suggesting that this is an exercise in softer issues and if we are really looking at the softer human ease, you need a particular skill set in the same way as when you are interviewing people and you recognize that to do the job it requires more than the paper qualifications, it requires a particular set of attitudes. And for this type of work, if you really want somebody to be able to focus on rehabilitation of prisoners and accessibility of the programmes, I am not sure if an attorney-at-law might be the best thing.

Sen. Ramlogan SC: No, no, no.

Sen. Small: That is all I wanted to join in. I like the thinking of Sen. Mahabir. I am not sure if I necessarily agree with everything in the formulation, but I think the thinking is, what is the role? You see the words "inspectorate" and "inspector" are very hard firm words in my brains and they do not lend themselves to someone doing rehabilitative work or social work. There is a mismatch.

Sen. Ramlogan SC: The draftsman has proposed something for us. It says, if we insert:

> The Minister may, by Order, prescribe the qualifications of the Chief Inspector of Prisons and the Deputy Chief Inspector of Prisons to be appointed by the Minister.

That is fine? Okay. Well, I think that is a nice compromise.

Sen. Vieira: You want to read it for the record?

Sen. Ramlogan SC: The Minister may, by Order, prescribe the qualifications of the Chief Inspector of Prisons and the Deputy Chief Inspector of Prisons appointed by the Minister.

That sounds good? Well, I think we are all okay with that.

Sen. Dr. Mahabir: I agree with that.

Sen. Ramlogan SC: In doing so, we will have regard to what—[*Interruption*]

Sen. Vieira: Now clause 11 is one of the most important clauses of this Bill.

Sen. Ramlogan SC: It is, yes.

Sen. Vieira: And while I took on board the importance of this particular aspect we have been discussing, to me there were more fundamental aspects that I wanted to look at in clause 11. I consider it necessary to establish—

Sen. Al-Rawi: Sen. Vieira, just before you move off the point so that you could launch into the rest of clause 11, which is other than the qualification aspect—

Sen. Vieira: I think this is more fundamental.

Sen. Al-Rawi: Are you finished with the qualification aspect?

Sen. Vieira: "Yeah, yeah". I think we agreed on what the—[*Crosstalk*]

Sen. Prescott SC: I do have something else on the qualification—

Sen. Vieira: Okay, when I am finished—

Mr. Chairman: Senators, please allow Sen. Vieira to conclude and then you will come in.

12.15 p.m.

Sen. Vieira: It may tie in. I would not be long.

The Government is establishing a corporate entity for the purpose of carrying out certain functions and duties on behalf of the State via the office of the responsible Minister. Now this is going to have its own persona. It does not seem to be completely independent and free of ministerial control. The way I read it, the Minister is not precluded from giving directions and directives on things like policy.

Now, where clause 11 is silent, the question of finance, I see remuneration is provided for, but what about this inspectorate having an office renting, paying for equipment, where are the funds going to be coming from for this particular body? What about the laying of accounts? Will this body have the power to sue, power to own property? So, to me, we are setting up a body corporate to do very important work but there are some very interesting and important aspects that I think are not clear.

Sen. Ramlogan SC: My interpretation of it was that these are administrative matters that would be worked out in the implementation of the legislation, but I did not get the impression that it was a body corporate, like a service commission. I mean, once you do that, what happens Sen. Vieira, the reason we shy away from doing that is sometimes the minute you put that in law, it has a multiplier effect on the Treasury. The organigram suddenly assumes a magnitude that one does not envision at this stage, and you have hospitality attendants, three Prados, four clerical assistants, and so forth. I think Sen. Dr. Mahabir understands the point, so that—

Sen. Vieira: No, I do too, but the question is funding.

Sen. Ramlogan SC: Yeah.

Sen. Vieira: You have to have it provided for. Now the other thing is, are the Chief Inspector and the Deputy Inspector going to be deemed as public servants? I am not sure, but again—

Sen. Drayton: Chair, if I may, just one observation. You know, I like the idea of reading 11 in conjunction with the functions of the inspectorate, and when I look at the functions of the inspectorate, the functions given under this law are exactly that, which is to inspect, to investigate and make a report. From what I see of this document in my hands, the Chief Inspector really has no authority to do anything else. Which is exactly what the inspector is doing now, the inspector inspects and they have sent some excellent comprehensive reports. Once the inspector hands in that report, the inspector has no authority to do anything else. So this, to a great extent, is really an administrative function.

Sen. Ramlogan SC: That is the point.

Sen. Drayton: It has no teeth. It has no powers to do anything about rehabilitation of prisoners. Its job is to inspect and report.

Sen. George: Yes, thanks, and that is precisely the point. This is an agency that is going to be set up under the Ministry of Justice, and recall that the rationale for doing it was that the prison system had outgrown the individual, the individual Inspector of Prisons, and now you require, because of that expansion of responsibility, right, a grouping that will work in support of giving the Chief Inspector the ability to carry out the work that is required of him, in the inspecting of prisons.

Sen. Drayton: If I may just add to what I have said, I think if you look at the Prison Rules, however, the Prison Rules give the current inspector, or at least the current regime under the structure that exists, some wider powers. The point I am driving at is that all too often we set up these authorities, or we set up commissions, and the law falls short of empowering the management of these commissions or authorities to execute their functions; to do anything meaningful in the context of supporting a policy of restorative justice and improving the well-being of prisoners.

That person or that commission must go back to a central authority, which is the Minister, for the funds and for the authority to do exactly that, and this is a failure of all the commissions and authorities that have been established in law or established under the Constitution. Now, it is not a failure of the Constitution itself, but a failure in the laws that operationalize the Constitution. And last week, week before we dealt with it, whether it is the Police Complaints Authority, the Police Complaints Authority is now saying that it has about "800-and-something" police matters monitoring, and that is all it could do because it has no investigative powers. It really has authority to do nothing else but monitor.

Sen. Ramlogan SC: But, Senator, I accept your point, but those are matters of government policy.

Sen. Drayton: Okay.

Sen. Ramlogan SC: If the Government does not wish, in a democratic society where there is an elected Government, we must respect the fact that the Government has the right to govern the country. If we create independent structures in every legislation that we pass, what you do is you undermine the very concept of democratically elected Government and the right to govern a

country. What we, from our side, see happening as well is the fact that you have an elected Government but you are draining out the power and ability to govern by virtue and discretion. Sen. Al-Rawi agrees with me. So that I agree with you to a point, but I am not prepared, as a matter of government policy, to say that with respect to the prison inspectorate, we wish to concede that this should be independent of the Executive arm of the State.

This is meant to be, as it is, as it always has been, subsumed under and as part of the Ministry. It will have its independence and it will continue to function, but we need to be very careful, as a matter of political and constitutional philosophy and ideology, that we do not have a Westminster system of parliamentary democracy with an elected Government, but we then surround that elected Government and encircle it with independent structures whereby the Government is unable and does not have the political authority and constitutional power to actually govern the society, in accordance with its elected mandate.

Sen. Vieira: AG, and for the record, I am not saying it has to be independent. I never said that—

Sen. Drayton: I fully agree with that.

Sen. Ramlogan SC: Well, I am happy to hear that because I am not considering that at all.

Sen. Vieira: I am quite comfortable with it being done via the office of the responsible Minister, but I was just really questioning about where these people are going to be, these offices—

Sen. Ramlogan SC: Sure, the funding? It will come out of the Ministers—

Sen. Vieira:—funding and things like that.

Sen. Ramlogan SC: Yes, I hear you.

Sen. George: But it will come out of the Ministry's budget, as it does now to address the individual Inspector.

Sen. Drayton: And I fully agree with that because I believe there is no such thing as 100 per cent independence, there is always interdependence. There must be referring back to the Minister, so what I was trying to point out, given the discussion that was taking place, is that there is a difference between a purely administrative role with the accountability resting with the Minister, and this is what this law says—

Sen. Ramlogan SC: What it envisaged, yes. Point taken.

Sen. George: Yes.

Sen. Drayton:—that the Inspector is going to inspect and the person who is accountable for the justice system, and the penal system being revamped, is the Minister.

Sen. George: Of course.

Sen. Drayton: As long as we understand that—

Sen. Ramlogan SC: And you see, Senator, you make a very important point about the interdependence, it is for that reason, for example, that it would be foolhardy and foolish for Government today, in today's world, to be making legislation without consulting critical stakeholders. In this legislation, for example, when the hon. Minister of Justice outlined the fact that the judicial arm of the State would have been consulted, there is nothing untoward about that. I mean, it would be, in my respectful view, quite odd if you were to make legislation that would affect necessary stakeholders and not ask their views on the policy, or the proposed legislation. I mean, in most modern societies, that is how it is done.

So I understand yesterday some concern was voiced about it, but I see no ground for consternation to be expressed about this matter. The judicial arm of the State must be consulted. I mean, I have the abolition of preliminary enquires Bill coming up, for example, should I implement and pass law to abolish preliminary enquires without at least consulting with the judicial arm of the State as to what they might think and how it will be implemented? I do not think, as well—certainly, in England it has never posed any problem that the Lord Chancellor, and the Government's working paper is informed by the views of those who manage the administration of justice.

It does not, in any way, give rise to illegal ground to say that if the constitutional validity of an Act of Parliament is challenged in Her Majesty's Courts, that that is a ground for recusal of the sitting judge; that the Judiciary, as an institution, might have given its views on a particular matter that they ought properly now to not sit on the ground of potential or unconscious bias. If one looks, for example, at the judicial continuing education, Judicial Studies Board, that board has been taking a proactive approach whereby they make known what the Judiciary's views are on certain matters.

Only last month, the hon. Chief Justice, myself and the Director of Public Prosecutions attended a symposium at the University of the West Indies in honour of the memory of the late Senior Counsel, Dana Seetahal, who was a Member of this Chamber. At that consultation, we all gave our robust views, mediated by an able mediator who kept us in check, Sen. Vieira, and we all gave our views on critical legislation and what is necessary. The Chief Justice, as a matter of public record, is calling for us to consider and has floated the idea, as a moot one, for the abolition of jury trial.

So if we now go to abolish jury trials and someone challenges that Act of Parliament to abolish jury trials, is it that the hon. Chief Justice must recuse himself because, as a matter of just thinking and philosophy, the idea was floated from the Judiciary? I dare say not. Should we muzzle the Chief Justice and the Judiciary such that they must not, in our democratic society, infuse it with their ideas, such knowing full well that those may very well be the ideas that "grease the wheel" of democracy and make it turn in the right direction?

As far as I am concerned, I disagree fundamentally with Senators—Independent and Opposition—who expressed their contrary view, and I remain committed to the view that necessary stakeholder consultation, which includes the DPP, the Office of the Chief Justice, the judicial arm of the State, is one that is ongoing, refreshing, and quite necessary in our democracy.

Sen. Drayton: Okay. AG, may I? I think—

Sen. Robinson-Regis: Could I ask a question?

Mr. Chairman: Please. Please. One at a time. Please get the consent of the Chair. Just conclude, Sen. Drayton.

Sen. Robinson-Regis: Sorry.

Sen. Drayton: Yes. I think, AG, I certainly would say, on my part, I fully agree with that, but I want to make a distinction, and I think it is very important, between consultation and using certain instruments and advice to support the Government's policy when it brings a Bill to Parliament, I see a distinction. I will tell you why I have become very much guarded by that, because I have to go back to that very Bill with respect to the section 34, when it was presented to us, there was a lot of name-dropping—the CJ, The Law Association, the Judicial and Legal Services—all sorts of names were called, and here we are, in a very trusting and cooperative spirit, relied on that information—

Sen. Ramlogan SC: Maybe that was why he was quoting the letter.

Sen. Drayton:—and what ensued thereafter was a situation where there were parties who then came out in the media to say, "Well, no one consulted with us on that".

Sen. Ramlogan SC: Indeed.

Sen. Drayton: So I think we have to be very careful. Consultation for input into legislation is one thing, but then using the Chief Justice, and I am not saying, for one minute, the goodly Senator, the hon. Emmanuel George, was using the information to justify his case, but I think we want to make that clear distinction, because that, I think, personally, I would believe it to be inappropriate.

Sen. Ramlogan SC: Well, I think it is a very helpful discussion. You see, in the debate, the Government is really at a disadvantage. Sometimes we feel that we are here and everyone opposite is trading arrows from different directions at us and we are not permitted to respond to the multitude and multifarious concerns raised, but I want to tell you what is wrong in a debate where Senators opposite, "Was the Judiciary consulted?"

Sen. Robinson-Regis: Nobody asked.

Sen. Ramlogan SC: No. No. No. They did not ask it in this debate, Ma'am, but I can tell you that that question has been posed debate after debate to the Government in this very Chamber, and let us be honest about it. I can get the *Hansard* and prove to this Chamber that that question has been asked in debate after debate about the Government as to whether or not the Judiciary was consulted. What the hon. Minister, my colleague, was doing, quite properly in my respectful view, is to simply demonstrate that, to the satisfaction of the Chamber, that the Judiciary, as an institution, was in fact consulted.

12.30 p.m.

One may disagree with the reading of the actual correspondence. One may say it could have been done differently, and that point as an important footnote to the debate has already been made. But what I want to say is that the hon. Chief Justice has himself come out this morning to say that there is no breach of the separation of powers doctrine, which is what we should concern ourselves with. There has been no breach of the Constitution or the doctrine of separation of powers, by reason of the Minister simply alluding to the fact that as an institution, as a stakeholder, given it is a critical success factor for the legislation to be accepted by the population and this Parliament for him to allude to the fact that there was prior consultation with the institution of the Judiciary. [*Crosstalk*]

Sen. Robinson-Regis: AG, could I ask a question, please?

Mr. Chairman: Confer your messages to the Chair. Sen. Robinson-Regis, please.

Sen. Vieira: I agree with you—

Mr. Chairman: Sen. Vieira, I have asked Sen. Robinson-Regis. She has been waiting a long time.

Sen. Robinson-Regis: Thank you very much, Mr. Chairman. I just wanted to join with Sen. Drayton, with the concerns that were expressed by her, particularly with the reading of that bit of correspondence. The question that I would like to ask is, we were promised sight of the letter: Is that promise going to be fulfilled? We have not seen the letter. The Minister did indicate that he would circulate the letter. Is that going to happen still?

Sen. Ramlogan SC: Listen, speaking for myself, you have consultation with institutions, especially institutions such as this, and one must respect the sacrosanct nature of some of the consultations that you have—I see Sen. Vieira shaking his head in agreement. Let us not demean serious institutions and offices by asking for these things, when it is not necessary to support the legislation and analyze and critique the Bill that is before us.

I have since advised the hon. Minister of Justice that we need to pause for a cause on those things. I am not prepared to sanction or authorize the disclosure of sensitive correspondence sent in good faith, that should remain sacrosanct. Sen. Small?

Sen. Small: I agree.

Sen. Robinson-Regis: AG, could I say, that there was no intention by anyone to demean in any way.

Sen. Ramlogan SC: I accept that, Ma'am.

Sen. Robinson-Regis: But when the correspondence was raised, the question was asked, not only from the Opposition but also from the Independent Bench.

Sen. Ramlogan SC: I am not prepared to disclose.

Sen. Robinson-Regis: Okay, I am just saying that the Minister gave an undertaking. If that is being changed now, we understand that, but it is within our right to ask whether or not that undertaking will, in fact, be fulfilled.

Sen. Ramlogan SC: I see Sen. Small wanting to say something.

Sen. Robinson-Regis: As a consequence of that—if I may get your attention—

Sen. Ramlogan SC: Yes, you have it.

Sen. Robinson-Regis:—that is why we asked. We did not put that into the public domain. It was done by the Minister in an attempt to bolster his argument, it would seem. So I am just saying that nobody—nobody said that we were trying to interrupt in that way or to interpret what was being done. As a matter of fact, we feel that the Minister, even in his response today, should have indicated that he had been advised that he would not be giving out the letter, and that was not done. So please do not cast any incorrect aspersions on us on this side.

Sen. Ramlogan SC: No, no, no, there is no aspersion. "Come on, man."

Sen. Robinson-Regis: But that is what you said.

Sen. Vieira: I just want to say for the record that I found that the criticisms that were levelled against the Minister yesterday were unfair and unfounded. I thought the Minister was trying to report that he had not just consulted with the Judiciary, but also the Law Association and they were congruent with his position. [*Interruption*] Let me finish.

Sen. Ramlogan SC: That is all. It was as simple as that.

Sen. Vieira: The way—[*Interruption*]

Mr. Chairman: Please, let us respect each other's contribution. Please, continue.

Sen. Vieira: It was a case of being damned if you do, and damned if you do not. It may have been put across, perhaps, less elegantly than others might have, but there was no doubt in my mind where the Minister was coming from. I find that the way that was picked up by the press and distorted, as though something untoward took place, is very unfortunate. [*Desk thumping*]

Sen. Ramlogan SC: That is right.

Sen. Dr. Balgobin: I was just curious as to why we were talking about this at all. I do not think that this adds any value, and I think whether an error was made or not that is done and we move on. Let us carry on. Why are we talking about this? Why are we having another debate?

Mr. Chairman: It is good that you have said that. That is the reason I allowed you to say it. [*Desk thumping and laughter*]

Sen. Dr. Balgobin: Thank you so much.

Sen. Al-Rawi: If I may, in just ending the particular point, I thought it important for the AG and the Minister to address the issue, because it did hit the front page; it led the news. The Opposition yesterday, for the record, when you saw my intervention, hon. Minister, it was to assist you by telling you that I was sure that you did not mean it in a particular way, and that, perhaps, insofar as you have referred to it, you may wish to consider looking at the letter.

We in the Opposition make no aspersions against you or, indeed, against the Judiciary. If you note what we said yesterday, in particular what I said, I was very careful to try to lend you a hand out of the situation that you were in. I also did not think that it was purposeful on your part to enter onto that ground, but it having been said, unfortunately, the line was explored. So I just want to end on that note. [*Interruption*]

Mr. Chairman: SC, I cannot refuse you. Sen. Prescott SC is the final—

Sen. Prescott SC: Chairman, I am grateful to you.

Mr. Chairman: Thank you.

Sen. Prescott SC: It seems that we have belatedly re-entered the debate from yesterday. So I need to say that it appears from what we were told by the Minister in his delivery, that he had received from the Chief Justice correspondence addressing the lawfulness of the legislation. If, indeed, that is what it was about, if, indeed, that is what the Chief Justice was commenting on, there was a risk of the institution and independence of the Judiciary being put out there for all to see, as moving a bit too close to the Legislature.

However, it appears that we are all prepared to forgive, and so let me just raise the point that I wanted to raise all along. When we come to deal with the qualifications of the Chief Inspector of Prisons, if I could remind Members where we were, I should like to see us focus on whether this Chief Inspector is merely to manage the inspectorate or is he the Chief Executive Officer; is he the executing arm of the inspectorate. I should like to see some reference being made to that in the order which is proposed, as the instrument by which the Minister may establish criteria for the Chief Inspector.

Sen. Ramlogan SC: The CIP and CEO?

Sen. Prescott SC: Yes; some consideration should be given to whether the Chief Inspector is either the executing officer or just the general manager, or what is his role in the inspectorate. I would be very concerned to see that we tried to exclude from the group of the likely candidates somebody who is engaged in any other occupation or employment. I trust that that too will appear in the order that is proposed.

Sen. Ramlogan SC: Yes, sure.

Sen. Al-Rawi: AG, is it in that ground that you are looking to the assistance provided by section 37 of the Interpretation Act, which is to deal with incorporation, by making it a body corporate, that there are things which follow in respect of that? The one thing I would like to add on is the point as to whether this particular office holder should be subject—the Deputy Inspector of Prisons and the chief himself—to the Integrity in Public Life Act. That, insofar as they occupy a post which may be brought into a little difficulty, is something which I wondered whether we should consider.

Sen. Ramlogan SC: The Integrity Commission right now is overloaded as it is, it is saturated. If we keep adding to it, they would not be able to keep their eyes on us, so let us keep them out of this, so they could keep their eyes on us.

Sen. Al-Rawi: Is the current inspector caught by it at all? I am not sure.

Sen. Ramlogan SC: No.

Mr. Chairman: Sen. Small, I would give you the opportunity as the final person. Did you indicate? Oh sorry, Rev. Mohan.

Sen. Rev. Abdul-Mohan: Thank you, Mr. Chair. It is related to Sen. Prescott's question. I had a very simple question. Are the functions of the Chief Inspector and the Deputy Inspector distinct and apart, or is it that the Deputy Inspector is more like a figurehead if and when the Chief Inspector is unable to perform his duty? That is a question I had. Are these functions listed in the regulations?

Mr. Chairman: That coincides with my position here in the absence of the President of the Senate. I am the Deputy and I am fulfilling the role. [*Laughter*]

Sen. Ramlogan SC: Yes, of course.

Sen. Rev. Abdul-Mohan: I mean, I am understanding that way. In some organizations though, it is not distinct like that; I am assuming.

