

SENATE*Monday, May 25, 2015*

The Senate met at 1.30 p.m.

PRAYERS[MADAM PRESIDENT *in the Chair*]**LEAVE OF ABSENCE**

Madam President: Hon. Senators, I have granted leave of absence to Sen. James Lambert and Sen. Helen Drayton who are both out of the country.

SENATORS' APPOINTMENT

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

“THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

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

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

President.

TO: WAYNE DANIEL STURGE

WHEREAS Senator James Lambert, Vice President of the Senate, is incapable of performing his duties as a Senator by reason of his absence from Trinidad and Tobago:

NOW, THEREFORE, I, ANTHONY THOMAS AQUINAS CARMONA, President as aforesaid, in exercise of the power vested in me

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by section 44(1)(a) and section 44(4)(a) of the Constitution of the Republic of Trinidad and Tobago, do hereby appoint you, WAYNE DANIEL STURGE, to be temporarily a member of the Senate, with effect from 25th May, 2015 and continuing during the absence from Trinidad and Tobago of the said Senator James Lambert.

Given under my Hand and the Seal of the President of the Republic of Trinidad and Tobago at the Office of the President, St. Ann's, this 22nd day of May, 2015."

“THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

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

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

TO: MS. MELISSA VIKKI RAMKISSOON

WHEREAS Senator Helen Drayton is incapable of performing her duties as a Senator due to her absence out of the country.

NOW, THEREFORE, I, ANTHONY THOMAS AQUINAS CARMONA, President as aforesaid, in exercise of the power vested in me by section 44(1)(a) and section 44(4)(c) of the Constitution of the Republic of Trinidad and Tobago, do hereby appoint you, MELISSA VIKKI

RAMKISSOON, to be temporarily a member of the Senate, with effect from 25th May, 2015 and continuing during the absence from Trinidad and Tobago of the said Senator Helen Drayton.

Given under my Hand and the Seal of the
President of the Republic of Trinidad
and Tobago at the Office of the
President, St. Ann's, this 25th day of
May, 2015."

OATH OF ALLEGIANCE

Senators Wayne Daniel Sturge and Melissa Vikki Ramkissoon took and subscribed the Oath of Allegiance as required by law.

WASTE RECYCLING BILL, 2015

Bill to provide for the establishment of a Waste Recycling Management Authority and a Resource Recovery Fund to facilitate the efficient coordination of the implementation of a waste recycling system that would protect human health and the environment and matters related thereto; brought from the House of Representatives [*The Minister of the Environment and Water Resources*]; read the first time.

Motion made: That the next stage be taken at a sitting of the Senate to be held on Tuesday, June 02, 2015. [*Hon. G. Singh*]

Question put and agreed to.

PAPERS LAID

1. Annual Administrative Report of the Port of Spain Corporation for the fiscal year 2012 to 2013. [*The Minister of Local Government (Sen. The Hon. Marlene Coudray)*]

2. Annual Administrative Report of the Chaguanas Borough Corporation for the period 2011/2012. [*Sen. The Hon. M. Coudray*]
3. Annual Administrative Report of the Chaguanas Borough Corporation for the period 2012/2013. [*Sen. The Hon. M. Coudray*]
4. Annual Administrative Report of the Trinidad and Tobago Film Company Limited (TTFC) for the year 2010. [*The Minister of Trade, Industry, Investment and Communications (Sen. The Hon. Vasant Bharath)*]
5. Annual Administrative Report of the Trinidad and Tobago Film Company Limited (TTFC) for the year 2011. [*Sen. The Hon. V. Bharath*]
6. Annual Administrative Report of the Trinidad and Tobago Film Company Limited (TTFC) for the year 2012. [*Sen. The Hon. V. Bharath*]
7. Annual Administrative Report of the Trinidad and Tobago Film Company Limited (TTFC) for the year 2013 [*Sen. The Hon. V. Bharath*]
8. Annual Administrative Report of the Export-Import Bank of Trinidad and Tobago Limited (EXIMBANK) for the year 2013. [*Sen. The Hon. V. Bharath*]
9. Annual Administrative Report of the Evolving TecKnologies and Enterprise Development Company Limited for the fiscal year 2013. [*Sen. The Hon. V. Bharath*]
10. Annual Administrative Report of the Cocoa and Coffee Industry Board of Trinidad and Tobago (CCIB) for the period 2009 to 2010. [*The Minister of Food Production (Sen. The Hon. Devant Maharaj)*]
11. Annual Administrative Report of the National Agricultural Marketing and Development Corporation (NAMDEVCO) for the fiscal year 2009. [*Sen. The Hon. D. Maharaj*]

12. Annual Administrative Report of the National Agricultural Marketing and Development Corporation (NAMDEVCO) for the fiscal year 2013. [*Sen. The Hon. D. Maharaj*]
13. Annual Administrative Report of the Caroni (1975) Limited for the fiscal year 2008. [*Sen. The Hon. D. Maharaj*]
14. Annual Administrative Report of the Caroni (1975) Limited for the fiscal year 2009. [*Sen. The Hon. D. Maharaj*]
15. Annual Administrative Report of the Caroni (1975) Limited for the fiscal year 2010. [*Sen. The Hon. D. Maharaj*]
16. Annual Administrative Report of the Caroni (1975) Limited for the fiscal year 2011. [*Sen. The Hon. D. Maharaj*]
17. Annual Administrative Report of the Caroni (1975) Limited for the fiscal year 2012. [*Sen. The Hon. D. Maharaj*]
18. Annual Administrative Report of the Caroni (1975) Limited for the fiscal year 2013. [*Sen. The Hon. D. Maharaj*]
19. Annual Report of the First Citizens Bank Limited for the year 2014. [*The Minister of Finance and the Economy (Sen. The Hon. Larry Howai)*]
20. Annual Audited Financial Statements of the Government Human Resource Services Company Limited for the year ended September 30, 2014. [*Sen. The Hon. L. Howai*]
21. Annual Administrative Report of the Ministry of National Security for the year 2012. [*The Minister of National Security (Sen. The Hon. Brig. Carl Alfonso)*]
22. Annual Report of the Public Service Commission for the year 2013. [*The Minister of the Environment and Water Resources (Sen. The Hon. Ganga Singh)*]

23. Report of the National Institute of Higher Education, Research, Science and Technology (NIHERST) to the Parliament for the fiscal year 2013. [*Sen. The Hon. G. Singh*]
24. Ministerial Response to the Eleventh Report of the Joint Select Committee of Parliament appointed to enquire into and report on Government Ministries, Statutory Authorities and State Enterprises (Group 2) on the Administration of the Water Taxi Service. [*Sen. The Hon. G. Singh*]
25. International Child Abduction (Amendment) Order, 2015. [*Sen. The Hon. G. Singh*]
26. Annual Administrative Report of the Ministry of Justice for the fiscal year 2013. [*Sen. The Hon. G. Singh*]
27. Ministerial Response to the 5th Report of the Joint Select Committee appointed to enquire into and report on Ministries, Statutory Authorities and State Enterprises (Group I) on the Administration and Operations of the Ministry of Health with specific focus on Primary Health Care. [*Sen. The Hon. G. Singh*]
28. One Hundred and Fourth Report of the Salaries Review Commission of the Republic of Trinidad and Tobago on the Review of the salary and other conditions of service for the offices of Coroner and Coroner (appointed on Contract), Judiciary. [*Sen. The Hon. G. Singh*]

JOINT SELECT COMMITTEE REPORTS

(Presentations)

Election Campaign Financing

The Minister of the Environment and Water Resources (Sen. The Hon. Ganga Singh): Madam President, I have the honour to present the following report:

First Report of the Joint Select Committee appointed to propose a legislative framework to govern the financing of election campaigns.

INSURANCE BILL, 2015

The Minister of Finance and the Economy (Sen. The Hon. Larry Howai):

Madam President, I have the honour to present the following reports:

Interim Report of the Joint Select Committee on the Insurance Bill, 2015.