Sen. Ramlogan SC: We take note of the point, and the proposed amendment which we will insert after subclause (3), which will now be a new 20(4), which is what the draftsmen have proposed, is:

> "The Minister may by Order"—capital O—"prescribe the qualifications"—should we say "and experience"?—"qualifications and experience"—of or for, which one?—"of the Chief Inspector of Prisons and Deputy Chief Inspector of Prisons." [*Crosstalk*]

CPO will deal with those things; it is only the top ones. [*Crosstalk*]

"appointed by the Minister". They are appointed by the Minister.

Mr. Chairman: Is that under subsection (1)?

Sen. George: Under subsection (1).

Sen. Ramlogan SC: "appointed by the Minister under subsection (1)".

Sen. Al-Rawi: Well, that will include the assistance aspects, who have the full powers. [*Crosstalk*]

Sen. Ramlogan SC: Let us move on guys. [*Crosstalk*]

Mr. Chairman: Hon. Senators, after a long healthy discussion and debate on the matter, as it relates to clause 11, the question is that clause 11, as amended, read as follows. [*Interruption*]

Sen. Small: Could I ask a question?

Mr. Chairman: I had offered you that privilege, and you said no.

Sen. Small: Forgive me, Mr. Chairman. I did not want to join in because we had closed the debate on rescuing Minister George. I did not want to necessarily join, because Minister George knows where my heart is where he is concerned.

Mr. Chairman: My respect for you, please continue.

Sen. Small: Yes, Sir. I just have a query about the order. I asked a question yesterday around how we are going to structure the organization. I know we are doing the chief and the deputy. The other staffing positions, how is that to be done? Will that be prescribed in the order? I need to understand how that is going to be done. How much staff, who determines that and what process?

Sen. Ramlogan SC: You would normally determine that in consultation with CPO. It goes to PMCD in the Ministry of Public Administration; they flesh out an organogram, and based on that they will—

Sen. Small: So it will follow that process?

Sen. Ramlogan SC: It will, yes.

Sen. Small: I was not sure, I just wanted to be clear. Thank you, I am all right.

Sen. Ramlogan SC: "appointed by the Minister under subsections (1) and (2)".

Sen. George: Because (1) and (2) is the deputy.

Sen. Robinson-Regis: Could I hear the amendment?

Mr. Chairman: I am reading it out.

Sen. Robinson-Regis: I am just thinking of where it should be placed.

Mr. Chairman: The question is that clause 11 be amended as follows:

Insert after subsection (3) the following subsection (4)—

The Minister may, by Order, prescribe the qualifications and experience of the Chief Inspector of Prisons, Deputy Chief Inspector of Prisons appointed by

the Minister under subsection (1) and (2) and renumber the remaining subsections accordingly.

Is that what we want?

Sen. Prescott SC: Mr. Chairman, permit me one more indulgence. I had stepped out for a while. Could the Minister look at the proposed section 26(4) on page 8, and consider whether in order to avoid ad hoc appointments of the appeal tribunal, that we should not say that the appointment should be for a period of not less than one year and not exceeding three years?

Sen. Ramlogan SC: No, leave that so.

Sen. Prescott SC: Give it some consideration.

Sen. Ramlogan SC: So what you are saying, you give them the flex to appoint someone for one year to see how they are performing?

Sen. Prescott SC: At the very least, yes, because ad hoc appointments for each case—

Sen. Ramlogan SC: It says "not exceeding", so that might cover it.

Sen. Prescott SC: Yes, and I am saying it, however, does not exclude someone being appointed for one case and then being pulled away, and then another for another. So I am saying make an appointment, give it some time to gel, the appeal tribunal that is.

Sen. Ramlogan SC: Well you will appoint them for a period not exceeding three years.

Sen. Prescott SC: Not less than one, that is what I am saying.

Sen. Ramlogan SC: I see.

Sen. Prescott SC: You may continue to say "not exceeding three", but it ought not to allow for an ad hoc appointment per case.

Sen. Ramlogan SC: "shall be for a minimum term of one year".

Sen. Prescott SC: "shall be for a term of not less than one year and not exceeding three years."

Sen. Ramlogan SC: Prescott, nobody is going to appoint anybody for less than a year. "Listen, yuh ketching tail to full these vacancies in the first place, Elton." In the public service right now you cannot even get people to come and take the three-year contract, because the bank is not going to give you a loan to even buy a car, house, nothing, with a three-year contract.

Sen. Prescott SC: My concern is the ad hoc appointment.

Sen. Ramlogan SC: I think we will be all right with that. The Minister would not do that. "I go deal with him."

12.45 p.m.

Question put and agreed to.

Clause 11, as amended, ordered to stand part of the Bill.

Clauses 12 and 13 ordered to stand part of the Bill.

Clause 4 recommitted.

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

Sen. Ramlogan SC: Chair, we return to the discussion on Prison Commissioner, and there is a proposal here to accept Sen. Robinson-Regis' formulation or the idea that she filtered which is a good one, I think, to say link it to the capacity and the function. We will say—but I want to raise something that just crossed my mind, it is this. You know, Prison Commissioner, these are the people who will adjudicate in the first instance. And we say, "office of Deputy Commissioner or Assistant Commissioner of Prisons".

Now, our experience with disciplinary tribunals has not been very exemplary in the public service. And part of the reason for that is because the substantive law has really suffocated the machinery, the disciplinary machinery, that we have put in place. Oftentimes one legislates without looking at the organizational chart. There is—how many officers of Deputy Commissioner of Prisons? There are two Deputy Commissioners of Prisons, and then Assistant Commissioners—how many? About three or four. But those two and four persons really are the heaviest work persons in the prison administration.

And in the police service we have had to change, on a piecemeal basis, all of the legislation to the point where we went from the Police Service Commission, which did not work, to delegating to the Commissioner of Police, and now to delegating even further. And I want to suggest respectfully that we say, delete the reference to the officers here because when a PO I, Prison Officer I, has to have a minor disciplinary infraction, and you want to have a hearing, you may for example, want to resort to a good Prison Supervisor, as opposed to a Deputy Commissioner of Prisons who is somebody that is so senior to deal with something so trivial, and they are already over-burdened. Let us leave that a little flexible because our experience with the police service has been that this has created a nightmarish experience with a backlog, that today, we cannot solve.

So, my suggestion would have been to say "Prison Commissioner" means an officer established under the prison service or means a prison officer—"Prison Commissioner means a prison officer with the responsibility for conducting disciplinary proceedings in the first instance under the Prison Rules". Mr. Vieira.

Sen. Vieira: I do not have a problem with that.

Sen. Ramlogan SC: Ok. That is fine, Sir. We will go with that, Sir. [*Crosstalk*]

Sen. Vieira: He wants to get the notes.

Sen. Ramlogan SC: "Prison Commissioner" means a "prison officer with responsibility for conducting disciplinary proceedings under the Prison Rules". And as simple as that.

Sen. Vieira: AG, I had just one—

Sen. Ramlogan SC: Yes, Senator.

Sen. Vieira:—parting thought.

Sen. Ramlogan SC: Yes, Sir.

Sen. Vieira: Coming back to the functions of the inspectorate—

Sen. Ramlogan SC: Yes, Sir.

Sen. Vieira:—at 22:

"inspect—

"prisons;

Industrial Institutions;"

Sen. Ramlogan SC: Yes.

Sen. Vieira: Now yesterday in the debate I pointed out that really it is only the Youth Training Centre—

Sen. Ramlogan SC: YTC.

Sen. Vieira:—that is an industrial institution, but since this is also to deal with young offenders, and you are dealing with people who are incarcerated, the industrial school like St. Michael's School for Boys, I feel, should also fall under the ambit. Because right now, who do they have to inspect, to report to make recommendations? So whether we can say industrial institutions and include industrial schools as well.

Sen. Ramlogan SC: Well, let us just get Sen. Robinson-Regis. [*Crosstalk*]

Sen. Robinson-Regis: Could I just make a point? There is a mechanism, it may not be working. There is a mechanism for inspecting those other schools, which is St. Michael's Home and so on. It may not be working, but there is a mechanism. And I did overhear one of my colleagues making the point yesterday, that if we include those institutions under industrial institutions, it may stigmatize the persons who we send to those institutions as being possible or being tainted as young offenders, when in some, and many instances, they are not offenders as we see under this legislation. So, I would like to respectfully suggest that we do not take them in that way, and that we perhaps look at what is occurring in terms of the inspection of those other institutions under the legislation that deals with those institutions.

Sen. Al-Rawi: There is the Children's Authority as well.

Sen. Vieira: With respect—industrial schools are defined under the Children Act as:

> "…a school for the industrial training of youthful offenders, in which youthful offenders are lodged…"

Sen. Ramlogan SC: All right.

Sen. Vieira: I am not too worried about stigmatization. I am interested in the rights of the children, and they are falling through the cracks.

Sen. Robinson-Regis: And they are covered by that legislation. They are covered by that legislation. I do not want to put them under the Prisons legislation.

Sen. Ramlogan SC: Sen. Vieira, I have much sympathy for your view, but this is one that would have required a policy decision from the Cabinet, and we did not in fact, before canvass this matter before the Cabinet. So, I will take note of it. I also hear what my learned friends on the Opposition Bench are saying, that it is already covered by the Children Act, and we have catered for it. I want to make the point however, it is not that your point is entirely without merit. In fact, in the prison service there is a cadre of persons in the welfare officers stream that are extremely capable to assist in those juvenile and youth detention facilities. So it is a matter, I have taken note of it. I, with my colleague, the hon. Minister of Justice, will look at it. Chair, if we could put the amendment because people are getting hungry now; come.

Mr. Vice-President: Yeah. Yeah. "They start getting hungry".

Question proposed.

Delete the definition of "Prison Commissioner" and substitute "Prison Commissioner means a prison officer with the responsibility for conducting disciplinary proceedings under the Prison Rules."

Question put and agreed to.

Clause 4, as amended, ordered to stand part of the Bill.

Question put and agreed to: That the Bill, as amended, be reported to the Senate.

Senate resumed.

Bill reported, with amendment, read the third time and passed.

Mr. Vice-President: Hon. Senators, we had a long morning, now it is 12.55 according to the clock on the wall. I wish to really suspend the sitting for the lunch break. [*Crosstalk*]

Hon. Senator: Do we have to put for a division?

Mr. Vice-President: That is what I was asking. [*Crosstalk*] This sitting now stands suspended for lunch, and we will return at two o'clock.

12.56 p.m.: *Sitting suspended.*

2.00 p.m.: *Sitting resumed*.

Mr. Vice-President: Hon. Senators, Bill No. 2.

INDICTABLE OFFENCES
(COMMITTAL PROCEEDINGS) BILL, 2014
[Second Day]

Order read for resuming adjourned debate on question [July 09, 2014]:

That the Bill be now read a second time.

Question again proposed.

Mr. Vice-President: List of those who spoke, that was Tuesday, July 09, 2014: Sen. The Hon. Anand Ramlogan SC, Attorney General; Sen. Faris Al-Rawi; Sen. Elton Prescott SC. All Senators wishing to join the debate may do so now.

Sen. The Hon. A. Ramlogan SC: Mr. Vice-President, I thank you for the opportunity to reply and wind up this debate on this very important measure.

This is a Bill entitled the Indictable Offences (Committal Proceedings) Bill, 2014, and it really has been a matter that was with us before, because there has been a previous incarnation of it, and the population, and indeed the Chamber, would be well aware of the arguments both for and against it.

There are not many against it, quite frankly, because the abolition of preliminary enquiries is a matter that has been on the drawing board now for over 15 years in this country. It is a matter whose time has come, because the procedure of a preliminary enquiry is one that does not add much value to the improvement of the criminal justice system. It is supposed to act as a filter to ensure that those matters which are before the judge and jury, before the criminal assizes, are matters that merit a criminal trial because there is a prima facie case against the accused person. What our experience has shown, the empirical data, is that the filtering process has really translated itself into virtually 90 per cent to 95 per cent of the cases going forward to a trial before a judge and jury.

It meant, really, that the time that was spent dealing with the preliminary enquiry, as it endures a very long and meandering endless journey before the Magistrates' Court, is one that has become counterproductive, and it is in those circumstances that the Government had moved to bring this Bill before the Parliament, building as we do on the existing law so that we can abolish preliminary enquiries.

This is going to have a significant impact on the question of the efficiency in the administration of criminal justice. It was not lost upon me that those who spoke before me mentioned the need to have the infrastructure in place. Of course, Mr. Vice-President, I take it for granted that that is understood. You would have seen the Government has already made an announcement that with respect to Chaguanas, the library facility that was being constructed there is one that would be repurposed and redesigned to be a court. It would be a new branch of the Supreme Court of Justice of Trinidad and Tobago.

That is not by accident. That is because we recognize that when you abolish preliminary enquiries you would front-load the administration of justice in terms of the criminal assizes, and there is obviously bound to be a need for more judges, more courtrooms and more trials to take place, or else you would simply remove the pressure point from one place in the body and put it on another joint in the body and the pain would therefore exacerbate and not go away.

It is for that reason as well you would see that I have announced the Government's intention to bring a new Bill to revolutionize plea bargaining in this country. [*Desk thumping*] In the United States of America 90 to 95 per cent of cases do not actually reach the stage of a trial in the criminal courts; 90 to 95 per cent of the cases are actually resolved at the stage of plea bargaining, and there is, in fact, no criminal trial.

If one looks at the current statistics, the hon. Chief Justice indicated at the opening of the new law term, that at the current rate, it would take us 10 years to clear the backlog with respect to murder trials alone, and that does not take into account that whilst you are bailing out the ship the leak is not plugged and the water would be filling back the ship. So, that 10-year period, really, you are talking about a 17 to 20 year period, and that is just to come up to speed, to get your neck out of the water.

So, what we have really is a situation where the infrastructure, the judges, the courts, even if you were able to build it at a rapid pace and make that investment, it cannot be the only solution, and it is for that reason the plea bargaining, which law we would bring, it is hoped that would assist in some form of alternative criminal dispute resolution—and I use the word "dispute" in inverted commas, but really it would allow for a number of possibilities. It would allow, for example, for us to give a defendant a genuine lease on a second life.

Because by plea bargaining they would have tasted the full weight and brunt of the law, but they would also know that by virtue of the plea bargaining, it would be structured in a way that if you reoffend, it would not be as lenient as it was the first time. In fact, the discount that applies on the first occasion would, in fact, perhaps, not be available and you might be penalized for reoffending.

The rate of recidivism is one that we have to take cognizance of in the country, and I dare say that together with plea bargaining and the abolition of preliminary enquiries, we would have had a double-barreled solution to the problems and the backlog that plague the criminal justice system, and we would be able to move forward in the right direction.

I am very heartened by the fact that Senators who spoke prior to my winding-up on this debate expressed, in principle, support for this measure. It is one whose time has come. We have seen in smaller Caribbean islands, whether it is St. Lucia or Antigua, that they have been able to move ahead of Trinidad and Tobago in this respect, and therefore we are now playing catch-up as the case might be.

Now, Mr. Vice-President, in moving forward with the criminal justice reform that the Government has envisioned, what do we want? We want a modern, efficient and effective system of criminal justice. And why do you need that? An effective system of criminal justice is perhaps the most potent deterrent against crime in any country. If a criminal knows that when he is caught that he would, in fact, be prosecuted and convicted within an expeditious time frame, that is perhaps the best deterrent that can operate on his mind against reoffending.

That is why we are taking a hard look at the criminal justice system and we have passed a plethora of measures that are designed towards improving criminal justice. You would have seen in the recent Bill, the amendments to the DNA and fingerprint laws that we have, to create a DNA database and to create a fingerprint database to improve upon it. And why is there that emphasis on the reliance of extraneous independent scientific evidence? It is because you need that for the plea bargaining to work.

If an accused person knows that the strength of the evidence against them is not confined to mere eyewitness account such that they could harass and intimidate the eyewitness so they do not come to court, then they stand a better chance by dragging things through the system. In fact, we have seen in the criminal courts where criminals deliberately—sometimes they plead not guilty and they play the waiting game. They play the waiting game, why? Because, one, they would in fact be able to intimidate and harass witnesses, and in some cases even eliminate them.

Secondly, you would find that they would, in fact, be able to just frustrate the justice system, because it is known that there is going to be a seemingly endless perpetuous cycle of adjournments in the Magistrates' Court at the level of the preliminary enquiry, and indeed, even the trial. So, what they do is they frustrate you. When a witness for the State has to come to court, the witness is nervous, they are jittery, the night before they cannot sleep, I mean, and let us not even talk about the victims of the crime who have to relive the horrendous and traumatic experience of the crime itself.

But, when you adjourn a matter endlessly, what you do is, the people lose the enthusiasm, they lose the commitment to come to court and testify on behalf of the State. And when we say the State here, in some countries they do not say the *State v X*, they say the *People v X* because it is an infraction of the moral code that is meant to be the Krazy Glue to hold society together. And when you have that infraction, it breaches the social and constitutional pact between the citizens and the State.

The very first among our fundamental human rights and freedoms guaranteed in the Constitution in sections 4 and 5 is the right to life, liberty, security of the person and enjoyment of property. All compendiously put into one, they are the first right in the pecking order. If we are to be honest we would realize that Trinidad and Tobago has reached the stage where that guarantee from the State to its citizenry is one that is being undermined by the criminal elements in our society. And that is why we must take swift, corrective action because that sacrosanct constitutional pact between the State and its citizens is the very fulcrum on which a functioning democratic society rests. Law and order is based on respect for those constitutional rights, not just by the State, but also by the citizens.

Now, some of the points that were made, Mr. Vice-President, I would treat with them briefly. I think the point was made that we could consider amending the Bill to specify clearly that the defendant must make a plea of guilty or not. In indictable matters, however, that is a point that was floated, but it really does not arise, because in indictable matters an accused is never really called upon to plead.

So, the issue of the plea does not, in fact, arise in such a case. Where it is a summary matter, of course, you are called upon to plead. It is the judicial officer in the case of indictable offences who would deal with the matter, and at the preliminary enquiry you are not called upon to make a plea as the magistrate is simply examining the evidence to determine if the matter should go forward before the High Court. And it is at that stage when the prima facie case has been established that you would be called upon to plea prior to the commencement of the trial.

Now, if you plead guilty, for sentencing purpose, the prosecutor provides the summary of the evidence rather than all the witness statements. That summary must be capable of supporting a conviction for the offence as outlined in the case of *R v Radic*, and since the accused is not called upon to plead, the issue of providing a summary of evidence for sentencing does not arise.

Now, Mr. Vice-President, I think it was my learned friend Sen. Prescott who made the point that the right to be heard is perhaps taken away under clause 5. Section 10 of Chap. 12:01 does not really specify a right to be heard. It is, in fact, a consequence of the appearance after a warrant is issued, and therefore, it does not appear, to me, that it takes away the right to be heard.

With respect to the child taking an oath and understanding the consequences of lying, I think, Sen. Prescott, that is a point that has fallen on fertile soil. I, in fact, have drafted an amendment to deal with that. I think we need to be very careful about the evidence of children. The aura of innocence that one sees with respect to children is, perhaps, justified and, obviously, must be respected and taken on board. But, one must also be very alive to the possibility that children could be easily manipulated. They are very malleable and pliable and one can easily influence than to give evidence that may support a party to litigation, and that evidence might be manipulated or fabricated.

You see it a lot, Mr. Vice-President, in the matrimonial courts, in the family courts where you have divorce proceedings and oftentimes the children are caught between the parents and you find one side or the other, one parent or the other, is influencing the child, poisoning their minds to get them to testify against the other parent in a particular way, and it oftentimes happens.

2.15 p.m.

So the safeguards that we have put in place strike the right balance between the child and protecting the welfare of the child, as well as protecting the integrity of the administration of justice by allowing for evidence to be of sufficient probative value to the criminal court in determining innocence or guilt in a criminal trial.

Sen. Prescott also made the point that the State should provide for 19(5), (6) and (7), for a person reading, aloud the statement of the person who cannot read or write or the person require the interpreter to give a declaration that the person cannot read or write, and so forth. I have taken on board that point. I mean, I saw in the newspaper only yesterday, yet another raid took place at a very popular establishment in Penal. I do not know if you know about it, Sen. Prescott, but they rounded up quite a few foreigners who happen to be female, some from Colombia, the Dominican Republic and what have you, and we obviously have the right venerable institution of Villa De Capri, which is well known to all and sundry in Trinidad.

And these institutions as I have made—[*Interruption*]

Hon. Senator: What! [*Laughter*]

Sen. The Hon. A. Ramlogan SC: I did not say "frequent", I said known. [*Crosstalk*] I saw some rather concerned flushed faces. [*Laughter*] But the point is that these establishments and the drug blocks they cannot function without police protection, and it is good to see that the police are responding to actually bring law and order to these places. And I think that is why the hon. Minister of National Security, my colleague Sen. Griffith, is advocating for a unique style of

policing that will have a direct intervention, because sometimes when you have the regular routine police officers going, what you have really is a man with a cell phone texting the owner of the drug block, the turf or the establishment, and telling them, "watch meh, we coming six o'clock tonight". They are tipped off in advance, and by the time you reach there, what you will see is a rum shop with pholourie and sahena selling and everybody sitting down and talking about their grandmother. But the minute you leave, the following day the establishment resurfaces, you see.