Report of the Joint Select Committee on the Insurance Bill, 2015

FAMILY AND CHILDREN DIVISION BILL, 2015

Bill to make jurisdiction for all family matters and children matters exercisable in a division of the High Court to be called the Family and Children Division and to make provision for matters connected therewith [*The Minister of Gender, Youth and Child Development*]; read the first time.

Motion made: That the next stage be taken at a sitting of the Senate to be held on Tuesday, June 02, 2015. [*Hon. G. Singh*]

Question put and agreed to.

MOTOR VEHICLES AND ROAD TRAFFIC BILL, 2014

[Fourth Day]

The committee of the whole Senate resumed its deliberations on the Bill.

[*Madam Chairman: Sen. Ahmed*]

1.45 p.m.

VISITORS

(Miss World Contestants)

Madam Chairman: Hon. Senators, let me take this opportunity to welcome you to Committee Stage and also this opportunity to recognize in our presence in the Public Gallery, the contestants for the Trinidad and Tobago leg of the Miss World Competition. [*Desk thumping*] And if the beautiful young ladies could rise so that

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we could see their beautiful faces. [*Desk thumping*] Thank you very much and may you have every success as you go forward.

MOTOR VEHICLES AND ROAD TRAFFIC BILL, 2014

[Fourth Day]

The committee of the whole Senate resumed its deliberations on the Bill.

[*Madam Chairman: Sen. Ahmed*]

Madam Chairman: Attorney General, could you please direct us as to whether the document that we have in front of us with the amendments, numbered pages 1 to 13, constitute your final list of amendments as of now? I have an amendment to clause 270(1)(b) on page 13. Maybe that is on your page 12.

Sen. Nicholas: I circulated something and it was brought back to me with a page missing.

Madam Chairman: Okay, could we just clarify the last one that you have on your document? It is clause 270?

Sen. Nicholas: Yes, Madam Chairman.

Madam Chairman: Okay, so we are all on the same page, which should now begin at clause 51.

Clause 51.

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

Madam Chairman: There is an amendment on page 7, Attorney General.

Sen. Nicholas: Madam Chairman, I beg to move that clause 51 be amended as circulated.

- A. In subclause (1), delete the words “Commander of the Trinidad and Tobago Defence Force” and substitute the words “Chief of Defence Staff”.
- B. Delete the words “not qualified from holding a” and substitute the

words “also the holder of a valid”.

Sen. Prescott SC: Chairman, pardon me. I want to raise an enquiry at clause 51(2) into whether the structure could not be different and instead read:

Subsection (1) applies only where the holder of the identification card is also the holder of a valid driver’s licence.

—as opposed to being placed in the negative language. Pardon me, I am seeing it already. Thank you.

Madam Chairman: Satisfied?

Sen. Prescott SC: Yes, indeed.

Sen. Al-Rawi: Thank you Madam Chair, and welcome back. We missed you. I am being so bold as to say that. We have not seen—we have just received with thanks, the Attorney General’s circulated amendments, which take into account some of the staccato that we are having this afternoon. May I ask the hon. Attorney General, with respect to clause 51(1), whether the term “military authority” is a defined term? I see it capitalized in both instances. I had the observation on CDS, versus Commander of Trinidad and Tobago Defence Force, so thank you. “Military Authority” is used twice in subclause (1). I wondered about that and I join in the commentary on subclause(2).

Sen. Nicholas: No, it is a typo.

Sen. Prescott SC: That term is not known to us. I do not think we should simply introduce it.

Sen. Al-Rawi: My point was that, not being a defined term I did not want to introduce it as something for someone to go and look for a definition. I looked at the Defence Act, I did not see it as well.

Sen. Nicholas: Okay, we can remove it.

Sen. Al-Rawi: But, hon. AG, I am not quite sure what you want to do.

Sen. Nicholas: I am being told it is in the existing legislation.

Sen. Al-Rawi: But as a term of art?

Sen. Nicholas: As a term of art.