So, Mr. Vice-President, I take on board that point Sen. Prescott made. I dare not say it is based on personal experience, but I know that it is based on the fact that he wants to safeguard and protect the integrity of the criminal trial process, and therefore persons who are illiterate or cannot read or write, or persons who require an interpreter it is only fair that we should in fact have the statement read out aloud.

Another point made was on clauses 30 and 31 of the Bill. We dealt with the question of 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. I think that is the point you were making. I am sceptical about a procedure that allows for that, and if the exhibits become lost or destroyed, clauses 30 and 31 contemplate that 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, et cetera.

What I wish to say about that point, Sen. Prescott, is that in clause 31, provision is made for the Clerk of the Peace district or the committing magistrate to certify copies for admission as evidence. I do not know that the recommendation is to remove the Clerk of the Peace and to use only the committing magistrate, but my preference would be that we allow the Clerk of the Peace to do that for simple practical administrative purposes.

With respect to the clause 27(e), I think you wanted the word "elimination" to be eliminated, and I have so done that. We have taken it off, and I will circulate an amendment to that effect. Under clause 36(1), that the accused should be allowed to sign his recognizance alone, we are not changing the law in this regard. It has always been the case that he would be allowed to sign his own recognizance as the case may be.

I think, Mr. Vice-President, those were the main issues that were raised during the course of the debate. As indicated, this is a very simple, though significant measure, and the Government is happy to be part of this revolutionary measure. Together with plea bargaining, I have no doubt that the three pieces of legislation that we have passed recently, including this, will form an important and very strong tripod on which the reform of the criminal justice system shall rest. [*Desk thumping*] The three pieces of legislation to which I refer would be the amendments to the DNA and the jury Act that we have passed recently, the plea bargaining law when it comes and, of course, the abolition of preliminary enquiries which we are dealing with today.

So with those few comments, Mr. Vice-President, I beg to move. [*Desk thumping*]

Question proposed.

Question put and agreed to.

Bill accordingly read a second time.

Bill committed to a committee of the whole Senate.

Senate in committee.

Clauses 1 and 2.

Question proposed: That clauses 1 and 2 stand part of the Bill.

Sen. Al-Rawi: Mr. Chairman, if I may, question to the hon. Attorney General. AG, I apologise that I missed part of your presentation, I had to return to office momentarily. [*Interruption*] Thank you for that confirmation of not being missed. But may I—the reason for me saying this, I do not know if I missed an explanation on this point. I had enquired in the course of my contribution, why it is we felt that we no longer needed a section 13 exception for derogation of sections 4 and 5 rights, and I had raised it in the context specifically of the last Bill that we passed, that is, Act No. 15 of 2012, had a section 13 exception and we have replicated by and large a lot of the same positions here.

So, we as a Parliament thought it fit to put in a three-fifths majority requirement on the last occasion. And apart from the fact that we did it once before, and one may meet it by saying it was maybe superfluous, I still felt that this Bill intruded upon sections 4 and 5 rights and I was cautious to receive an explanation as to why we have not done it on this occasion.

Sen. Ramlogan SC: I did in fact address that when I was piloting, and I indicated that in light of the judgment in Hilroy Humphreys and elsewhere, there is no vested right to a particular procedure for one's criminal trial. And having regard to the fact that it had been decided by the judicial committee of the Privy Council that there is no vested right in a particular procedure, it was felt that you are not depriving anyone of a substantive right that existed. In fact, in the Privy Council this question was considered, and in that case the question—[*Interruption*]

Sen. Al-Rawi: I will accept it on that point.

Sen. Ramlogan SC: Yeah, sure.

Sen. Al-Rawi: On the point of procedure AG, I accept that we also dealt with that point in 2011 when we dealt with the Bill, the Hilroy Humphreys case being a 2008 case. What concerned me, for instance, AG, was the right to property. We have, for instance, the ability to seize material other than material protected by legal profession privilege, computer systems, and documentation that way. So that is a right, a property right falling outside of the Hilroy Humphreys scenario, and that is just one of the rights. So I wondered, particularly insofar as we had this Bill repeat some of the clauses quite, almost verbatim, from the last Bill, in particular, the property rights and others. We took the caution on the last occasion to deal with it; again, if I could ask you to think of it again.

Sen. Ramlogan SC: Well, we are of the view that you do not need a constitutional majority on this matter. And that is the advice that I have received, I accepted it and it accords with my own here.

Sen. Al-Rawi: Okay, just on the record, I beg to differ—[*Interruption*]

Sen. Ramlogan SC: Sure, that is fine.

Sen. Al-Rawi:—and I would go on that point and see what everyone else has to say. And on the point of proclamation, hon. Attorney General, clause 2, are there any undertakings or caveats in terms of the time by which this thing may be proclaimed?

Sen. Ramlogan SC: None whatsoever.

Sen. Al-Rawi: None. Okay so it is not envisaged yet? We have done successively amendments to the Indictable Proceedings Act, the old Act, if I may put it that way, even up to this week. Is it anticipated that there would be some more architecture required—and I mean that in the legislative sense as well—before this law comes on stream?

Sen. Ramlogan SC: What is required is the administrative and infrastructural arrangements that have to be put in place, and those are matters which will be attended to.

Sen. Al-Rawi: Okay, thank you.

Mr. Chairman: That is it, Attorney General?

Sen. Ramlogan SC: "Yep", that is it, clauses 1 and 2 can be put.

Question put and agreed to.

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

Clauses 3 to 5 ordered to stand part of the Bill.

Clause 6.

Question proposed: That clauses 6 stand part of the Bill.

Sen. Al-Rawi: May I enquire in relation to clause 6, subparagraph (4) which is on page 3 of the Bill. It reads as follows:

> "When a thing is seized and brought before any Magistrate, the Magistrate may detain it or cause it to be detained, taking reasonable care that it is preserved until the conclusion of the committal proceedings, and where any person is committed for trial, the Magistrate may order the thing seized to be further detained for the purpose of evidence on the trial."

This harkens back to section 5(3) of Act No. 20 of 2011. I wondered whether we required the qualification language or until further order. It would give the wide judicial discretion to consider it other than just in the circumstances prescribed there.

I also noted that you may order it to be further detained, but not necessarily released towards the end of the paragraph. So two issues arrive. One on the word "until" where we are talking about until further order", giving the discretion to move beyond just committal and trial; and secondly, "further detained", is "released" required to be included there or not?

Sen. Ramlogan SC: I do not think so because the jurisdiction of the Supreme Court is governed by the Supreme Court of Judicature Act and that would give the overriding originating jurisdiction of the court to make an intervention any time it sees fit. And with respect to the power to detain, the detention corresponding implies that it has the power to release. So that we do not think that is necessary. If you have the power to detain you will have the power to release.

Sen. Al-Rawi: Sure, thank you.

2.30 p.m.

Sen. Prescott SC: Could we go to clause 6(6)? There seems to be a word missing in line two. It reads:

"Except as provided for under this Act or any other law, where a person is not committed for trial or where the thing..."

Could that be "seized or detained under this section"? "Thing seized"?

Sen. Ramlogan SC: Well, yeah, it will be "thing seized". Yes, I will seize upon your argument and insert the word "seized".

Sen. Prescott SC: I see your point.

Sen. Ramlogan SC: Good. You seize my point?

Sen. Prescott SC: I seize your point.

Sen. Ramlogan SC: So we can insert the word "seized". In (6):

"…where a person is not committed for trial or where the thing seized…"

Sen. Prescott SC: Yes. And I think that (6) goes on to say how the magistrate may treat with the thing.

Sen. Ramlogan SC: Yes, sure. That makes sense.

Sen. Prescott SC: By restoring it to the person.

Sen. Ramlogan SC: Well, it is there if you read the law apart, "shall direct the thing seized to be restored…"

Sen. Prescott SC: Yes. I was commenting on the earlier observation.

Sen. Ramlogan SC: Fair enough.

Sen. Drayton: Can I just raise a question?

Sen. Ramlogan SC: Yes, certainly, Senator.

Sen. Drayton: Actually it is 6(1), just for reasons of simplicity.

Sen. Ramlogan SC: Yes, sure.

Sen. Drayton: Why did we say:

"…there is reasonable ground for believing that there is in any building, ship, vessel, vehicle, box, receptacle, or place, anything."

Why not simply be "any place or anything"?

Sen. Ramlogan SC: I thought about that. I had raised that point elsewhere and—

Sen. Al-Rawi: It is standard language. It comes from all law.

Sen. Ramlogan SC: Yeah. It is one of those legalese drafting things, but I thought we could have said "anywhere" quite frankly, to cover "anywhere else", but anyway—

Sen. Al-Rawi: It was in section 5(1) of the Act—

Sen. Ramlogan SC: Yeah. I think that is a cut-and-paste, really. We have one amendment.

Mr. Chairman: Clause 6 is amended as follows:

"(6) Except as provided for under this Act or any other law, where a person is not committed for trial or where the thing seized under this section does not constitute evidence in any other criminal proceedings, the Magistrate shall direct the thing seized to be restored to the person from whom it was taken unless the Magistrate is authorized or required by law to dispose of it otherwise."

Question put and agreed to.

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

Clause 7 ordered to stand part of the Bill.

Clause 8.

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

Sen. Al-Rawi: May I enquire, Mr. Chairman, to the hon. Attorney General, clauses 7 and 8—

Sen. Ramlogan SC: Eight, subsection (7) and (8)?

Sen. Al-Rawi: Sorry. I am just preambling. Clause 7 and 8 of this Bill mirror back to the last law that we dealt with, which was Act No. 20 of 2011. There was an interesting clause in section 6 of that law. That is the law that we did not bring into full effect, which had the provision:

"…where the Director of Public Prosecutions is of the opinion that a person should be put on trial for an indictable offence, the DPP may prefer and file an indictment against that person, whether or not a complaint is made…"

And then another one, which deals with the DPP's ability to issue a summons or warrant to compel appearance. Is there any reason why we did not want to repeat that power onto the DPP as we had considered in the last incarnation of this law?

Sen. Ramlogan SC: What happened is that in this matter we had sought the guidance of criminal justice consultant, the late Miss Seetahal, and she had advised that those things really ought not to be there. She felt that it was over-legislating and giving an overarching sense of power where it would not be appropriate, and we accepted that advice.

Sen. Al-Rawi: Okay. Thank you.

Sen. Prescott SC: I claim ignorance. So that the power of the DPP to himself prefer an indictment exists somewhere else?

Sen. Ramlogan SC: Yes.

Sen. Prescott SC: Where is it?

Sen. Ramlogan SC: In the Constitution.

Sen. Al-Rawi: May I enquire, if Sen. Prescott is finished, on clause 8(6) on page 6 at the top of the page, just some clarification on the wording here:

> "The Magistrate may issue the warrant under subsections (3) or (4) upon oath being made on behalf of the complainant substantiating the matter…"

Is that correct, "on behalf of"? Are the subclause references (3) and (4) the correct ones, or did we intend to say instead, subclauses (1) and (5)?

Sen. Ramlogan SC: Well, I think "on behalf of the complainant" is correct because I think the idea here is that they are issuing the warrant—I mean, one could leave it out, but I mean it is "on behalf of the complainant", I presume in the way they would deal with the virtual complainant or a private complaint.

Sen. Al-Rawi: But this is the complainant. I would accept "on the virtual complainant's behalf".

Sen. Ramlogan SC: Yes, sure.

Sen. Al-Rawi: So I just wondered about this "on behalf of the complainant". Is it that the complainant makes the oath, or is it someone else?

Sen. Ramlogan SC: Well, I think whoever makes it, it is on behalf of the complainant. That is the language, I am advised—the language-speak of the criminal profession and that is how they understand it, so I did not want to tamper with it.

Sen. Al-Rawi: Okay. It just seemed a little odd to me. And perhaps your team could look at whether the references to (3) and (4) are the correct references? I just had a little question mark on that.

Sen. Ramlogan SC: Yes. They have checked it and they are fine with it. That is fine.

Sen. Al-Rawi: Okay.

Sen. Ramlogan SC: Thank you for drawing it to our attention.

Question put and agreed to.

Clause 8 ordered to stand part of the Bill.

Clause 9.

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

Sen. Al-Rawi: Sorry, Mr. Chairman, I was reading while you were speaking. Sorry about that. Could I invite clarification? Clause 9, which, related back to section 7 of the last incarnation, the 2011 law which we did not proclaim, we had an inclusion in that summons reference there, that the summons had to have a reference to the section of the written law creating the offence where applicable, similar to the issuance of a notice under the Civil Proceedings Rules where you must say pursuant to which rule of the CPR you are dealing with—just drawing the analogy. I noted on this occasion that we have left that out. We have repeated that it should be directed to the accused and require him to appear at a certain time and place mentioned in the summons and that it should not be in blank. But the previous law had that, what I thought to be laudable position, where it says, you are:

"…directed to the accused;

(b) contain a statement of the specific offence which the accused is charged, together with—

(i) a reference to the section of the written law…where applicable…

(ii) such particulars as may be necessary for giving reasonable information as to the nature of the charge…"

So I wonder why we were omitting what I think to be important ingredients by way of initial disclosure on the part of the complainant.

Sen. Ramlogan SC: In a matter of practicality, one would expect that some reference to that should be included. I suspect the rationale for putting it this way is because you may be summoning them to just be a witness. There may not be any offence, per se. You see? But I take your point and we will make note of it so that in devising the forms, as it were, that they will be using. I think it is already there, in any event, but—

Sen. Al-Rawi: Okay. Perhaps it may be taken into account in the rules that may accompany this.

Sen. Ramlogan SC: Yes, sure. That is fine.

Sen. Prescott SC: Chairman, in 9(3), it mirrors what was in the Administration of Justice (Indictable Proceedings) Act at section 7(4). I think the word "given" should be put against the word "last" in the penultimate line.

> "…by leaving it with an adult person for him at his last"—given—"or most usual place of abode."

It is usually an address given by the accused person. That formula was used in the previous—

Sen. Ramlogan SC: The reason it was changed is because it was felt that sometimes if you put it in the substantive law you will have to leave it at the last given address. The idea was that sometimes the police get information as to where the true address is, or was, and they prefer to leave it there, or sometimes they leave it at more than one place.

Sen. Prescott SC: So "last known" might be a better way?

Sen. Ramlogan SC: Let us leave it as "last". It will cover "known", it will cover "given" and it will leave it flexible to the police to determine, you know, if they have to serve. Sometimes they say they serve two and three. But "last" will cover "given", "known" or any other permutation.

Sen. Prescott SC: I bring it to your attention.

Sen. Ramlogan SC: Sure. It is noted, thanks.

Question put and agreed to.

Clause 9 ordered to stand part of the Bill.

Clause 10.

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

Sen. Al-Rawi: Just an enquiry, really, because I did not have the chance to check it. How does this rack up, hon. Attorney General, to the amendments that we made to the Bail Act in the three-strike to one-strike formula? I recall—and I did not have the chance to check it, perhaps CPC has—that we had amended the schedules. Is CPC sure that we have cross-checked these schedules carefully from the Part I of the First Schedule, et cetera, that we got those schedules right?

Sen. Ramlogan SC: Yes. We are fine on that.

Sen. Al-Rawi: Okay. Thank you.

Sen. Vieira: I just have one question on clause 10. It is at 10(3).

> "…a warrant has been endorsed for bail…the person referred to…being taken to a police station on arrest under the warrant…the police station may release him…in accordance with the endorsement."

But if the conditions have been met, why should the police station not release him?

Sen. Ramlogan SC: You mean "shall" as opposed to "may"?

Sen. Vieira: Yeah.

Sen. Ramlogan SC: Let us leave it as "may", "nuh" because, you see, sometimes they take in the fellas sometimes—I will tell you what happens. They take in the guy on a warrant for one thing and while they are there "de chile mudder, or somebody, rush een de station an sayin—making anodda report", or some other, you know, they get a result on a fingerprint or something.

Sen. Vieira: I agree, but that would be separate and apart from that particular offence and endorsement.

Sen. Ramlogan SC: I hear you.

Sen. Vieira: You see? So you say, "Okay, you are released on this, but ah holding yuh on that". But this gives them almost an out to say, "I have nothing else against you but I am not releasing you". That is my concern.

Sen. Ramlogan SC: Yeah. Well, it is a "may" that has to be exercised not arbitrarily and capriciously, but rationally. But I would prefer to leave it as the "may" for now.

Sen. Al-Rawi: I would think that the word "may" there is a necessity to indicate the discretion. I would be concerned that the police—because it says that "the officer in charge…may…" I mean, he must consider something. I think that we would want to convey the need for a discretion on his part. My own view on it.

Sen. Prescott SC: Moreover, the following section speaks of the person arrested being brought before the magistrate as soon as practicable. So that "as soon as practicable" may be within a matter of an hour or so.

Sen. Ramlogan SC: Yeah. And they might have to just keep him.

Question put and agreed to.

Clause 10 ordered to stand part of the Bill.

Mr. Chairman: Senators, like you are all tired. I am not hearing the "ayes" and the "noes". [*Laughter*]

Clause 11.

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

Sen. Al-Rawi: Just a few enquiries on clause 11. Clause 11 says, where you are apprehended, that you may be brought "as soon as practicable after". We are comparing section 8 of the 2011 law. The 2011 law had a very interesting formulation:

> "Where an accused is apprehended upon a warrant, he shall, without delay and as soon as practicable after he is apprehended…"

I wondered if removing the words "of urgency without delay" and confining ourselves to simply "as soon as practicable" would cause any injury to what we intend. So the proposal would be to include, if necessary, the words, "without delay and".

Sen. Ramlogan SC: No.

Sen. Al-Rawi: May I hear some reason?

Sen. Ramlogan SC: Because "as soon as practicable" is a term that is a well known to us. In fact, in the Constitution, the constitutional right is to be brought promptly before a judicial authority "as soon as practicable", and there is learning on it in the case law as well. It implies what you are saying—

Sen. Al-Rawi: May I invite you to consider something further?

2.45 p.m.

Sen. Vieira: I tend to agree with Sen. Al-Rawi, because sometimes even in drafting commercial agreements you should say "shall deliver forthwith". Because "forthwith" could be "as soon as practicable". You say, "and in any event no later than". Now, "as soon as practicable"—the police have a style, you know? They pick you up on the long weekend, on the Friday, and they hold you for four days if they can. "Without delay" means "without delay".

Sen. Ramlogan SC: Yes, but the reason I put this here is because this is subject to the Constitution, and the Constitution already has the provision which speaks to that issue and this must be read in tandem with that:

"…the right to be brought promptly before an appropriate judicial authority;"

That was the provision I argued before the Privy Council in the case of *Narinesingh v the DPP*, and in the judgment in the Privy Council they gave a rather illuminating judgment on the meaning of that section in the Constitution and it means what you all say. But it is already in the Constitution and that is the supreme law. So there is no need to put it here.

Sen. Vieira: You are talking about section 5(iii)—[*Interruption*]

Sen. Ramlogan SC: Yeah.

Sen. Vieira:—"of the right to be brought promptly before an appropriate judicial authority."

Sen. Ramlogan SC: Correct. Yes. And this will be read in tandem with that.

Sen. Vieira: Hopefully, a directive will go out to police stations reminding them of that. [*Interruption*]

Sen. Ramlogan SC: Yes, certainly.

Sen. Al-Rawi: May I invite something further for consideration? The 2011 law has a very useful clause that I thought perhaps could be included here again. It said in 8(8):

"Where there is a delay in bringing an accused before a Master or Magistrate, the police shall provide reasons for the delay."

I thought that that was a very far-reaching clause in that 2011 law, which compels the police to go and give a reason why they brought this man as late as they have. It balances off the elimination of words "without delay" and "as soon as practicable" and I accept what you are saying about judicial pronouncement, et cetera, but I thought that this particular subclause in the 2011 law was a very useful one for the rights of the accused.

Sen. Ramlogan SC: Well, I rest on the same constitutional authority. I mean, in practice, if there is a delay, the magistrate will normally make an enquiry and they will give the reasons. But to put it as a substantive law, I hesitate to do that. I mean, if someone challenges it in a court, of course, they will have to provide affidavit evidence and so on, to answer the query.

Sen. Prescott SC: Chairman, would the Attorney General consider a little quirk of mine in the last three line? [*Interruption*]

Sen. Ramlogan SC: Senator, I am not hearing you. Sorry.

Sen. Prescott SC: Would you accommodate a little quirk of mine in line three from the end and say instead that "the magistrate may grant bail to the person arrested" as opposed to "may grant the person arrested bail"?

Sen. Ramlogan SC: "may grant bail to the arrested person"?

Sen. Prescott SC: No, "may grant bail to the person arrested" as opposed to "grant the person arrested bail".

Sen. Ramlogan SC: It is a stylistic change that—[*Interruption*]

Sen. Prescott SC: That is all I am saying about it.

Sen. Ramlogan SC: All right. It is noted for future drafting, you know, guidance. Thank you.

Questions put and agreed to

Clause 11 ordered to stand part of the Bill.

Clause 12.

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

Sen. Al-Rawi: May I enquire with respect to clause 12(3) which is on page 8 of the Bill:

> "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"—take—"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."

I had a little problem in conceptualizing the "deceived" and "misled" in the context of the prescription which the magistrate may exercise.

Sen. Ramlogan SC: Beg your pardon? Sorry.

Sen. Al-Rawi: I had some problem with the words "deceived or misled" as married by the solution which the subclause proposes, and I wondered whether you could dust off for us what the mischief in mind was versus the remedy.

Sen. Ramlogan SC: I think the mischief here is that, for example, if you look at the preceding subsection, if there is a defect or irregularities in the summons or warrant—now, for example, you have someone come to court, and, as you know, you often have challenges in the Magistrates' Court where the police officer who is giving the ticket or writing the summons, he cites the wrong section of law or he spells the man's name wrong. People on the ground oftentimes feel that is a defence. So they come to court and they say—I have seen lawyers do it and say, "Well, you know, the facts did not match the cited offence in the summons."

Now, in a case where it causes genuine prejudice because the lawyer prepares the case to meet a particular offence, which is not in fact the offence the prosecution had in mind to charge and prosecute, in that case you might wish to grant them an adjournment so they could now prefer their case for the amended summons so that there can be no prejudice. That is the situation they have in mind.

Sen. Al-Rawi: Thank you.

Sen. Vieira: I kind of preferred the wording of the original Act, where:

> "The Magistrate may, if he thinks that the ends of justice require it… adjourn the hearing of the case, at the request of the accused person to some future day and in the meantime…"—remand the accused person or admit him to bail.

I mean, "deceived or misled" is narrow.

Sen. Ramlogan SC: I know.

Sen. Vieira: And there could be many other circumstances.

Sen. Ramlogan SC: Yes, I did raise this myself, but I went along with the advice I was given on it because I thought that they had better experience on these matters.

Sen. Vieira: I think you should trust your instincts on this one. I mean, justice of the case is a more fitting—[*Interruption*]

Sen. Al-Rawi: I agree.

Sen. Ramlogan SC: The thing is there is an undercurrent that everything that a judicial officer does it must be in the interest of justice. So I do not know that putting it here would detract from it.

Sen. Vieira: I have reminded magistrates many times that they are creatures of statutes and they have to follow statutes. So when the statute is limiting him, he will say, "Well, Mr. Vieira, I do not know if I have the power to do this. There are only two circumstances I could use."

Sen. Al-Rawi: And we had a whole line of authority in the civil law following the Trincan decision.

Sen. Ramlogan SC: Sure. Where do you want to put it in, Sen. Vieira?

Sen. Vieira: I have seen that in the original draft. "The Magistrate may—[*Interruption*]

Sen. Ramlogan SC: Meet me halfway. Let us say we take it from:

He "may make any necessary amendments"—[*Interruption*]

Sen. Vieira: Well, "if he thinks that the ends of justice require it".

Sen. Ramlogan SC: So we will insert it there?

Sen. Vieira: This is about adjourning the case, and here the magistrate has to take the view that there is irregularity or illegality or defect such that the accused person has been thereby deceived or misled. It is funnelling too narrowly for me. I prefer the section—[*Interruption*]

Sen. Ramlogan SC: You see, I think the mischief here is what is important.

Sen. Al-Rawi: How about if you marry it together this way?

> "Where a magistrate is of the view that any irregularity, illegality or defect mentioned in this section has occurred and that the ends of justice require it, he may make necessary amendments"—or we could even leave that out—"and he may adjourn upon such terms as he may think fit, the further hearing of the case."

That is sufficiently wide to allow him to set bail, to do anything that he wishes—[*Interruption*]

Sen. Ramlogan SC: Repeat that for me slowly.

Sen. Al-Rawi: "Where a magistrate is of the view that any irregularity, illegality or defect mentioned in this section has occurred and that the ends of justice require it,"—we delete everything that goes down there and then we go—"he may adjourn upon such terms as he thinks fit, the further hearing of the case."

Sen. Ramlogan SC: Yes, I think that is fine. I do not have a problem with that. Just let the Chair and Clerk get it.

Sen. Al-Rawi: So after the word "section" that appears in the second line of subclause (3), insert the followings words "has occurred and that the ends of justice require it" and then delete from the word "is" continuing down into the next line and then into the third line ending at the word "so", and insert the words "he may" and then continue with the sentence as is.

Sen. Ramlogan SC: You are deleting up to "misled"?

Sen. Al-Rawi: Yes. Yes, we could do that, sorry. So we could stop at "misled".

Sen. Ramlogan SC: That is right.

Mr. Vice-President: You will delete "misled".

Sen. Al-Rawi: Yes, up to "misled", but do not delete anything further. So deleting from the words "is" to "misled" in lines two and three, and inserting the words after "section", "has arisen and that the ends of justice require it he may". No, no, "he may" is there already. Sorry. So do not worry with that.

Sen. Prescott SC: What about "arisen"?

Sen. Al-Rawi: I had "arisen" at first. I was not sure if to use "arisen" or "occurred". I think "arisen" may be a better word than "occurred".

Mr. Vice-President: Has "arisen"?

Sen. Al-Rawi: Yes, Sir.

Sen. Ramlogan SC: I preferred "occurred". I think "occurred" is better. Leave it as "occurred". It occurs to me that we should leave it as "occurred".

Sen. Al-Rawi: I am fine either way. I was not sure.

Mr. Vice-President: The question is that clause 12(3) be amended as follows:

Clause 12 paragraph (3):

"Where a Magistrate is of the view that any irregularity, illegality or defect mentioned in this section has occurred"—delete the word "is" to "misled"—"he may make any necessary amendments—[*Interruption*]

Sen. Al-Rawi: Sorry, Sir. We are inserting after "section":

"has occurred and that the ends of justice require it".

Mr. Vice-President: Okay. Paragraph (3)

"Where a Magistrate is of the view that any irregularity, illegality or defect mentioned in this section has occurred and that the ends of justice require it, he may make the 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."

Sen. Robinson-Regis: Sorry, Mr. Chairman, may I ask a question, please? I noticed in 2(a) it says:

"…irregularity, illegality, defect or error".

Is there a desire to include "error" in that amendment, just so that it follows what we had said previously?

Sen. Ramlogan SC: We can. I mean, it was drafted to be expansive, but we can include it.

Sen. Robinson-Regis: After "defect".

Mr. Vice-President: After "defect" you include "error". So we understand?

Sen. Ramlogan SC: To be consistent we could include "error".

Sen. Al-Rawi: So you would actually delete the word "or", put a comma, insert "or error".

Sen. Ramlogan SC: That is right. We delete the first "or" and you add in—[*Interruption*]

Question put and agreed to.

Clause 12, as amended, ordered to stand part of the Bill.

Clause 13.

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

Sen. Vieira: Again, I had some questions. I lost my note, but I am looking at 13(4) and I find that the original Act was much clearer. But basically, what (4) says:

So—"…the Magistrate is satisfied that an accused person who has been remanded is, by reason of illness, accident or other sufficient cause, unable to appear before the Court at the adjournment...the Magistrate may, in the absence of the accused person, order him to be further remanded"—and here is the bit—"for no longer than twenty-eight days."

Now, that is a kind of arbitrary—[*Interruption*]

Sen. Ramlogan SC: No! That is because we had made a previous amendment to an Act which limits it for 28 days.

Sen. Al-Rawi: It is to the Bail (Amdt.) Act.

Sen. Ramlogan SC: Yes, to the Bail (Amdt.) Act. That is right.

Sen. Vieira: Well you know, why not go back to what—before that amendment to the original which basically said, "may adjourn as necessary". I have to find that clause.

Mr. Vice-President: It does not make much difference.

Sen. Ramlogan SC: Yeah, I do not think it will make much difference, you know, because in any case to do it would not elongate his power.

Mr. Vice-President: Not being a practitioner myself, I just feel as a layperson that it does not make much difference. Thank you for acceding to what I have said. [*Crosstalk*]

Sen. Al-Rawi: It is in harmony with the Bail (Amdt.) Act.

Sen. Vieira: Supposing, as had happened, the guy got cancer, he is away in some foreign hospital or he is in a coma—[*Interruption*]

Sen. Ramlogan SC: Yeah.

Sen. Vieira:—this suggests, on a literal reading, that you only have one adjournment and it is for 28 days. It does not allow—we think, oh, well, it implies that I can go back and get a further remand. It is not clear.

3.00 p.m.

Sen. Ramlogan SC: What happened is that the amendment we had done to the Bail Act, it used to be you could have remanded them in custody, I think, it is up to eight days.

Sen. Vieira: It used to be eight days.

Sen. Ramlogan SC: Yeah, it was eight days before, we increased it to 28. Now, "if de man in ah coma, they better doh arrest him and bring him before the court". That is all I could say. [*Laughter*] I am content to leave it as it is here. They have the right—writ of habeas corpus as well, as Sen. Al-Rawi reminded me. Okay, Chair.

Question put and agreed to.

Clause 13 ordered to stand part of the Bill.

Clause 14.

Question proposed: That clause 14 stand part of the Bill.

Sen. Al-Rawi: AG, if I could just ask? Clause 14 is materially different from section 11 of the 2011 Act in that we have removed the statutory prescription for what was then seen to be safeguards in the parent law. Is it the intention that similar safeguards would be comprised in the rules instead as opposed to the parent law?

Sen. Ramlogan SC: I think so.

Sen. Al-Rawi: Yeah?

Sen. Ramlogan SC: We will consider it there. Thanks.

Sen. Prescott SC: Chairman, I have an enquiry, please. Forgive me. It is not clear from clause 14 whether we have done away with the taking of oral evidence and if it is, I think we ought to make that very clear. Could the Attorney General address that for us, please?

Sen. Ramlogan SC: Sorry, subsection (4)?

Sen. Prescott SC: It is not clear from clause 14 whether we have done away with taking oral evidence.

Sen. Ramlogan SC: Well, subsection (4) makes it clear, I think. It says:

"In this Part any statement shall be filed in writing."

Sen. Prescott SC: So, have we done away with oral evidence?

Sen. Ramlogan SC: Yes.

Sen. Prescott SC: So that the magistrate may not take oral evidence?

Sen. Ramlogan SC: Well, essentially, yes. This thing is done in writing now.

Sen. Al-Rawi: I understand that the Bill only prescribes oral evidence—if I may assist my learned Senior—in the circumstance just before the sentence—the committal is passed and that you may be heard at that point.

Sen. Ramlogan SC: Correct.

Sen. Al-Rawi: So, in marrying the two sections, I understood it and I am grateful for your clarification, AG, that we were, in fact, doing away with it, subject only to the provisions of this Bill which prescribes for the oral evidence at the point of "I am about to make a verdict on this particular issue". I do not know if that is correct.

Sen. Ramlogan SC: Yeah, sure.

Mr. Chairman: We are good? We are okay?

Sen. Prescott SC: That is how you got it?

Sen. Al-Rawi: That is how I got it; perhaps, I may be wrong, I am not sure. I am just volunteering what I understood.

Sen. Ramlogan SC: That is it.

Mr. Chairman: You are right.

Sen. Prescott SC: And then what? Does the witness have to be present in court at any time before the magistrate?

Sen. Ramlogan SC: Not at the committal stage. The whole point is to avoid witnesses having to come and wait in court and spend half day, take time off from work and so on. The committal stage really is a paper committal. So you do not have—I mean, at the trial, they will come and there is viva voce evidence and they will cross-examine and you have the whole works, but not at this stage.

Sen. Prescott SC: Fine, I understand.

Sen. Ramlogan SC: Okay. Yes, Chair.

Question put and agreed to.

Clause 14 ordered to stand part of the Bill.

Clause 15.

Question proposed: That clause 15 stand part of the Bill.

Sen. Prescott SC: Line 1 of clause 15(1), it says:

"Where the accused has been served in accordance with section 14(3)…"

And 14(3) allows service both:

"…on the accused person or his legal representative."

Was it intended at 15(1) to refer to both methods of service?

Sen. Ramlogan SC: Yes, but I presume if you serve his legal representative, you are serving the accused.

Sen. Prescott SC: So that it may not have been necessary in 14(3)?

Sen. Ramlogan SC: It may not have been, but you know.

Sen. Prescott SC: Do you not see the need to stick it in here that either he or his legal representative has been served?

Sen. Ramlogan SC: We can put it in, if it will make you happier, yes, Sen. Prescott.

Sen. Prescott SC: I am inclined to that way. [*Laughter*]

Sen. Al-Rawi: May I enquire before the inclination is delivered—

Sen. Ramlogan SC: What the CPC is pointing out as well is that the reply in any event is from the accused. I mean, let us take the Civil Proceeding Rules of court, I mean, you serve the client the originating process, having served the intended defendant, he goes by a lawyer, enters an appearance, and thereafter all the service takes place on the legal person representative so—

Sen. Prescott SC: There is a minor difference. In the civil proceedings, the attorney on record remains on record until he is formally removed. In the criminal proceedings, you can—

Sen. Ramlogan SC: There is no notice of change. [*Laughter*]

Sen. Al-Rawi: That is right, and discretion of the court to deny.

Sen. Ramlogan SC: Mr. Prescott has promised this is his last point so we will put it in. [*Laughter*]

Sen. Prescott SC: I shall be back. I shall return. [*Laughter*]

Sen. Al-Rawi: AG, I had a question on subclause (3).

Sen. Ramlogan SC: Yeah. Let us just make the insertion for Sen. Prescott. So it will be:

"Where the accused" or his legal representative…

Sen. Prescott SC: Or you may say where service has been effected, as in section 14(3).

Sen. Ramlogan SC: "Doh make ting too complicated and give meh so much trouble here now, nah." [*Laughter*]

"Where the accused"—or his legal representative—"has been served…"

Sen. Prescott SC: Thank you.

Sen. Al-Rawi: You see, AG, I was raising Sen. Prescott's submission in light of subclause (4) of the same section. Subclauses (3) and (4): I had a question on (3) and I wondered about the amendment that we just proposed to subclause (1) in light of (4). If I deal with (3) first:

> "The Magistrate shall, without delay, cause a copy of any reply…under subsection (1) to be served on the prosecutor."

I find that a very onerous responsibility for an already scarce resource. It envisages an operationality similar to the Industrial Court where the Industrial Court serves you with documents which are filed at the Industrial Court, for instance, witness statements, et cetera. So I wondered about capacity in subclause (3) and I wondered why not allow for the rules to have the parties serve each other as the CPR does, for instance.

Sen. Ramlogan SC: I raised that and it was felt that because the liberty of the subject is in jeopardy and you do have disputes arising between attorneys and all of that, that the court should be the one to deal with this matter because the reins are in the hands of magistrate—

Sen. Al-Rawi: That is a sensible observation, I accept that one.

Sen. Ramlogan SC: Yeah.

Sen. Al-Rawi: May I then look at subclause (4) in light of Sen. Prescott's observation on (1):

> "Notwithstanding subsection (3) where the accused person is legally represented, his legal representative shall, without delay, serve a copy of any reply filed under subsection (1) on the prosecutor."

Could we not deal with the capacity of accused versus representation in subclause (4) as opposed to (1) or are we comfortable with it there?

Sen. Ramlogan SC: Nah, we good with it in (1) there. "Allyuh doh make thing too difficult", you know, that is a simple query.

Sen. Prescott SC: Only one final enquiry, please.

Sen. Ramlogan SC: Sure.

Sen. Prescott SC: Thank you very much. Well, have you been thinking about the accused person being granted an opportunity at this stage to challenge the admissibility of any of the witness statements or documentary evidence provided by the prosecutor?

Sen. Ramlogan SC: Not at this stage.

Sen. Prescott SC: Why is that?

Sen. Ramlogan SC: Because he will have his chance at the trial. The idea here really is it is an administrative paper committal process, but one would no doubt bear in mind that the judicial officer, seeing that it is going to be a magistrate, that they will be able to red-flag in their mind anything that is relevant and they do have the opportunity to speak to the prosecution and say, "Well, look, you do realize X, Y, Z is the case?" And I think that is also where the plea bargaining may come in very useful in the event that they give an indication as well to either side. But, at this stage, as you would appreciate, technical arguments on admissibility can run into a lot of adjudication issues there.

Sen. Prescott SC: Pardon me? Actually, I was more thinking of a filing, something similar to what happens in the civil court, that you file a notice of evidential objective which comes to the attention of the presiding officer later on.

Sen. Ramlogan SC: I think that is something—the Chief Justice and the rules committee will look at that and criminal rules are being made to accommodate this, and it is something we looked at.

Sen. Prescott SC: I hope that materializes.

Sen. Ramlogan SC: Yes, most certainly, Senator. Thank you very much. Yes, Chair, put it quick before he makes a next point. [*Laughter*]

Mr. Chairman: The question is that clause 15 be amended as follows:

Where the accused or his legal representative has been served in accordance with section 14(3) he may in reply, within such period as may be specified by the Magistrate, file—

Question put and agreed to.

Clause 15, as amended, ordered to stand part of the Bill.

Clause 16.

Question proposed: That clause 16 stand part of the Bill.

Sen. Al-Rawi: I wonder if the Attorney General would consider the recommendation that we have made that we ought not to leave too quickly behind the equivalent of section 23 of the 2011 which is the section which had specified what a prima facie case is, the standard of proof required in this.

Sen. Ramlogan SC: Yeah, I remember that point being made. We looked at it and we felt that this formulation is one that, as a matter of policy, we wanted to go with. Six of one, half a dozen of the other, but when we look at the other jurisdictions, the test is along the same lines really.

Sen. Al-Rawi: Could you assist me perhaps you have this and I have not seen it yet.

Sen. Ramlogan SC: Sure.

Sen. Al-Rawi: In Antigua where this law comes from, has there been any difficulty with the standard of proof? Because albeit that this is to arrange papers for another place, still the preliminary enquiry is ultimately, in its essence, a filtration process to make sure that cases which do not pass muster do not get to—

Sen. Ramlogan SC: Yeah.

Sen. Al-Rawi: Otherwise, everybody would just go for an indictment and be met with serious allegations against them, well, you are on a charge for robbery or this or that. There may be no filtration. So the rationale for the standard of proof was really to allow for that filtration, and in particular, to occupy the mind of the magistrate, as you put it in the example earlier, with respect to evidence which may be suspect from the prosecution's end.

Is it that Antigua has had no experience or—I do not know. Has there been any experience in Antigua which suggests that the standard of proof was problematic in their jurisprudence? One of the reasons in moving from the St. Lucian model to the Antigua model is, as advocated, that it has been tested. I am not sure about the standard of proof as a filtration point.

Sen. Ramlogan SC: Yeah. But what I can say is that I know that Miss Seetahal had in fact spoken to the relevant persons in Antigua on this matter and her advice was that it had not proven to be problematic, and that this was the formulation that she had advised we adopt. I saw the wisdom in it, I agreed with it. I do not think it makes any difference to say prima facie as opposed to sufficient evidence. I think it is a filter and really it would be difficult to see where one would have a prima facie case with insufficient evidence or vice versa.

Sen. Al-Rawi: So we could leave it to the judicial mind to settle what the standard may be.

Sen. Ramlogan SC: I think so and if the hon. Chief Justice and the rules committee feel that there is any need for reinforcement, I suppose we can treat with it at the rules stage.

Sen. Al-Rawi: Okay. Thank you.

Question put and agreed to.

Clause 16 ordered to stand part of the Bill.

Clause 17.

Question proposed: That clause 17 stand part of the Bill.

Sen. Prescott SC: Chairman, through you, Attorney General, in relation to what we had asked about there being oral evidence, how do you see clause 17 operationally?

Sen. Ramlogan SC: Well, I think that is where you—

Sen. Prescott SC: Because if you are now required to attend or may be required to attend and make oral submissions.

Sen. Ramlogan SC: I think now, if you notice here, that is where the opportunity is given and they might be able to make a submission on any particular red points, if I may use that, you know. Anything that they see as being a low-hanging fruit, they can harvest at that stage in defence of their client. I think that is the time at which they can do so.

Sen. Vieira: Yeah, because I found the wording curious, "show cause", but I thought to myself, is this the accused's opportunity to make a no-case submission?

Sen. Ramlogan SC: Yeah.

Sen. Vieira: And then there was, I do not know if this is still the law but there was an Indictable Offences (Preliminary Enquiry) (Amdt.) Act in 1990, where the accused could be called upon to give evidence on oath. I do not know, does that dovetail with this at all anywhere?

Sen. Ramlogan SC: I think this is really by way of submission so evidence does not arise. All right?

Sen. Vieira: Yes. It might be lost though, the wording "show cause" as opposed to opportunity to make your no-case submission.

Sen. Ramlogan SC: Yeah, I hear you. I mean, the wording was deliberate though, because it really is directed to the order of committal really, but, you know, I hear you. Yes, Chair.

Question put and agreed to.

Clause 17 ordered to stand part of the Bill.

Clause 18 ordered to stand part of the Bill.

Clause 19.

Question proposed: That clause 19 stand part of the Bill.