Sen. Al-Rawi: Should it be common “m”, common “a”? It implies that it is a defined term? I catch what you are saying that it is verbatim from the existing Act.

Sen. Nicholas: It is existing but we will find out if it needs to go forward that way.

Sen. Al-Rawi: Thank you because the existing Act in its origin predated some of the other legislation, which has moved on from it. So the Ordinances that prevailed at the time may have given it descriptive intent.

Sen. Nicholas: We will remove it, so we can move on.

Sen. Al-Rawi: I do not propose that it be removed, hon. AG. I was wondering if you could assist us with—I can see that there is an intention to have some authority provided to the—*[Interruption]*

Sen. Nicholas: What is your suggestion?

Sen. Al-Rawi: I wondered whether it should simply be common “m”, common “a”, as opposed to the capitalized version.

Sen. Nicholas: Would that suffice, Sen. Prescott?

Sen. Prescott SC: Yes.

Sen. Nicholas: Then so be it.

Question again proposed: That clause 51 be amended as circulated and further amended to remove capital “M” and capital “A” from “military” in subclause (1) as well as further in that same sentence, to remove the capital “M” and the capital “A” and replace them with common “m” and common “a” in the last sentence of clause 51(1).

Question put and agreed to.

Sen. Dr. Mahabir: Madam Chairman, on clause 51(1), I do have a query and that is, while I do not have any issue at all with military personnel exempt from having a driver's licence, what I do have a concern with in the public interest is that while discharging its military duties, military vehicles may be driven into civilian territory. If a military vehicle was to injure a civilian, I see no provision here for any insurance protecting that civilian from any injury caused by a military vehicle.

Now, I do not know what existing law occurs, but really my concern is whenever a military vehicle is driven, for whatever purpose, into civilian areas, and it injures a civilian, as any other vehicle in Trinidad and Tobago, there should be some form of insurance coverage to protect the injured citizen from any untoward activity which may occur.

Sen. Nicholas: The fact that the officer would be a holder of a driver's licence, I think, covers that issue. It is not necessary that the holder or the officer has the driver's permit on his person, in the case of an emergency.

Sen. Dr. Mahabir: Hon. AG, the issue is not about the permit. I have no issue with the permit. My concern is with recompense compensation to an injured civilian who, due to the negligence of this particular driver in the military vehicle, has been injured, or has been maimed or killed. There is no provision here for compensation as if a regular citizen of Trinidad and Tobago were to cause injury. And my concern is there should be some provision, either in this law or somewhere else, so that the injured civilian is going to be protected. It is for this reason we have compulsory insurance in the rest of the population. I do not see why we do not have it here.

Sen. Nicholas: The liability is with the State in those circumstances.

Sen. Dr. Mahabir: Thank you very much, hon. Attorney General.

Sen. Al-Rawi: Hon. AG, for the record, is it—this is the way I understand it so

please permit me to ask you this for the benefit of the record—insofar as this Act binds the State and insofar as the Trinidad and Tobago Defence Force is part of the State, liability will then flow under the state liability proceedings legislation towards the State and negligence claims can be met that way. Is that the approach?

Sen. Nicholas: That is absolutely correct.

Sen. Al-Rawi: Thank you hon. AG.

Sen. Nicholas: With a lot more words.

Sen. Prescott SC: AG, could we just slowly return to that provision in this Bill, which deals with the binding nature of the act on the State, because we had used the State Liability and Proceedings Act at some point? What concerns me is now that I have heard the exploration into the State's liability—

Sen. Al-Rawi: It is 5.

Sen. Prescott SC: Is it 5?

Sen. Al-Rawi: Yes, 5, after the definitions.

Sen. Prescott SC: There is one that dealt with the State Liability and Proceedings Act that imposes liability on the State for the sureties of motor vehicle inspectors, is it?

Sen. Al-Rawi: Yes, there is that as well.

Sen. Prescott SC: The point I am going after is, as we have taken the time to identify which acts of which officers bind the State in that regard, or are covered by the State Liability and Proceedings Act, now that you have clarified that military personnel who drive might well invoke that Act, can we be sure by inserting provisions that speak specifically to such a person? I need to find the section if anybody could assist me.