Sen. Ramlogan SC: An amendment was circulated, please, Sir. Clause 19 to be amended as circulated:

A. In subsection (4) insert after the word "truth", the words "and the consequences of not speaking the truth".

B. Insert after subsection (8) the following:

"(9) For the purposes of subsections (5), (6) and (7), the person who -

(a) records and reads the statement aloud to the person who cannot read or write under subsections (5) or (6) respectively; or

(b) records, reads and translates the statement to the person who requires an interpreter under subsection (7),

shall sign a declaration that the person under subsections (5), (6), or (7) understood what was written, confirmed that it was true, and that the statement reflected what he would have said orally.".

3.15 p.m.

Sen. Drayton: With respect to clause 19(3) and (4), where a statement is made by a person under 18 years of age it shall be "recorded in the presence of an adult of his choice". I am just wondering whether this is open to a problem since the adult chosen may not be a suitable person.

Sen. Ramlogan SC: A parent or guardian.

Sen. Drayton: That person could have had a previous conviction and, therefore, may not be a witness to the truth. Or he or she may have some hold over the child. So I am just wondering that, perhaps, inserting the word "appropriate"—in the presence of an appropriate adult, or such.

Sen. Ramlogan SC: The problem there Senator is this, once you introduce the word "appropriate" it then injuncts the State to have a role in the independent selection and choice of the prospective witness to the prosecution who happens to be a child. Once you do that it undermines the voluntary nature of the evidence that emanates from the child and it could be challenged by the defence. You really must leave it open to the witness, the prospective witness to select someone. Anytime the State gets involved in that—so the police officer determines Mr. X is an appropriate person and the child selects someone different—you are going to have serious problems there. The admissibility of the evidence, they may change their opinion. By the time the trial arises they would say I did not select that person, the police say come with your father, but I told them I do not live with my father, I live with my mother. Then the mother comes too court and says: "well yuh know he never pay no maintenance and he never see de child but now he want tuh come and play father", et cetera.

Sen. Vieira: Actually, AG I agree, I actually like this section because when you have read the original section, what it said was the statement of the accused made under this section shall be received in evidence upon its mere production without further proof by the court before which he is brought. So then that opens the door for all kinds of challenges. This narrows it down and saves time ultimately.

Sen. Drayton: So, it does not matter who that person is?

Sen. Ramlogan SC: Well unfortunately we have to err on the side of caution with this one, or else it will undermine the admissibility of the evidence or the weight, the probative value of it, if it is admitted, based on the fact that the State selected the independent verifier, as it were.

Sen. Al-Rawi: Yeah, and any statement by a child still has to be assessed ultimately.

Sen. Ramlogan SC: Must.

Sen. Al-Rawi: So we ought not to fetter.

Sen. Drayton: So if it has to be assessed then the child would have some sort of protection in that sense.

Sen. Al-Rawi: May I also remind that we have the Children Act which has the creature of the child advocate on the concept it is married into the Legal Aid Act too as well. I think that it maybe that in the rules, that we would have some kind of marriage between the organs of State.

Sen. Ramlogan SC: Agreed.

Sen. Prescott SC: Mr. Chairman, would the Attorney General consider that clause 19(3) could be made subject to clause 19(2), or that clause 19(2), should apply to it? That is to say in particular, 19(2)(a) and (c)?

Sen. Ramlogan SC: Well, it is all part of 19 so it will apply anyway.

Sen. Prescott SC: No, 19(3) does not say specifically that you must satisfy the conditions in (2).

Sen. Ramlogan SC: No, but it is part of the same section. So it has to.

Sen. Prescott SC: I think you ought to be cautious about it and ask the question again.

Sen. Ramlogan SC: Does 19(3) mandate them to follow 19(2)? I think the answer is yes.

Sen. Prescott SC: Consider saying that it should apply. That is what I would like.

Sen. Al-Rawi: Is the answer yes because 19(2) speaks to all statements? I am just wondering if—

Sen. Ramlogan SC: I am advised by the Chief Parliamentary Counsel that is the way it has to be interpreted, Senator.

Sen. Al-Rawi: And that is because 19(3) says:

"Where a statement" and a statement is dealt with in 19(2), so it must fit the criterion of statement.

Sen. Ramlogan SC: That is correct, yes.

Question put and agreed to.

Clause 19, as amended, ordered to stand part of the Bill.

Clauses 20 and 21 ordered to stand part of the Bill.

Clause 22.

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

Sen. Al-Rawi: May I just ask the Attorney General, when making recommendations for the rules that accompany this, to consider the merit that exists in the 2011 legislation where the time frames for the production of documents are required. If that can be done in the rules, it will materially assist the position. Thank you.

Question put and agreed.

Clauses 22 and 23 ordered to stand part of the Bill.

Clause 24.

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

Sen. Al-Rawi: Is it necessary at all to include an expressed statement that clause 24 is subject to section 17? Section 17 is the one where we talk about the ability to give oral or written evidence before something is done.

Sen. Ramlogan SC: No, because it is already there as a section in the back. That is fine Chair.

Question put and agreed to.

Clauses 24 and 25 ordered to stand part of the Bill.

Clause 26.

Question proposed: That clause 26 stand part of the Bill.

Sen. Vieira: I have a little problem with clause 26 and it is this, I recognize that committal, preliminary enquiry, is not final proceedings, but time and again, you see what I consider vexatious proceedings. The magistrate has discharged, he says, I am not satisfied that there is a case to be made out, the DPP comes back again. I am wondering whether at some point there should be some kind of provision for declaration to be made that, you know, this is an abuse of process. Further proceedings, vexatious and oppressive.

Sen. Ramlogan SC: I raised that and in fact you do get it but you get it in judicial review proceedings. What you do is if they come back a third time, as the case may be, you go for judicial review and you get that declaration under the Judicial Review Act.

Sen. Vieira: And I am just thinking in terms of an expedited procedure. Not every criminal accused has access to the kind of lawyer that could go for a judicial review and a judicial review has time limits, eh. Within three months done expeditiously, having certain things. It is just that, you know, this happens so often that it is a problem.

Sen. Ramlogan SC: Well if you notice we took out certain powers that the DPP had in the previous law and it was designed to meet exactly that point. So having hived off that, I did not want for the incursion to be any greater and to rest on the ordinary principles of administrative law with the judicial review.

In my experience the judicial review for these matters, they deal with them fairly quickly because the liberty of the subject is involved and the Privy Council in that Seeromanie Naraynsingh judgment did in fact give clear direction and guidance as to how they should treat with those matters.

Sen. Vieira: Yeah, but you are a judicial review specialist, many are not.

Sen. Ramlogan SC: No, but the courts are up to speed on it now, man. I did enough for them to come up, "doh worry".

Sen. Vieira: You see how much evidence is dealt with at 26(5), and in that situation there was always the provision that, well here you reopened the case but in the old law it was fresh evidence. You could have a further enquiry.

Sen. Ramlogan SC: I am reluctant because I do not want to fetter the DPP's discretion and there is a constitutional issue that would be involved. He does have an absolute right to prefer an indictment as and when he sees fit in his sole judgment and discretion.

Now this section, subsection (5), deals with when additional evidence of a material nature comes to his attention. So that is, for example, let us use the famous Dr. Vijay Naraynsingh case. The magistrate commits and he says the evidence is tenuous but he feels is duty-bound to commit. But at the trial what happens, the man says the agreement, the conspiracy to murder, took place on the fifth floor of a building in Cipero Street in San Fernando and they then get a certificate from the Chief Fire Officer saying that building "de bun dong" 10 years before and nothing was ever constructed, so that they were mid-air on the fifth floor in a building that did not exist, conspiring. So in a case like that, obviously they will treat with it. But I would leave it to the exercise of judicial discretion. But I take your point.

Sen. Al-Rawi: I am concerned that it can be met by the rules. A lot of the observations that we made as the Opposition you put into good form in the context of the rules. I mean, if I look at the way the Civil Proceedings Rules have grown and have been interpreted, I think that there may be merit in working some of that out there.

Sen. Ramlogan SC: And it is easier to amend the rules than it is to update the Act.

Question put and agreed to.

Clauses 26 ordered to stand part of the Bill.

Clause 27.

Question proposed: That clause 27 stand part of the Bill.

Sen. Ramlogan SC: Mr. Chairman, I beg to move that clause 27 be amended as circulated.

In paragraph (e) delete the word "subjected" and insert the words "assessed as one subject".

Question put and agreed to.

Clause 27, as amended, ordered to stand part of the Bill.

Clause 28.

Question proposed: That clause 28 stand part of the Bill.

Sen. Prescott SC: May I ask as to clause 28, does the accused person have a right to appeal as well?

Sen. Ramlogan SC: Yeah, they do.

Sen. Prescott SC: It is not contemplated by 28.

Sen. Ramlogan SC: No, but the reason you put that there is because the State did not have a right of appeal and that is why you need to put it specifically for the State, but the accused always has a right of appeal.

Sen. Prescott SC: As of right?

Sen. Ramlogan SC: Yes.

Sen. Prescott SC: Thank you.

Sen. Al-Rawi: May I enquire in respect of subclause (5), which appears on page 18.

Sen. Ramlogan SC: Sure, yes, we are with you.

Sen. Al-Rawi: We had had in the 2011 law the prescription that the DPP could have his own discretion in section 6(2) of that law.

Sen. Ramlogan SC: Yes, and that is what I had adverted to.

Sen. Al-Rawi: Good, I just wanted to clarify that. That is it, right?

Sen. Ramlogan SC: That is taken off.

Sen. Al-Rawi: Okay, thank you.

Sen. Ramlogan SC: Fine.

Question put and agreed to.

Clauses 28 ordered to stand part of the Bill.

Clause 29.

Question proposed: That clause 29 stand part of the Bill.

Sen. Prescott SC: Just permit me a minor observation in clause 29(1), at the top of page 18, the word "defence" is used, maybe inadvertently in line three and it should be the accused.

Sen. Ramlogan SC: Clause 29(1) is on page 19.

Sen. Prescott SC: Clause 29(1) continues on page 18 at line 3 from the top. That is an inadvertent use of the word "defence" instead of the "accused"? The accused is used throughout.

Sen. Ramlogan SC: If he does not have a lawyer, you mean?

Sen. Prescott SC: No, if you look at—[*Interruption*]

Sen. Ramlogan SC: I understand the point. For consistency they have used the accused.

Sen. Prescott SC: The "accused" throughout.

Sen. Ramlogan SC: And now they used "defence".

Sen. Prescott SC: I thought it might be just a slip on somebody's part.

Sen. Ramlogan SC: I wonder if it is not that this is coming after the committal proceedings and, therefore, they envisaged that there would be a defence thereafter. You see? You see, he is now committed to stand trial and he stands—[*Interruption*]

Sen. Al-Rawi: He stands in defence.

Sen. Prescott SC: So you think that is what is meant by it?

Sen. Ramlogan SC: Yes, well for now, yes, I think so.

Sen. Vieira: He is now committed for trial.

Sen. Ramlogan SC: Correct.

Sen. Vieira: Not every accused is going to be—[*Interruption*]

Sen. Ramlogan SC: No, that is the point, yes. His status has changed.

Sen. Prescott SC: He has now become a defendant?

Sen. Ramlogan SC: He is now committed to stand trial and has the opportunity to defend himself.

Question put and agreed to.

Clause 29 ordered to stand part of the Bill.

3.30 p.m.

Clauses 30 and 31 ordered to stand part of the Bill.

Clause 32.

Question proposed: That clause 32 stand part of the Bill.

Sen. Prescott SC: Can I make an enquiry in clause 32, please? Clause 32 provides that the prosecutor has the opportunity of introducing new evidence, and the same does not appear to have been extended to the accused. Is that contained somewhere else?

Sen. Ramlogan SC: Yeah, I think it is, you know.

Sen. Prescott SC: Would you like to—

Sen. Ramlogan SC: I think it is. We will have to find it, because I know certainly when we were dealing with alibi, I had raised that matter. I had asked if, for example, a further witness to support your alibi defence emerged, comes forward, and they were not there at the committal. I remembered that the answer was, yes.

Sen. Prescott SC: So you think it is here?

Sen. Ramlogan SC: It is here. It is.

Sen. Prescott SC: Should we wait or just defer this?

Sen. Ramlogan SC: Well, no, we can approve it, but I will ask the CPC to look for it. I am pretty sure it is there.

Sen. Prescott SC: I want to see it, let us defer it.

Sen. Ramlogan SC: Yeah, that is fair enough.

Mr. Chairman: Is clause 32 deferred?

Sen. Al-Rawi: Yes, that is clause 32. I had the same observation when I was looking at it.

Assent indicated.

Clause 32 deferred.

Clause 33 ordered to stand part of the Bill.

Clause 34.

Question proposed: That clause 34 stand part of the Bill.

Sen. Al-Rawi: Just a question on this ominously numbered clause. [*Laughter*] If I may just ask the Attorney General his view on the statement by the accused at committal, where he is being informed that he is guilty or not, and he says, and he is committed—

Sen. Ramlogan SC: Can I just—one second.

Sen. Al-Rawi: Sure.

Sen. Ramlogan SC: I crave your indulgence. Sen. Prescott, if I could just take you back to 32. Now, 32 deals with fresh evidence and it really—the only reason you interpreted it as being a right to reopen at the instance of the prosecution is because it says "with notice to the court and the accused person".

Sen. Prescott SC: No.

Sen. Ramlogan SC: What else?

Sen. Prescott SC: There is another reason.

Sen. Ramlogan SC: Tell me why.

Sen. Prescott SC: It is in support of the offence.

Sen. Ramlogan SC: That is where, sorry?

Sen. Prescott SC: Line 3.

Sen. Ramlogan SC: Yes, I see it.

Sen. Prescott SC: It is evidence in support of the offence, not the defence.

Sen. Ramlogan SC: Because what I want—yes, I see, in support of the offence. Well, what immediately came to mind is that if we insert "in support of the offence or defence", something along those lines, and we were to say, "instead of the accused person and/or the prosecution", if we can mull on that, we could come back to it, and that might resolve it if it is not there.

Sen. Prescott SC: And if we deleted the words "in support of the offence?"

Sen. Ramlogan SC: Yes, that will suffice as well. But then you have to say—you then have to deal with—you will have to say "with notice to the court and the accused person or prosecutor".

Sen. Prescott SC: Look at it again and come up with something.

Sen. Ramlogan SC: Yeah. Well, I think that is a quick fix, if it is not there, but I have sent to check.

Sen. Prescott SC: You are checking also if it is somewhere else?

Sen. Ramlogan SC: I have asked the draftsman who is somewhere else to get with us. Sorry, yes, Sen. Al-Rawi?

Sen. Al-Rawi: I was just wondering whether clause 34 dealt with the right against self-incrimination.

Sen. Ramlogan SC: But that is dealt with in the Constitution.

Sen. Al-Rawi: Yeah, I know, and because of that, whether the section 13 in exception was required?

Sen. Ramlogan SC: "Nah." No, no.

Sen. Prescott SC: In support of, pardon me? Are you—

Sen. Ramlogan SC: I do not think he is. Are you finished?

Sen. Prescott SC: It might by way of extension, or extension or by support of what Sen. Al-Rawi is saying. Can we not find a medium for saying in 34, that arrangements can be made of the representation of the accused person if he does not already have one? He wishes to plead guilty and he may well be on sound ground, and he is not going to have that opportunity in 34 unless he has an attorney-at-law.

Sen. Ramlogan SC: "Who is represented by an attorney-at-law." No, well, I think the "who" is—I had asked that, and the thinking was that the "who is represented by an attorney-at-law", is to ensure that he has an attorney-at-law, because we all know that if you cannot afford one, legal aid will appoint one.

Sen. Prescott SC: Well, they may. But sorry, are you saying that a person who appears before the magistrate unrepresented will get representation?

Sen. Ramlogan SC: I am saying, yes. If they intend to plead guilty, the answer is, yes.

Sen. Prescott SC: And should clause 34 not say that some steps will be taken to allow him to do that?

Sen. Ramlogan SC: Well, it said that by implication, it says "who is represented by an attorney-at-law". It means, you know, the way I read it is that, you know, he cannot inform the magistrate—the guilty plea will not be accepted unless he is protected by legal representative.

Sen. Prescott SC: Okay. So, sorry. I did not like that he has to imply.

Sen. Ramlogan SC: I understand.

Sen. Prescott SC: I am saying, he has said to the magistrate, I want to plead guilty. The magistrate says to him, "pause, firstly, you must get an opportunity to be represented by an attorney; I can assist you with that"—and then whatever follows.

Sen. Ramlogan SC: The way I read it, the magistrate will not be able to accept the guilty plea, except that the man has had legal advice.

Sen. Prescott SC: And in practical terms, that may mean that the person goes unwittingly into custody, until his trial in the assizes. When, in fact, he really genuinely wants to do it, and is unaware that he may say, can I have representation, please?

Sen. Ramlogan SC: Can I, well—

Sen. Al-Rawi: Is that necessarily so, Senior? He—

Sen. Ramlogan SC: I do not think so, because what happens is this. The man indicated—even now, a man indicates he wants to plead guilty. Nine out of 10 times the magistrate will say, well, look, have you had legal advice and so on. Let us appoint an attorney for you—

Sen. Prescott SC: The court appoints?

Sen. Ramlogan SC: Yeah, yeah, yeah.

Sen. Prescott SC: That is what I am unaware of.

Sen. Ramlogan SC: Yeah, the court will appoint an attorney from the Bar, or they give you one from legal aid as the case may be, and they advise you, and that is how it operates.

Sen. Prescott SC: So we are saying it here, that the magistrate shall offer him the opportunity?

Sen. Ramlogan SC: No, no, no, because you see—look, can I give you a commitment to look at this when we are dealing with the rules, because I do not think it needs to be further stated here. It says: who is represented by an attorney-at-law. As to the procedure to be adopted to get to that destination, I think the procedure can do, one, we can look at it in the rules, because I would assume the Legal Aid Act would already kick in and, of course, the discretion of the magistrate and the practice that obtains really. Which, you know, my colleague—

Sen. Al-Rawi: Just to bring home the point perhaps a little further. The rules I think may be: I had asked the question earlier and you had said yes, in respect of bringing in the equivalent of section 11 of the 2011 law, which was the safeguards Act, the sufficiency hearing, where you are cautioned.

This clause 34 is a replica of section 28 of the 2011 Act. It is literally, word-for-word, the same. Once the rules make the provisions—Senior, I hope that this may assist, and I look forward to your view on that—once the rules make provision for how that incrimination is delivered. I think that we could probably get there. My only concern was from a constitutional perspective on the need for a section 13 exception against this in derogating the privilege of incrimination.

Sen. Ramlogan SC: I think we are all right with that. We did, in fact, canvass that point, and Miss Seetahal had advised we are okay on it. Other persons think that as well. I think we are okay with that. I feel comfortable with it, but thanks for raising it. Yes, Chair.

Question put and agreed to.

Clause 34 ordered to stand part of the Bill.

Clause 35 ordered to stand part of the Bill.

Clauses 36.

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

Sen. Prescott SC: Chairman, I am sure it has already been observed, but in 36(2), the use of the word "court"—

Sen. Ramlogan SC: Where is it?

Sen. Prescott SC: 36(2).

Sen. Ramlogan SC: I beg your pardon, yes.

Sen. Prescott SC: I am saying, I am sure it has been noted already, but the word "court" in the penultimate line of 36(2), might be incorrect.

Sen. Ramlogan SC: Might be incorrect?—"…and he will not depart the court without leave of the court."

Sen. Prescott SC: I suspect "country" might be the word required.

Sen. Ramlogan SC: Oh, I see—"that he will not depart the country without leave of the court".

Sen. Al-Rawi: I do not think so, you know. I think that "court" is required, because on an attendance on a summons or a warrant, if you leave the court itself, is where you run into breach of the summons. So I thought the court was actually the correct point, because leaving the precincts of the court without permission is in itself a failure to be discharged, or to have your matter adjourned properly. It comes about when you are trying to bring contempt proceedings in particular. The first route that you deal with in a contempt proceeding is the fact that you were in court. You are not permitted to leave the court, and, therefore, having left without getting the date, you are, therefore, in breach of the summons. That is the way I understood it.

Sen. Prescott SC: I am sorry. I was thinking more broadly. This is, someone who is on bail, and a condition for his recognizance is that he will appear in court subsequently. And I imagine that one will say it falls in naturally that he also is required not to leave the country.

Sen. Al-Rawi: Well, would that not be a condition of bail, Senior?

Sen. Prescott SC: And it goes on to say, it may well be—

Sen. Ramlogan SC: Sen. Prescott, this is, in fact, how it was in the existing law.

Sen. Prescott SC: And that is what it was meant to say?

Sen. Ramlogan SC: Yeah, that is what it was meant to say. I am so advised.

Sen. Prescott SC: That he would not exit the premises without leave of the court? And that he would accept service of any such indictment at some place to be named? But he is already there.

Sen. Ramlogan SC: That is how it has been since—

Sen. Prescott SC: Time immemorial. [*Laughter*] Let us look at it again. He is on bail—

Sen. Ramlogan SC: But I think the explanation given by Sen. Al-Rawi is why it is there also—

Sen. Al-Rawi: I have seen it in the summons also to attend commissions of enquiry, et cetera, Senior, I understood it for the purposes of proving that. I thought that the leaving the country bit was captured under section 61 of the Bail Act, and those provisions where you would be in breach of bail in any event, if you were to abscond without permission of the court to leave the country, because there are circumstances where you can be permitted to leave the country with the permission of the court. So I do not know putting it into this may cause a fetter to the conditions of bail under the Bail Act provision itself; that is the way I understand it.

Sen. Prescott SC: Chairman, in what circumstances would he be leaving/departing the court?

Sen. Al-Rawi: He may purposefully want to leave the court—

Sen. Prescott SC: The room?

Sen. Al-Rawi: Yeah, the court itself, so that he could say, well—I understand this clause, and the old law as well, and the section in the 2011 law which repeated this, to make it a condition positive on the accused, to make sure before he leaves the court, that he gets that permission to go. So that he cannot say, well, I just did not hear my name and I left and, therefore, my continuing presence by way of this existing summons is no longer required. Otherwise the court and the prosecution will be required to serve a fresh summons. I think it is to avoid the service of a fresh summons that it exists that way.

Sen. Prescott SC: It is beginning to make sense. Very well, I will pursue it.

Question put and agreed to.

Clause 36, ordered to stand part of the Bill.

Clauses 37 to 40 ordered to stand part of the Bill.

Sen. Ramlogan SC: Chair, I just want to enquire, are there any other queries on the others, because this is the rest of it. We can put the rest together. The rest is really how the existing law is.

Sen. Prescott SC: Well, I do want to—except with respect to 44, if you do not mind.

Sen. Ramlogan SC: 44, we can go to 44. Take it in bracket to 44, sure.

Sen. Prescott SC: I will defer to Sen. Al-Rawi first.

Sen. Al-Rawi: No, no, no I am actually at 44 and 45

Sen. Ramlogan SC: Put it till 43.

Clauses 41 to 43 ordered to stand part of the Bill.

Clause 44.

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

Sen. Al-Rawi: Mr. Chairman, if I may ask the hon. Attorney General to consider the limitation provided in 44(2). So 44(2) says:

> "Where a witness is not within Trinidad and Tobago and it is not reasonably practicable to secure his attendance at trial, the Court may direct that a special measure apply."

And then that special measure may include audiovisual live television link, et cetera. I thought that this was an excellent section to not limit the witness' absence from the jurisdiction, but in circumstances where the witness may be in witness protection within the jurisdiction, or in some other circumstance that the court considered it appropriate to use an alternate means to give evidence.

Sen. Ramlogan SC: Well, if they are within the jurisdiction—I think this was really geared to people who are not within the jurisdiction. If you are in a witness protection programme within the jurisdiction, there are other measures that can apply. For example, anonymous evidence, the one-way screen and so on, those are measures that will be treated with, but this really is to deal with people outside of the jurisdiction.

3.45 p.m.

Sen. Al-Rawi: I understood that. It is exactly—you hit the nail on the head. It is the anonymous witness evidence point. I was looking to the UK use of that and where they prescribed that use and in the US as well. They allow it within or without. I was just wondering whether I would be met with an objection if I tried to do an anonymous witness evidence provision that they would say, "Well look, the fact that you cannot prove that you are without the jurisdiction requires you to attend under these purposes." I wondered if, leaving it to some degree of judicial discretion as opposed to just excluding the circumstance to be only if you are out of the country, you would think of it.

Sen. Ramlogan SC: I am with you on it, but I think, on this particular issue let us confine it to those out of the jurisdiction, but on that issue is something that requires a little larger policy issue and discussion because there may be other permutations that we need to consider.

Sen. Al-Rawi: I would be grateful if you could consider it. It is something that the Opposition feels very strongly about it.

Sen. Ramlogan SC: If the victim is a child, for example, the trauma of confrontation in court for a particularly nervous and anxious victim, some of whom have particular anxiety disorder and so on, a lot of other things that we need to put into the pot, all right? And we are good to go.

Sen. Prescott SC: Chair, my question in relation to 44(2) has to do with the use of the term "other than direct oral evidence". It seems to me that the special measure is meant to capture somebody outside of the country who cannot attend and it says that we may take evidence other than direct oral evidence. Why are we saying "other than direct oral evidence"?

Sen. Ramlogan SC: I think what they really mean is that you are not in court and in the witness box and giving direct.

Sen. Prescott SC: So the emphasis is on "direct".

Sen. Ramlogan SC: "Yeah". I see what you are saying. It is a bit awkward and inelegant, but—

Sen. Prescott SC: Could it not be corrected? The special measure means audiovisual, which I understand. "Video recordings" I understand; "Or any other measure"—

Sen. Ramlogan SC: Other than direct oral evidence.

Sen. Prescott SC: Any other measure which does not require the person's presence, you mean?

Sen. Ramlogan SC: I think that is what it means, yes.

Sen. Prescott SC: Is there drafting language to say that?

Sen. Ramlogan SC: Well, we could put "whey yuh just say, but ah mean, is this sufficient?"

Sen. Prescott SC: Do not put what I just said, tell me what—there must be some drafting language that says it does not require his presence.

Sen. Ramlogan SC: You see (2) already presupposes that they are not in Trinidad and Tobago, so when you read (2) and (3) together, you understand what it means.

Sen. Prescott SC: So it may end at "video recording or any other measure that comes into being"?

Sen. Ramlogan SC: Well no, when you read it together, when you realize you are talking about a person who is not in Trinidad and Tobago, when you interpret "other than direct oral evidence", against that backdrop, it is clear it means that the person—it is evidence by any method that is not related to the person being physically present in court and giving the evidence because they are not in the country.

Sen. Al-Rawi: Can I ask a question? Sorry, Senior, if I could just throw in one thought. Under a mutual legal assistance, let us assume that we had a reciprocity arrangement with a court in a particular jurisdiction, would we not want to allow for direct oral evidence to be adduced under the supervision of a judge who may be assisting by way of cooperation?

Sen. Prescott SC: Electronically?

Sen. Al-Rawi: Yes, electronically in these circumstances.

Sen. Prescott SC: That would be direct?

Sen. Al-Rawi: And that would be direct evidence and that is within the powers of reciprocity as exists in our court system as it is. Would it help? And I do not know if you have a policy point that you can agree to on this or if you require consultation. If we were to delete the words "other than direct oral evidence", would it help us to allow for the development of some degree of jurisprudence by the Judiciary as may be supplemented by the rules to allow some system to develop there and, if I may just point out a minor point that subclause (3) is incorrectly numbered as subclause (2).

I was wondering if you are able at this point to consider, because I do not know if you need to consult otherwise on whether we can eliminate the prescription here that says you cannot give direct oral evidence because there may be circumstances where our courts may be satisfied under a reciprocity arrangement that you can give direct oral evidence.

Sen. Prescott SC: And, Chair, may I just add, if you were to delete those words "other than direct oral evidence"—

Sen. Ramlogan SC: It does not take away—it would not make a difference.

Sen. Prescott SC: Any other measures that may be available to the court.

Sen. Ramlogan SC: It would not make a difference. If we take it out, it does not—that is fine.

Sen. Prescott SC: It would be good if we take it out.

Sen. Ramlogan SC: I will go along with Sen. Roach on this one. We will take it out. This was his point, Sen. Prescott.

Sen. Prescott SC: I will go with Sen. Al-Rawi. Okay, I prefer Roach.

Mr. Chairman: What are you deleting?

Sen. Ramlogan SC: We are deleting "other than direct oral evidence".

Mr. Chairman: And inserting? You are leaving it like that? That is it.

Sen. Ramlogan SC: And you are renumbering (2), the second (2), as (3). You can clean that up; that is not an amendment.

Mr. Chairman: The question is that clause 44(3) be amended as follows:

> For the purposes of subsection (1), a special measure means any audiovisual live television link, video recording or any other measure that may be available to the court from time to time for the adducing of evidence.

And you delete the words "other than direct oral evidence".

Question put and agreed to.

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

Clause 45.

Question proposed: That clause 45 stand part of the Bill.

Sen. Vieira: AG, I had just a couple thoughts on it. Now, obviously, 45 is about the media not prejudicing the fairness of a trial and I want us to look at this because this is a very important thing.

Sen. Ramlogan SC: Very important, yes.

Sen. Vieira: I am wondering whether it goes far enough because really, what it says is that the press is allowed only to report on the basic formalities unless the court says I will remove the restrictions. Now my question is: who makes the application for the restrictions to be removed? I know that there used to be a practice that if the defendant made the application for it to be removed, it was granted as of course, but nowadays you are hearing the prosecution saying: we do not want adverse press reporting. That is one thought.

Sen. Ramlogan SC: It can be made at the instance of either party.

Sen. Vieira: I do not know if that leaps out at you there. And the second thing is: what happens if the media seems unaware of this section or recklessly goes ahead and reports, where are the enforcement provisions? I am just wondering.

Sen. Ramlogan SC: Well, they will be in contempt and that is how it is enforced. And I think that the media is very well aware because the gag orders have been issued quite frequently by the courts. We have the famous case *Ken Ali v The Mirror* that went all the way to the Privy Council fairly recently. So the media is well aware and the contempt procedure is what they use. I think it is at the instance of either party because, as you pointed out, the prosecution makes it now. We are fine with that but the media will be aware; by virtue of your having raised the point, they will be aware, Sir.

Sen. Drayton: I heard what Sen. Vieira said. Of course, by extension, it goes to heart of the possibilities of witness intimidation. So that I was wondering, although that clause is underscored by the phrase, "unless the court otherwise directs", is this really sufficient, since in every case an application would need to be made to the magistrate—[*Interruption*]

Sen. Ramlogan SC: Not in every case.

Sen. Drayton:—in the case of the witness not being published? But, would it not necessarily be an onerous task particularly on the police prosecutors who are likely to face opposition by defence lawyers?

Sen. Ramlogan SC: No, I will tell you what.

Sen. Drayton: Just a sort of consideration of that particular clause. And then I have a comment on 45(1)(c), but let us deal with that one.

Sen. Ramlogan SC: What is happening is, what really sells and the interest in the theatre and drama of the trial in the court is the evidence and the salacious nature of what the evidence reveals is what is reported. By removing that out of the equation, the incentive is really nil to report and you will confine them to reporting the name, address and occupation of the accused person and the witnesses, a concise statement of the charge and submissions on a point of law. That means that you have removed the lynchpin of what they are really after which is the evidence and that is where the adverse pre-trial publicity and the prejudice really occurs.

Now, bear in mind this is at the committal stage. At the trial, the media could report anything and everything and they will be there.

Sen. Vieira: But Sen. Drayton when she was talking, raised an important point. What this says there, the way this is worded, the media has a right to report on the name, address, occupation, not only of the accused, but any witnesses— [*Interruption*]

Sen. Ramlogan SC: Not a right. I see what you mean.

Sen. Vieira: Unless the—

Sen. Ramlogan SC: If you change "shall" to "may".

Sen. Vieira: Now, the point is this does not go far enough because there may be an occasion where the court says: you know what, we need to protect the identity of the witnesses. We need to restrict even this formality.

Sen. Ramlogan SC: But, unless the court directs otherwise, this will cover that.

Sen. Vieira: No. This says that you have the right to say these things.

Sen. Ramlogan SC: Unless the court directs otherwise, so that if the application is made, the court will direct: listen, I am not allowing you to publish the names of the witness in this case and that is it.

Sen. Drayton: But what you are saying there, there will be an onerous responsibility—

Sen. Ramlogan SC: Not really, you know. It is not that onerous. These things are relatively routine.

Sen. Drayton: They were not to publish that information. An application—

Sen. Ramlogan SC: An application will be made, but these things are fairly routine now. The prosecution or the defence, as Sen. Vieira said, they routinely make it and the magistrates are up to speed on this.

Sen. Drayton: Let me ask a question; just one other question. So, really, what is the purpose in revealing, okay, the name is one thing, but to go to the extent of publishing the address of a witness? What value is that?

Sen. Ramlogan SC: It really is an—sorry?

Sen. Al-Rawi: It is the right of knowing your accuser.

Sen. Ramlogan SC: It is reconciling the right to an open system of public justice with the need in modern times to protect the integrity of the trial and the witnesses and so on, but you have a right to know who are the witnesses against you and it is an open system of public justice. How would you feel if you were accused and your liberty is in jeopardy and you accuse the prosecution of hiding everything from you.

Sen. Drayton: Why should the public, everybody, know the address of the witness and the workplace of the witness. Would that not be intimidating to the witness? You also mentioned international best practice. I do not know that international best practice—

Sen. Vieira: One of the reasons why people do not come forward to give evidence is that they know that their names will be out there and their addresses.

Sen. Ramlogan SC: Can I say this? Remember in the Act we just passed for the jury, we had removed the addresses and so on. I had raised this point before. It was pointed out to me that this is what has always been with us. It is the existing law and it has not created any problems because the media does not generally report on the address and so on. But if you all feel that we can take it out, I am not going to stand and dig my heels in on it at all.

Sen. Vieira: Because the accused person will have that information. He will know who is going to be giving evidence against him. I do not see why the public needs to know the address and position of the accused person.

Sen. Ramlogan SC: Sorry, Mr. Macintyre, quite rightly, is telling me why we cannot interfere with it.

Sen. Drayton: Why?

Sen. Ramlogan SC: Because there is a constitutional right to freedom of the press and this is the law as it exists. If we tamper with it, it will have implications for that.

Sen. Vieira: The press's freedom is not being interfered with at all.

Sen. Ramlogan SC: Yes, you are.

Sen. Vieira: It still can report on the trial, but the question is a balancing of rights. If it is that one of the reasons why we have a crisis in our criminal justice system is because people are scared to come forward and testify because their private information is being put in the public domain, this is not the accused rights being abrogated.

Sen. Ramlogan SC: The crux of the abrogation is that they can report the name, address and occupation now, but if we accept the amendment, they will be restricted from reporting that and, therefore, we have interfered with the right of the freedom of the press. That is the argument. So that I am not here to say it is right or wrong, but I see merit in it and I do not want to make a change that could run us into problems. Also, the media is very hypersensitive and they are bound to say that we are here trying to restrict media freedom and so on and they will blame Sen. Drayton and I do not want to put her in that problem.

Sen. Prescott SC: Mr. Chairman, in that case, will the Attorney General consider, should the potential witness have a right to make an application at this stage to have his name, his address and occupation expunged?

4.00 p.m.

Sen. Ramlogan SC: Well, can we say—well, let us see.

Sen. Prescott SC: So unless the court directs otherwise on the application of a witness.

Sen. Ramlogan SC: We can say, "on the application of any"—

Sen. Prescott SC: Or "any of the above persons".

Sen. Ramlogan SC: "of any person".

Sen. Prescott SC: "of any accused person or witness". The one in (a). It is only the one in (a), really.

Sen. Ramlogan SC: "unless the court directs otherwise on an application"—

Sen. Vieira: "upon an application".

Sen. Ramlogan SC: Let us say, "upon an application by"—

Sen. Prescott SC: By the person named in (a), the person in (a). The accused or the witness.

Sen. Ramlogan SC: Can we leave that for the rules?

Sen. Vieira: Yeah, for application.

Sen. Ramlogan SC: Because there may be other people I could think of, Mr. Prescott, an interested party, you know.

Sen. Prescott SC: So "upon application"?

Sen. Ramlogan SC: Yeah. No. No. No. We will deal with that in the rules.

Sen. Vieira: And, conversely, the media might want to make an application knowing there is not a danger.

Sen. Ramlogan SC: Absolutely, that is exactly what I had in mind, and it could be the adoption home, you know, foster parents, a whole range of people.

Sen. Vieira: Upon application being made.

Sen. Ramlogan SC: Yeah, fair enough.

Sen. Drayton: Sorry. Clause 45(1)(c), which states that submission on a point of law can be published—now, where such issues are raised in argument at the committal proceedings, should these be published as any such arguments or submissions may rightly be put again during the course, you know, of the trial? Should they be published at that stage?

Sen. Al-Rawi: Where is the confidence?

Sen. Ramlogan SC: Well, the submission on a point of law, it will be ruled upon at the committal stage because you will be making submissions on a point of law, and it will be ruled upon at that stage. If it is ruled against you, you have a right of appeal.

Sen. Al-Rawi: And there is no confidence having made the submission.

Sen. Ramlogan SC: No. Exactly.

Sen. Al-Rawi: Yeah, it is done in public.

Sen. Ramlogan SC: So that is fine. Yes, Chair.

Question put and agreed to.

Clause 45 ordered to stand part of the Bill.

Clause 46.

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

Sen. Ramlogan SC: I think on the miscellaneous we just have one question from Sen. Al-Rawi, really.

Sen. Al-Rawi: Yes, Sir, thank you, hon. AG. No real questions other than in 46, we say that it shall "apply to the summary trial of certain indictable offences", and I wondered whether there was need for specificity as to that, and the second question is—

Sen. Ramlogan SC: I am advised that is the existing provision—

Sen. Al-Rawi: That is the existing provision?

Sen. Ramlogan SC: Yeah, it was never created in—

Sen. Al-Rawi: Okay, and then the second question is, is there anywhere contemplated in this law that somebody can elect to lift themselves out of the old procedure and adopt the new procedure?

Sen. Ramlogan SC: No.

Sen. Al-Rawi: So are you bound to go through the old procedure?

Sen. Ramlogan SC: Yeah, we have to save those and run with it, that was the advice.

Sen. Al-Rawi: Okay.

Question put and agreed to.

Clause 46 ordered to stand part of the Bill.

Clauses 47 to 50 ordered to stand part of the Bill.

Clause 32 reintroduced.

Sen. Prescott SC: You have actually thought about it?

Sen. Ramlogan SC: Yeah. Yeah. And I have come up with a formula, I want to just run it by you to make sure. It would appear that this is in fact the existing law, and there was in fact no corresponding allowance for the accused person. What I propose to do, however, is to change it, but I just want to flag one thing for your consideration: the reason it has been like this in the existing law is because you do not want to create a multiplicity of proceedings at the committal stage. You follow? The law has always been like this because it is not envisaged that the accused person will be able to revive and harass, as it would, or manipulate the proceedings by constant reopenings; that becomes abusive in its own right. So it has always been the law that section 32 is a stand-alone at the instance of the prosecution, and that if the defence gets fresh evidence, they adduce it at the trial and that is established, and my preference would be to leave it as it is.

Sen. Al-Rawi: I want to agree—

Sen. Prescott SC: Sorry, that does not seem to—

Sen. Al-Rawi: Sorry, Sen. Prescott, perhaps if you may hear, I tend to agree with the Attorney General's submission only insofar as the system has worked well and an accused at trial—if your point is that you may wish to adduce, you see, this is where an accused person has been committed for trial and it relates to reopened committal proceedings. If I could just understand better what your point is: is it that you are making sure that we preserve the right for the accused who wishes, under section 17, for instance, to have the magistrate discharge him? Is it that sort of scenario you have in mind?

Sen. Prescott SC: No, I am afraid not.

Sen. Ramlogan SC: As I understand it, what Sen. Prescott is saying, say, for example, you are running an alibi defence and you only have one witness who was, you know, is not as strong, but after the order of committal has been made against you, another witness comes forward and says, "Well, no, I was there, I saw him eating corn soup", and whatnot. I mean, when that happens, at that stage, you wish to reopen the committal to try and get the order of committal against you reversed without having to wait until the trial comes up to do that.

Sen. Prescott SC: No, no, they are slightly different because, I am saying, that person at that point should be able to seek—the accused person that is, should, rather than be committed, limited to his written evidence, be able to say to the judge, "I have fresh evidence", at the trial?

Sen. Ramlogan SC: No, and the answer is, that is protected, Senator.

Sen. Al-Rawi: That, I understand, is the existing law.

Sen. Prescott SC: Where is it?

Sen. Ramlogan SC: No. No. No.

Sen. Prescott SC: Where is it protected?

Sen. Al-Rawi: That is protected in the—

Sen. Ramlogan SC: The criminal procedure and so.

Sen. Al-Rawi:—in the criminal proceedings that occur at the assizes, as far as I understand it.

Sen. Ramlogan SC: That was my explanation as well.

Sen. Prescott SC: At the trial?

Sen. Ramlogan SC: Yes. Yes. Yes. Yes.

Sen. Al-Rawi: Yes, because an accused at trial always has the right to tell a judge, "This evidence has come to my attention, I want you to admit it for the following reasons", and then the judge exercises a discretion whether to include or exclude the evidence. So I understood, and perhaps Sen. Roach, who has done more criminal trials than I have, I, certainly, I think I have probably done one, could assist us on that end, but I understood that it exists as a right at the assizes level.

Sen. Roach: Yeah—[*Inaudible*]

Sen. Prescott SC: It is new to me, I did think that—

Mr. Chairman: Well, we always have to learn at some time, education is not how much you know, it is how much more you can learn.

Sen. Prescott SC: Chair, you are right, but the learning process tends to go slower for some persons.

Mr. Chairman: That is why I do not practice, you know, I am just breaking the model today. [*Laughter*]

Sen. Prescott SC: The learning process goes slower for some persons, and today I am pleading guilty. [*Laughter*]

Sen. Al-Rawi: [*Inaudible*] slow for me as well.

Sen. Prescott SC: I am pleading guilty today.

Mr. Chairman: I am learning. [*Laughter*]

Sen. Ramlogan SC: Sen. Prescott, just FYI, it is at 24(c) in the existing law, so you can check it out there in your own time, not now.

Sen. Prescott SC: 24(c)?

Sen. Ramlogan SC: Yeah. You see, I should not have told you that, you know.

Question put and agreed to.

Clause 32 ordered to stand part of the Bill.

Schedules 1 to 5 ordered to stand part of the Bill.

Question put and agreed to: That the Bill be reported to the Senate.

Senate resumed.

Bill reported, with amendment.

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

The Senate voted: Ayes 28

AYES

Singh, Hon. G.
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.
Moheni, Hon. E.
Maharaj, Hon. D.
Ahmed, Hon. R.
Ramnarine, Hon. K.
Scott, A.
Smith, K.
Al-Rawi, F.
Henry, Dr. L.
Baldeo-Chadeesingh, Mrs. D.
Singh, A.
Drayton, Mrs. H.
Balgobin, Dr. R.
Wheeler, Dr. V.
Prescott SC, E.
Mahabir, Dr. D.
Vieira, A.
Small, D.
Roach, H.R.I.
Cudjoe, Miss S.

Question agreed to.

Bill accordingly read the third time and passed.

SECURITIES (AMDT.) BILL, 2013
(House of Representatives Amendment)

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

Be it resolved that the House of Representatives amendment to the Securities (Amendment) Bill, 2013 listed at Appendix II be now considered.

Question proposed.

Question put and agreed to.

New Clause 62C.

House Amendment read as follows:

Insert after clause 62B the following new clause:

"New section 156B inserted

"62C. The Act is amended by inserting after section 156A the following new section:

"Jurisdiction and limitation

156B (1) Summary proceedings for an offence under this Act may, without prejudice to any jurisdiction exercisable apart from this subsection, be taken against an entity in any place at which it has a place of business, and against an individual in any place at which he is for the time being located.

(2) Notwithstanding anything in any other law to the contrary, any complaint relating to an offence under this Act which is triable by a Magistrate's Court in Trinidad and Tobago may be so tried if it is laid at any time within seven years after the commission of the offence or within eighteen months after the relevant date.

(3) In this section, the 'relevant date' means the date on which evidence sufficient in the opinion of the Commission to justify the institution of summary proceedings comes to its knowledge.

(4) For the purpose of subsection (3), a certificate as to the date on which evidence referred to in subsection (3) came to the knowledge of the Commission shall be conclusive evidence of that fact."

4.15 p.m.

Sen. Howai: Mr. Vice-President, I beg to move that the Senate agree with the House of Representatives in the said amendment to clause 62(c) of the Securities (Amdt.) Bill, 2013.

This Bill, which was considered by this honourable House, had been sent to a special select committee which considered all the amendments, and it was unanimously passed in this House about two weeks ago.

On putting the matter before the House and in the debate during the moving of the Motion in the House, it was discovered that, in fact, there was, perhaps, a lacuna, a little loophole in the Bill which, if you implemented the legislation in the way that it had been drafted, in fact, we could have the situation where after 12 months an action could become statute-barred.

Why that happened is that in streamlining the legislation, we had done a detailed analysis of the penalties and fines in the legislation, and what we did is that all of the offences had been made summary offences. One of the reasons why that was done was also to speed up the process by which matters could be brought before the courts and could be brought to a final determination.

One of the things, though, with that approach is that the Summary Courts Act, Chap. 4:20 reads as follows in subclause (2):

> "In every case where no time is specially limited for making a complaint for a summary offence in the Act relating to such offence, the complaint shall be made within"—and I just made a mistake, it is actually six months—"six months from the time the matter of the complaint arose, and not after."

What it meant is that if someone committed an offence and the matter was not brought to trial within six months, it would become statute-barred and, therefore, you would not be able to move forward with it.

The thing is that we picked up that amendment in the Insurance Bill, which has been under consideration for some time, and we had made an amendment which had actually suggested up to 10 years to allow for the prosecution of an offence. That is still subject to consideration by this House. When we considered the situation as it exists in the Financial Institutions Act, subsequently we realized that in the Financial Institutions Act, again, all the offences are made summary offences, but there is a three-year limitation. So what they did in that Act is they put three years and, therefore, you do not have this limited time of six months, as would have occurred if we did not make an amendment.

So in the debate in the House, it was agreed that we needed to lengthen that time and perhaps even three years—as indicated in the Financial Institutions Act—may be too short a period of time, and that, perhaps, in fact, we should lengthen that. The suggestion was that we should go to seven years. One of the reasons for that, of course, was also trying to find a balance between the fact that, yes you would need to prosecute those who are guilty, and if you actually committed an offence, we would like to have as long a period of time before the matter becomes statute-barred. Of course, if you are innocent and if there is an issue, it could be that, perhaps, this matter would be outstanding for quite a long period of time and things could be dredged up which could, perhaps, for as long a period as 10 years after that, one might need to take a look at and to try to find a balance.

In the debate in the House, it was eventually agreed that we should make the amendment, and the amendment should be for a period of seven years. Why we chose seven years is that when we looked at the length of time it takes to prosecute some of these matters, in the United States the average is about five years. Although we noted in the case of Raj Rajaratnam and the Galleon issue that, in fact, the first offence that they identified was actually in January 2003. The matter was not prosecuted until October 2009; so, in fact, there were like six years in that particular case. We thought that establishing a period like seven years would have created enough time for one to be able to prosecute something like that.

But there is a further, perhaps, addition to that clause where if, for example, the matter came up subsequently after the seven-year period—in other words, you did not discover it within the seven years and you discovered it afterwards—that you then have an 18-month period after that in order to prosecute the matter. So we added a little tail end to it, which gave us a further one and a half years after the discovery of the offence.

What we did is that, in the House, we thought that we needed to address this particular matter, Mr. Vice-President, and we made the amendment which we have made here. So what we have done is, in fact, also found a kind of medium between the Financial Institutions Act, which is three years—and which is a little bit short and, perhaps, we need to look at that at some later date—and the 10 years that is in the Insurance Bill. So it is somewhere in the middle there also, from the point of view of trying to find a reasonable period of time.

We should also note that in simple contracts there is a four-year limitation. For income tax there is a six-year limitation, so this kind of carries you a little bit beyond that, but it is a question of judgment as to where we think would be appropriate to land.

Mr. Vice-President, in the debate in the other place, it was agreed that we should establish seven years, with an extra rider of 18 months, as indicated in the subclause which we have here, which is subclause (2) of the change that we are making here, where we have seven years or within 18 months after the relevant date. We have defined "relevant date" in subclause (3), which clears up exactly how we would like to see it operate. That is the change; it is a simple change. It involves just one clause in the Bill and, apart from that, I think in the other place they were all satisfied with the legislation.

As a result, we ourselves on this side believe that this change certainly strengthens the legislation and puts us in the right place as far as the prosecution of these particular offences are concerned. We endorse that change for this House.

Mr. Vice-President, with those short words and that short explanation, I beg to move.

Question proposed.

Sen. Al-Rawi: Thank you, Mr. Vice-President. I rise to lend full and complete support to the proposed amendments, as greet us on this table, coming from the House of Representatives.

If I may at this point say that it is, perhaps, for this very reason, this very amendment, that it is a wonderful thing that we have a bicameral system, and that we have the benefit of two Chambers, one to check the other and to consider perspectives. It is, in fact, the very reason why the PNM usually insists upon the operation of a joint select committee which involves both Houses of Parliament, as opposed to special select committees which may involve one alone.

The amendment that is now proposed before us is one which, quite frankly, slipped through the cracks. The observation was made in committee stage, Sen. Dr. Henry and I both participating in that particular committee. There was a degree of confluence between the work that we have done in the insurance committee and that done in the securities committee. It is, in fact, true that in the insurance committee we have made the recommendation for these kinds of offences to survive for as long as the ability to prosecute—for as long as 10 years. That is in recognition of the complexity of white-collar crime, quite frankly, and of the need to secure evidence which can actually result in, not only a good prosecution, but a successful prosecution.

The FIA, as it currently stands, is perhaps one which is in need of amendment. The law as it currently exists prescribes only three years, and it is from that model that we borrowed the three-year formula in the law, as dealt with in the Senate two weeks ago.

I thank the Member for Diego Martin North/East in particular, if I may, for making the observation that we required a little bit of retooling and precision in making the prescription. Having prescribed the operationality of offences by way of the summary route, we run the risk, of course, of the six-month limitation period after three years operating to stymie any prosecution that the State may wish to bring, in advancing a claim of white-collar crime and, in particular, as it arose in respect of insider trading.

That being the case, I think we can find comfort that the prescriptive period is not only beyond the three-year existing period, but is one that is brought now to seven years, but that the cap is further extended, such that, a certification on the part of the commissioner as to the finding of material evidence as a marker at what we have described as the relevant date, allows for a further extension of time of 18 months, and that is something which is very welcome.

So it is not, for the listening public, that after the passage of seven years, that a prosecution of an offence for insider trading may just die. Far be it from the case, this amendment, in fact, proposes that there may be certification by the commissioner, which is deemed to be conclusive evidence, that as at a relevant date further information has happened, and that 18 months after that certification, that prosecution may be commenced.

This is a very welcomed improvement of the laws, I think, that we have considered as a Parliament as a whole, and I certainly thank the Members of the House of Representatives—in particular, the Member for Diego Martin North/East, Mr. Imbert, who has, in my estimation, some of the very sharpest eyes when it comes to legislative scrutiny and, indeed, something which is backed by years of experience in the public sector. I wish to express my public gratitude for him and to the hon. Minister for listening to the proposed amendments and in agreeing to the inclusions that we have before us today.

With that very short contribution, I wish to offer wholehearted support for this particular improvement to the law, and I thank you for the opportunity to contribute.

Sen. Prescott SC: Thank you, Mr. President. I too rise in support of the observation and the amendment. But I do want to communicate generally that one should not think that immediately after seven years have passed, there is only 18 months left and then you are free. It is not a get-out-of-jail card because what subsection (3) says is that the relevant date, the date from which we count the 18 months, will be the date after the commission has satisfied itself that it has sufficient evidence. It is not just a question of their becoming aware that something may have happened. The commission has to satisfy itself that it has sufficient evidence to institute proceedings.

I raise that point just to offer some clarity, in the event that there are people out there who are thinking that the sum total of the limitation is eight years and six months. Thank you very much.

Sen. Dr. Mahabir: Thank you very much, Mr. Vice-President. First, I think the Minister of Finance and the Economy has to be commended, not for bringing this amendment to the Senate, which was picked up in the Lower House, but I think for really bringing two important pieces of legislation and having them in joint select committee simultaneously—that is the Insurance Bill, which is to come, and this Securities (Amdt.) Bill.

When one is dealing with the financial sector and one makes a subdivision, one sees differences, but more important, one sees similarities. It certainly was for me a most pleasant experience to have been drafted in late into the insurance deliberations, where, in fact, this particular issue was picked up and then, of course, transferred to the securities industry.

4.30 p.m.

The fact is that we are in a pioneering stage of our development of the laws in these areas, and that slips such as these, I think, are going to be inevitable. One, of course, is awaiting the outcome of the SEC's investigations. One would have to see exactly how long now the SEC is going to take to complete its own report with the FCB matter that is currently under investigation.

We do know that PricewaterhouseCoopers has, in fact, concluded its own report, but that is not an agency aimed at prosecution. So, one is giving the SEC every opportunity, and one, of course, hopes that the release of the report will be timely, and that there will be no undue delay.

Be that as it may, I hold the view that the insurance legislation, and the securities legislation, which are being pioneered now and being passed in both Houses, are legislations which are alive because the industries themselves are changing at such a rapid rate, and that before long we may have to return to the House for some amendments, given industry changes. This, I think, is inevitable with respect to the kinds of laws we are passing.

When we do inevitably, Mr. Vice-President, I want it recorded that I hold the view that the white-collar crimes which are being perpetrated are crimes which are of a serious nature. When I look at other jurisdictions in my earlier contribution to this particular Securities Bill, sometime, I think, in January, I did mention Allen Stanford serving 110 years, and Madoff serving two life sentences

which amount to 150 years. If those crimes were committed in Trinidad and Tobago, both gentlemen would be, I think, open to a sentencing of only 10 years. I am of the view that the Magistrates' Courts are courts aimed at infractions which are of a less serious nature, and that the High Courts are courts of a higher nature. If one steals a fowl, one will have his trial tried in the Magistrates' Court. And if one steals a car, it would be at a higher court.

Similarly, if one steals $1,000 he may be tried in the Magistrates' Court, but if one engages in an act which defrauds the country of $20 billion or $21 billion, I would like to see, at some time, that there has to be some higher courts with higher sentences. That is for the future, but for now I want to commend the Minister for bringing this piece of legislation to us. I want to commend the MP for Diego Martin North/East for actually spotting it, so that we could actually pass legislation which is as watertight as possible. Thank you very much, Mr. Vice-President. [*Desk thumping*]

Sen. Small: Thank you very much, Mr. Vice-President. I want to join in recognizing the importance of the fact that we have a bicameral system, a bicameral Parliament, and that for all of those who probably were dancing a jig thinking that they were going to get away, this clause makes sure that there is opportune, enough time, for the relevant parties to conduct their investigations. And for those who are culpable in the various enquiries to understand that they are very much under the thumb of the law. So, I think this is a very important amendment. As a country, as we move forward and we recognize that for 18 years we have had an SEC, and up to now they have not had a single conviction for any offence [*Crosstalk*] something—not a single prosecution—I am corrected; I stand corrected. Something is fundamentally wrong with the process.

So this is an important amendment that allows the parties to not delay, inordinately, the investigations, and to, at least, make those who are culpable understand very clearly that there is enough time for the investigations to be successfully concluded, and for prosecutions to proceed. In the spirit in which we have just recently completed debate on the prisons Bill, and I think inside of the inspector of prisons Act those accused persons should have no fear. There are wonderful improvements to the prison system that will assist in their accommodations, rehabilitation facilities are there in place for them, so they should feel comfort. If they are guilty of these crimes, they will be properly taken care of inside the nation's penal institutions.

Mr. Vice-President, this is important for them to understand that we are not here to just try to pass legislation to lock people up. If you have done the crime, you will have to pay the time. And this is what this is about, and white-collar crime exists, it exists, but for some reason or reasons there is a wonderful cloak of secrecy about what is going on. And I, like my colleague, Senators, I await anxiously the report of the FCB

IPO by the SEC, in the same way in which the hon. Prime Minister of Trinidad and Tobago has laid the report of the HCU matter in the Parliament in the public record, I would like to see, at some point in time when the prosecutions are completed or before the prosecutions begin, that that information comes out in the public domain, so that people can understand the scale and the depth of the connivance and the malfeasance that has been going on in the system for sometime.

And it is time that some party or parties of substance, everyone—we have a particular view of crime in this country that crime only seems to be committed by a particular—there is a particular look to crime. But because—forgive me, Mr. Vice-President, I went to high school, so crime has several looks, and I think that this legislation makes it clear that the Government of the day has taken a stand, and the Parliament of the day has recognized that we make sure that things are in place that are robust, so that those who commit crimes understand that they will very likely face the full brunt of the law. Mr. Vice-President, I thank you. [*Desk thumping*]

The Minister of Finance and the Economy (Sen. The Hon. Larry Howai): [*Desk thumping*] Well, Mr. Vice-President, I think basically, you know, there is full endorsement from all the comments which were made, and for the changes that had been proposed. So, you know, there is not very much more for me to say at this time. But, I beg to move.

Mr. Vice-President: Hon. Senators, the question is that this Senate agree with the House in the amendment of clause 62(c) of the Securities (Amdt.) Bill, 2013.

Question put.

Hon. Senator: Division.

The Senate voted: Ayes 26

AYES

Singh, Hon. G.

Howai, Hon. L.

Griffith, Hon. G.

Hadeed, Hon. G.

George, Hon. E.

Karim, Hon. F.

Tewarie, Hon. Dr. B.

Bharath, Hon. V.

Moheni, Hon. E.

Maharaj, Hon. D.

Ahmed, Hon. R.

Ramnarine, Hon. K.

Scott, Miss A.

Smith, Miss K.

Al-Rawi, F.

Baldeo-Chadeesingh, Mrs. D.

Singh, A.

Drayton, Mrs. H.

Wheeler, Dr. V.

Prescott SC, E.

Mahabir, Dr. D.

Vieira, A.

Small, D.

Roach, H.R.I.

Henry, Dr. L.

Ramlogan SC, Hon. A.

Question agreed to.

Mr. Vice-President: Hon. Senators, the time now is 4.40 p.m. I propose to take the tea break now and return at 5.20 p.m. The Senate is now suspended until 5.20 p.m.

4.40 p.m.: *Sitting suspended*.

5.20 p.m.: *Sitting resumed*.

STANDING ORDERS COMMITTEE
(ADOPTION OF REPORT)

Sen. Helen Drayton: Thank you, Mr. Vice-President, I beg to move the following Motion standing on the Order Paper.

Be it resolved that the Senate adopt the Report of the Standing Orders Committee of the Senate, Fourth Session (2013/2014), Tenth Parliament.

I would be very brief in this presentation. In accordance with the provisions of Standing Order 64 at the sitting of the Senate held on September 23, 2014, the following persons were appointed to serve on the Senate Standing Orders Committee: Mr. Timothy Hamel-Smith, Chairman; Mr. Anand Ramlogan SC; Mr. Devant Maharaj, who was subsequently replaced by Mr. Ganga Singh on December 10, 2013; Mr. Terrence Deyalsingh, who was subsequently replaced by Mr. Faris Al-Rawi on May 20, 2013; and myself. We held three meetings between April 01 and June 10.

Regarding the process of our deliberations, the committee was fully aware that the House of Representatives had recently conducted a comprehensive review of its own Standing Orders, and had adopted the recommendations of its Standing Orders Committee to be put into effect from the Fifth Session of Parliament. And in the interest of maintaining the necessary similarity in the conduct of the business of the House, the committee used as its deliberation a working document patterned heavily on the Standing Orders agreed by the House of Representatives.

Now, throughout the process of our deliberations we encouraged Senators to submit any ideas, recommendations in writing, and the committee had received recommendations from a few Senators. With regard to the process thus far, the committee has completed the review of the working document, as far as the proposed Standing Order clause 43 of a total of 117 clauses. We have deferred for further discussion Standing Orders 31 which dealt with the Privileges Motion, and 32 Arrangement of Business in the Senate for further consideration.

Another critical area in the working document upon which further discussion is also required has to do with the allotment of speaking time. Now, given the imminent prorogation of the Fourth Session of the Tenth Parliament, and cognizant that the committee will not be able to complete its deliberations on the working document, the committee recommends for consideration and agreement by the Senate, that one, the Senate agree in principle that the joint standing

committees recommended for establishment in the Standing Orders of the House of Representatives, and agree to appoint the requisite number of Senators to serve on these committees in the Fifth Session of the Tenth Parliament, and two, that the general procedure for the operation of select committees as adopted by the House of Representatives also be adopted by the Senate.

Mr. Vice-President, I beg to move. [*Desk thumping*]

Question put and agreed to.

Report adopted. Question proposed.

5.25 p.m.

EID-UL-FITR GREETINGS

The Minister of the Environment and Water Resources (Sen. The Hon. Ganga Singh): Mr. Vice-President, there are two events taking place nationally within the coming days, and this is, presumably, our final sitting for this session. Whilst I say so, I anticipate if there is no requirement for us to sit as a result of amendments in the Lower House, this will be our last sitting, but there are two events taking place: the Eid-ul-Fitr celebrations and Emancipation Day celebrations. And to bring greetings to the national community on behalf of the Government is Sen. Raziah Ahmed on Eid-ul-Fitr celebrations and Sen. Embau Moheni on the Emancipation Day celebration on behalf of the Government. [*Desk thumping*]

Sen. Raziah Ahmed: Mr. Vice-President, I consider it an honour to bring greetings, on behalf of our Government, in this the holy month of Ramadan, and as we approach the celebration of Eid-ul-Fitr, by the grace of God.

God-fearing Muslims in Trinidad and Tobago join Muslims all over the world to honour our Lord and creator, who prescribed fasting as a rule of law. It is written in the Holy Qur'an that fasting is prescribed for you, as it was prescribed for those before you, so that you may obtain Taqwa—Taqwa, the Arabic word, meaning self-restraint.

Indeed self-restraint is not easily obtained, for it requires discipline in the face of temptation, and physical challenges to gain the pleasure of Allah. In fact, after a few days of abstinence from food from dawn to dusk, the body becomes familiar with physical discomfort, and food deprivation then can free the mind to

feel compassion, especially for those who have little food: the destitute and the poor, which then frees the psyche to experience, mindfulness; how possible it is to control one's passions, one's greed and one's need, which then elevates the heart to begin to examine hopefulness, the meaning of existence and the divine attributes of the creator.

In the great work of Imam Ghazzali, an ancient scholar, it is said that fasting is one quarter of the faith of the Muslim, and one half of the virtue of patience. Ramadan also commemorates the revelation of the holy Qur'an which is still in its original language and which is memorized from cover to cover by millions of Muslims all over the globe, and is therefore preserved in the mind of man in the great tradition of those who honour the holy prophet Muhammad (Sallallhu Alaihi Wasallam).

The holy Qur'an, the revealed book of the Muslims, is distinguished by its embracing reference to all the prophets, and is distinct in that it speaks of the revelation of the Torah and the Gospel, the books that came before. For it says, in Sura 3:

"Al-Lahu La Ilaha Illa Huwa Al-Hayyu Al-Quayyumu.

Nazzala Alayka Al-Kitaba Bil-Haqqi Musaddiqaan Lima Bayna Yadayhi Wa Anzala At-Tawraata Wa Al-Injil."

Which translates: There is no God, but he the living, the self-subsisting, eternal. It is he who sent down the book with truth, confirming what was before it; and he sent down the law of Moses, and the gospel of Jesus.

At this joyous time, we wish all citizens would ponder on the glories of creation, the principles of brotherhood, the virtues of patience and the struggles for peace all over the world. We share this time with our brothers and sisters in Islam, and in humanity, and we honour the ancestry of the prescription for fasting.

May the glory and blessings of Ramadan be retained in our hearts.

Eid Mubarak.

Sen. Faris Al-Rawi: Mr. Vice-President, I rise on what is potentially the last sitting of the Senate for this particular session as we march towards prorogation, at least for this term, on August 01, 2014 to join in bringing greetings on the occasion of Eid-ul-Fitr.

I saw Sen. Prescott a short while ago sitting rather quietly upstairs during the tea break and I said to him, "My learned Senior, it is unusual to see you this quiet, and he said, "You remember your days back at school when it was your last day of school, you were either exuberant at the imminence of the vacation before you, or somewhat saddened by the thought of not seeing your colleagues and friends for a while", and I noted the quiet demeanour that he adopted on that day.

Before we bring into full context Eid-ul-Fitr and the celebration that we wish to bring on behalf of us all to the national community, I have been reflecting upon the privilege being offered to me today to bring these greetings. And the privilege is born directly out of the fact that the holy month of Ramadan has happened whilst we have been in active sitting in the Senate.

And my learned colleague, Sen. Ahmed, who bears the name of the prophet in her title, Ahmed from Hamed, meaning to praise and the one who is praised, put it forward very beautifully, that fasting by way of human sufferance, suffering is a reflection upon your acknowledgement of the place that we as humans occupy in the divine architecture that exists around us.

And it was perhaps fitting, therefore, in my reflections that I did crystallize in my mind that this has been a particularly busy session, that we have as a Senate engaged in a lot of work, that we have engaged in a lot of sacrifice. Each and every one of us sitting here has definitely, I think, demonstrated on the Government Bench, on the Opposition Bench and on the Independent Bench, we have demonstrated our enjoyment of the sacrifice that we have willingly taken onto ourselves in trying to prosecute the best interests of the people whom we represent and the people whom we are pleased to love—all, because we are talking about it in a national context.

Mr. President, the month of Ramadan has come to Trinidad and Tobago, brought to our shores by our travelling forefathers, be they indentured labourers, be they people who came without shackles or invitation such as indentureship. It has spread from Medina to Trinidad. It has been brought through the ages in the hallmark of discipline.

The Qur'an, the holy and glorious book that it is, is referred to in Arabic as Al Kitar. Kitar means book, Al means "the", and when you put the definite article, al, before something it signifies the epitome or the prominence of the thing which you are describing, and it properly is the book. It was brought into existence, as religion teaches us, as a gift from the messenger of God to humanity so that we may have clarity as to what our purpose in life is. And Sen. Ahmed, quite properly, put before us some of the tenets which we all agree upon: that of charity, that of fasting, that of simple things such as being polite.

The concept that we are together in human experience, experiencing something more than self is something which echoes through Islam. Sen. Ahmed put it very beautifully when she quoted the prescriptions that the Qur'an offers in saying that there is parity in religions, because Islam is definite in its direction to all Muslims that you should not destroy the mosque as the church or synagogue, for there good worship is done. It is as a religion certainly something which prescribes tolerance and patience.

As this month of Ramadan has been a testing experience for those Muslims that have engaged in fasting or in reflection—because there are some people who may not have been able to keep their fast as they would have liked to—it is certainly also something which evokes into mind the sacrifice which we, as Senators, have experienced with privilege and pleasure. I wish to associate myself with the very warm and true reflections that Sen. Ahmed put before this Senate and, in particular, to offer to all Senators sitting here this afternoon, the warmest greeting for Eid-ul-Fitr. Eid in Arabic, of course, means an event of celebration. It is used in relation to your birthday, Eid ul Milard, the celebration of your birth. It is used in relation to Christmas, to any event, and this celebration of Eid-ul-Fitr which is coming towards us is one of the two very sacred celebration points for Muslims.

You, of course, have Eid-ul-Adha, which is in fact the larger of the two Eids. In Trinidad we tend to associate the larger celebration as at the end of Ramadan, but it is in fact the other Eid, which is the one that is more significant in terms of the dedication of sacrifice that was offered as it happened and gave birth to that Eid. But, I want to send a message, through you, Mr. Vice-President, on behalf of us all, to the people of this nation, good citizens that reside here, residents—the people that are proud to be associated with Trinidad and Tobago—that it has been a true experience of service and dedication for us all in this Senate to do work.

The month of Ramadan has been particularly interesting in this session in terms of the amount of work we have done as a Parliament together, and it has been a pleasure to pass good law, in sacrifice, together with our colleagues. And, Mr. Vice-President, if you permit me to reflect upon, a very, very simple sura which appears in the Qur'an. It is, of course, Al Fatr. Al Fatr is the first sura and it refers, as the name implies, Fatr is to open in Arabic, and Fatr means the opening sura. But it is universally acknowledged as the sura which encapsulates the Qur'an in its truest sense. It is only seven verses long and it is something, I think, which I wish to put on the record.

5.40 p.m.

I read interestingly enough from a text which I have cherished for many, many, years; one given to me by mother's father which was a gift by the ASJA society way back in the 1950s to him, and something which he encouraged in terms of understanding religious tolerance, he being a Hindu, the rest of my family being Christian, Presbyterians and my father being Muslim. We grew up in a tradition as all of Trinidad and Tobago has had, of religious tolerance, born about through understanding. But the description given in this particular text which is an explanation of some of the sura, I find quite interesting.

In reference to the Sura Al-Fatiha, of course the Arabic version reads as most would know, by starting with the incantation:

"Bismillah-hir-Rahman-ir-Rahim.

In the name of"—God, the—"Most Gracious"—the "Most Merciful.

Al-Hamdu lillahi Rabbil-Alamiin.

Praise be to"—God, the Master of the Worlds.

But this text provides it in an interesting way. The "Cherisher and Sustainer of the Worlds". And that verse itself where we say, "Al-Hamdu lillahi Rabbil Aalamiin". "Aalamiin" is the plural of the word "Alim". "Alim" means world and "Aalamiin" is the plural of world. And it is a reflection to us all that we should understand that we are not confined to one world or one existence, that there are certainly boundaries which we cannot see or appreciate. It says in continuing:

"Most Gracious"—and—"Most Merciful", of course.

"Ar-Rahmaannir-Rahim;

Maaliki Yawmid-Diin!

Master of the Day of Judgement."

A remembrance of the fact that we are all marching towards death and that we will certainly greet, whichever faith that we follow the "Master" who will consider our lives and the passage that we have taken upon the day of judgment.

"Thee do we Worship, And Thine aid we seek.

Iyyaka na'-budu wa iyyaaka nasta-iin.

Ihdinas-Siraatal-Musta-qiin-

Show us the straight way."

That straight path, the "Sirat", show us that straight path of light before us, Mr. Vice-President.

"The way of those on whom, Thou hast bestowed Thy Grace,

Those Whose (portion) Is not Wrath, And who go not astray.

Siraatal-laziina 'an-amta alay-him-

Gayril magduubi allay-him wa lad-dhaaalliin."

Words which in Arabic speak by far much more than they can in English, it being a slightly more superlative language than English lends itself to.

But these seven verses of the first sura, on a day like today when we reflect upon a day which is to come, which is the end of fasting, the end of the holy month of Ramadan, is certainly something which I think can be met with ready acceptance by all members of all faiths.

Trinidad and Tobago is a most beautiful country. It is a country that experiences and lives religious tolerance, that practises true brotherly and sisterly love towards each other, where Muslims, Hindus, Christians, Orisha, whatever faith we follow, walk hand in hand and serve side by side.

So on behalf of the PNM, to all Members present, to members of the Government, members of the national community listening through, Members of the Independent Bench, I wish you Eid-ul-Fitr and Mubarak Eid, an Eid which is filled with celebration, an Eid which is holy, and one where we will all particularly remember to practise that very special requirement of Islam, where we give alms to the poor in whatever fashion we may, if you are not Muslims, the privilege of Zakat, the privilege of making sure that we support those less fortunate than ourselves is something that I encourage all to reflect upon.

Mr. Vice-President, if this is indeed the last sitting of the Senate for this session, may I wish my colleagues all, a most welcome break. Sometimes our tempers may flare, sometimes it gets a little testy around. I hear the name "Saddam"—sometimes offered to me. I had to remind Sen. Hadeed that in Arabic "Saddam" means to oppose. So it is not such a bad name to have when you sit in the Opposition. But I think it is true when we say that we all contribute with equal purpose to finding a better place. And to my colleagues, I wish a restful break so that we can come back recharged and filled with life and with compassion to proceed as we have. Thank you, Mr. Vice-President. [*Desk thumping*]

Sen. Dr. Rolph Balgobin: Thank you, Mr. Vice-President. "Alhamdulillah, Alhamdulillah, Alhamdulillah". This means of course, thanks and praise to God. What a beautiful time this is and I am grateful for the opportunity to rise and to join with both Government and Opposition in wishing, in recognizing this time and wishing the Islamic community the best.

Ramadan, of course, is the ninth month of the Islamic year leading to Eid-ul-Fitr, one of the key days in the Islamic calendar. Islam as we know is the faith of the Muslims and to be a Muslim is to be a submitter to God; to align one's will to God's will is the work we must accomplish through daily struggles, and if we are successful, eventually, surrender. Every single thing on earth has been sent down in finite measures from the stores or the treasuries of the infinite, sent down as a loan rather than a gift, for nothing here below can last and everything must, in the end, revert to its supreme source.

Ramadan is a time of fasting and focus on that supreme source, the Almighty Allah. Fasting, of course, is one of the Five Pillars of Islam, along with Faith, Prayer, Charity and Pilgrimage. This is therefore a time of tremendous brotherhood, forgiveness, love and closeness to God, the actualization here on Earth of living the "Shahada", which says, "La ilaha illallah", which really means, "there is no God, but God".

The Independent Bench joins with the Muslim community in recognizing the efforts of the faithful in their fast during Ramadan and wishes them as well as the rest of Trinidad and Tobago the very best for Eid-ul-Fitr. Thank you. [*Desk thumping*]

Emancipation Day Greetings

The Minister of State in the Ministry of National Security (Sen. The Hon. Embau Moheni): Mr. Vice-President, it is a pleasure for me to extend Emancipation greetings on behalf of the Government Bench, and to extend those greetings and blessings to the entire Senate, as well as to the national community as we observe the 180th anniversary of Emancipation, the abolition of slavery.

Mr. Vice-President, Emancipation is an observance which has international significance. The Chief Servant, His Excellency Makandal Daaga, Caricom Cultural Ambassador led three initiatives in this regard. The first was the Emancipation campaign nationally here in Trinidad and Tobago in the 1970s, and during the first part of the 1980s, which led to Emancipation Day, August 01 being proclaimed a public holiday in Trinidad and Tobago in1984 and taking effect as of 1985.

The second was the launch in 1974, of the Caribbean fortnight observance, incorporating August 01, Emancipation Day, to the August 15 India independence, and which was observed in different parts of the region.

The third initiative is the continuing efforts at internationalizing Emancipation Day. I was part of the five-member team which began this campaign in 1996 when we went to Barbados and established the OCED, Organization for the Celebration of Emancipation Day. After leaving Barbados, the OCED continued the work and successfully lobbied the Barbadian Government to have Emancipation Day proclaimed as a public holiday by 1997. Jamaica and Guyana followed shortly after.

Then a delegation went to lobby the Caricom Heads of Government Conference in St Lucia in June 1998. This led to the declaration officially recognizing Emancipation Day throughout the Caricom region. Approaches were then made to the 53 member African Union and in 2006 the African Union, the AU proclaimed August 01 as Emancipation Day for the entire African Union.

On the initiative of the Chief Servant and the work of the National Joint Action Committee, NJAC, Washington DC also proclaimed August 01 as Emancipation Day. That proclamation is now housed at the Smithsonian Institution. Similar proclamations were also passed by the State of Massachusetts, New York, Boston, as well as Ottawa and Toronto in Canada. Such is the international appeal that the Indian Government has also pledged their support for this effort once it is taken to the United Nations. It is a continuing effort which when we started in 1996 Trinidad and Tobago was the only nation observing Emancipation as a public holiday.

In our commemoration of the Emancipation observance of 2014, let us reflect on the words of the Chief Servant when he told us, history has taught us that Emancipation is not distinctly national or racial. But it is a continuing process that involves all men and women of conscience. Let us today appeal to that human conscience in using the lessons of Emancipation to pursue and create human aspirations which can find fertile soil and which can grow and prosper in the hearts of the citizens of our beautiful Trinidad and Tobago. I thank you. [*Desk thumping*]

Sen. Shamfa Cudjoe: Thank you, Mr. Vice-President. On behalf of the Opposition Bench and my brothers and sisters of the People's National Movement, I wish to extend Emancipation greetings to all citizens of this great nation as we observe the 180th celebration of Emancipation Day, and as we consider what this great holiday means to us.

Sen. Moheni would have, in his contribution, taken us on a walk down memory lane as to the days when NJAC would have championed the cause of making this holiday, ensuring that this holiday is observed throughout the English-speaking Caribbean, and I commend NJAC for that. [*Desk thumping*] But I must say those were the days when NJAC was NJAC.

So, Mr. Vice-President, allow me to add a little tidbit to that history lesson though, because I would like to add that it was the former Prime Minister George Chambers, at that time, who would have declared that Christopher Columbus Discovery Day be replaced by a more significant holiday, the Emancipation Day, which commemorates the emancipation of enslaved Africans, and that was done by Legal Notice No. 147 of October 15, 1984.

Now in declaring Emancipation Day a public holiday, Trinidad and Tobago took the lead as trailblazers and we were followed by our neighbouring Caribbean brothers and sisters. Now, Mr. Vice-President, this day celebrates the legal abolition of slavery which I like to refer to as the most horrific experience in

history as it relates to human cruelty. We use this day of Emancipation Day throughout the entire region to commemorate our freedom from 500 years of invasion, oppression, violation and exploitation, and most of all today, we join our brothers and sisters in the Caribbean in celebrating our accomplishment as a people and our contribution to the development of the nation and the world by extension. Now we have come a long way since 1838, but we still have a mighty long way to go. So while we celebrate physical liberation we must admit that the battle for social acceptance and mental liberation is still in progress in many circles and in several corners.

Mr. Vice-President, this year's celebration of Emancipation Day is a good time, a good time for all of us as a people, as a nation, to do some serious introspection as to who we are and where we are going. Many have fought, many have struggled and sacrificed, many have bled and died for us to enjoy this freedom. My main question today is, what are we doing with this freedom? We have that freedom to think; that freedom to learn; that freedom to grow; that freedom to contribute to the development of our country; that freedom to live peacefully, to live equally and that freedom to unite. So I believe that we need to examine ourselves as a people and as a nation–what are we doing with that freedom?

And on that note, Mr. Vice-President, I think that it is our responsibility as leaders and elders in our society to educate ourselves on our history and to make a serious investment in our youth, because we must admit that there are some serious repercussions to slavery but we cannot cry that for the rest of our lives. We have to take measures and take steps and different strategies to cure these things and to control these things.

5.55 p.m.

On that note, Mr. Vice-President, I want to commend all the different organizations and institutions that are putting together, that are hosting lectures and other performances and activities to celebrate Emancipation, and to educate our people on our history. I would like to congratulate the Tobago House of Assembly and the people of Tobago for its celebration of the Heritage Festival that is taking place in Tobago, and I want to invite one and all to participate in the many activities.

This is the very first year we are going to be celebrating the Heritage Festival throughout the entire year, so in each month there are different activities to participate in, and to be a part of the history and to learn, first-hand, about African history and our struggle and sacrifice in slavery.

On that note, I want to join with the Government and the Independents in wishing everyone a happy and safe Emancipation Day, and I want to thank you, with those few words. [*Desk thumping*]

Mr. Vice-President: Sen. Roach. [*Desk thumping*]

Sen. H.R. Ian Roach: Thank you, Mr. Vice-President. On behalf of the Independent Bench I would simply like to sincerely extend warm greetings to all citizens of Trinidad and Tobago on this special occasion of Emancipation, another year of it. As Sen. Moheni said, it is 180 years of emancipation. It is a time for sober reflection as we remember our history and take pride in the significant contributions that the African community had made, and continue to make, in the development of our rich and fascinating country.

Perhaps the day will also come soon when we, as a people, who are all descendants of people from different continents to this land of beauty and abundant resources, will celebrate one national day that will give recognition to our common existence and allegiance to Trinidad and Tobago. We are a unique people, living side by side, not allowing the sometimes contentious and ugly politics to compromise the peaceful coexistence that is a hallmark of our people.

I am a Trinbagonian, first and foremost, and I love my country with the kaleidoscope of friendly, kind and talented people, be they Chinese, Indian, African, mix, white or Syrian/Lebanese. We are all here now by choice and it is our home.

So as we join with our African brothers and sisters to recognize this day of historical significance, let us also not lose sight that we are all one human race, one people sharing this beloved space called Trinidad and Tobago, and we owe it to our children to make it a place fit to be called heaven on earth.

I therefore wish the citizens of our country a happy Emancipation Day, a day that will be marked with events and celebrations that will serve to unite us as one, remembering that we are our brothers' and sisters' keeper.

And with that, Mr. Vice-President, I thank you. [*Desk thumping*]

Mr. Vice-President: I myself would be very brief, but I want to take the opportunity to join with all the others that preceded me and to really congratulate, and to really commend the Muslim community on the month of Ramadan that they have sacrificed by fasting, based on their spiritual belief. Therefore, I would want to wish them well. I know on the 29th will be the official day given by the Government for the celebration, and I want to wish the entire community a very happy celebration on the 29th of this month.

As it relates to Emancipation, all of us should be celebrating Emancipation Day on August 01 because this is the time when—slavery was abolished before but that is the time that we were given as a day of recognition for the sacrifices that have been made by our forefathers. I really want to personally congratulate the organizing committee that is led by the Chief Servant and, therefore I want to wish them, the organizing committee, and all those who would be participating in that celebration, including myself, that we should have a merry and celebratory day on August 01, 2014.

I thank you very much. [*Desk thumping*]

ADJOURNMENT

Sen. G. Singh: Thank you, Mr. Vice-President. Mr. Vice-President, as I rise to move the adjournment of the Senate to a date to be fixed, I want to take the opportunity to thank the Clerk of the Senate and her staff [*Desk thumping*] for their professionalism and dedication to duty throughout this session, and I want to thank the protective services throughout this period also. [*Desk thumping*]

I want to also take this opportunity to thank my colleagues and the Leader of the Opposition in the Senate, Sen. Camille Robinson-Regis, [*Desk thumping*] and the coordinator of the Independents for their cooperation, and all colleagues for the cooperation throughout this session as we maintained the decorum and dignity of this House, but we carried out the duty of making laws in the national interest.

Mr. Vice-President, with those few words, I beg to move that this Senate do now adjourn to a date to be fixed.

Mr. Vice-President: Hon. Senators, before I put the question, I also want to take the opportunity to thank all the Senators that are present, both Independents, Opposition and Government, as the acting President for that short period, the support [*Desk thumping*] that they have given to me.

I want to personally thank the Clerks of the Senate—the ladies there, and also the men, and all the attendants, for giving me the kind of support that was necessary, particularly when we go to committee stage. They guided and protected me and I am very grateful for what they have done.

I want to also thank the police, as you have rightly said, who have taken me up and down with the coat on me to ensure I did not run away from the Parliament. [*Laughter*] I want to thank them sincerely. And importantly, also, I

really want to sincerely thank those who fed us during the period, the late hours that they have stayed. [*Desk thumping*] Therefore, it is only befitting at this time, the shower of praise that has been bestowed on me at the end of the Fourth Session of the 10th Parliament, I want to thank everybody sincerely. [*Desk thumping*]

Question put and agreed to.

Senate adjourned accordingly.

Adjourned at 6.02 p.m.