What 28 says:

Notwithstanding the State Liability and Proceedings Act, the registrar and

any other Motor Vehicles Enforcement Officer in exercising his powers under this Act shall be deemed to be an agent of the State for the purposes of that Act.

So one would not wish it to be heard later on that the Parliament was very clear as to whose activity fell within the purview of the State Liability and Proceedings Act and it did not point to the military personnel driving. Would you want to consider either creating a whole new clause or incorporating in 28, the acts of the military personnel while driving?

Sen. Al-Rawi: I wish to associate myself with that submission.

Sen. Nicholas: Yes, but what would be your suggestion?

Sen. Al-Rawi: I think that because the construction would read that 28 was as narrow as it was—that is why I asked the question the way I did, so I understand the policy behind it—it may be that we need to broaden the language to clause 28 or, perhaps, factor compensation by the State.

Sen. Nicholas: Would you like to propose language for clause 28?

Sen. Al-Rawi: Perhaps, if we understood architecturally how you wanted to treat with it, the language could be fit in. So we have enforcement and administration under Part IV and we are dealing with registration issues here in this part. Is it that you wanted to deal with compensation architecturally as a separate issue, or under liability? Because I see that the enforcement and administration aspect is probably not the best place to put it. It may be that we are looking for liability of the State.

Sen. Nicholas: Okay, let me ask Sen. Prescott.

Sen. Prescott SC: May I make a recommendation? The very clause that we are dealing with, clause 51?

Senators: Yes.

Sen. Prescott SC: That we introduce a 51(3).

Sen. Nicholas: That will read?

Sen. Prescott SC: A military officer who drives a vehicle under the authority of the Commander shall be deemed to be an agent of the State to whom the State Liability and Proceedings Act shall apply.

Sen. Nicholas: Sure, absolutely.

Sen. Prescott SC: That could be 51(3) if you wish.

Sen. Nicholas: Thank you very much for that, Sen. Prescott.

Sen. Al-Rawi: May I ask a question? Insofar as 28 put that obligation in reverse, clause 28:

notwithstanding the State Liability and Proceedings Act, the registrar or any other motor vehicles enforce—

AG, if we may, what we are looking at is I am not sure whether there was a recent amendment to the State Liability and Proceedings Act. I know there were some but I cannot remember the full extent. So I was wondering whether firstly, there was a need to actually make the specific inclusion. If there is, I think it laudable and we should, but I am not sure what the current state of that amended law is. Perhaps, your team could assist us by looking at it to make sure that we are making an appropriate amendment. Because section 28 was put by way of an exception for clear circumstances where those persons did not fit within the definition of that legislation.

Sen. Nicholas: Okay, we will have a look at it and we will get back to it.

Sen. Prescott SC: Section 13 of the State Liability and Proceedings Act might have some bearing.

Sen. Nicholas: Section 13?

Sen. Prescott SC: Have a look at it. It speaks to provisions relating to the armed forces. I have not read it in detail. Section 13 of the State Liability and

Proceedings Act.

Sen. Nicholas: Let us return to it. Let us move on.

Question put and agreed to.

Clause 51 deferred.

Sen. Nicholas: We have to revisit clause 28.

Sen. Al-Rawi: Clause 28 or 51, depending upon what you have discovered, if I would suggest it that way.

Madam Chairman: So we are on clause 51 and we will revisit clause 51?

Sen. Nicholas: Yes, Ma'am.

Madam Chairman: Moving on.

Sen. Prescott SC: Madam Chair, far be it for me to suggest this, insofar as the AG is going to look at something, may I enquire whether it is convenient to look at clause 50, which is the last clause concluded on the last day and just to ask the AG if he could have a look at the inclusion of a police certificate of character as a requirement for a driver's licence?

I wondered whether that did not go a little too far. On the one hand I can see that it was required, but on the other hand whether it went too far, particularly insofar as people may, having served a sentence, et cetera, find themselves in trouble. The consequence is what next after the inclusion, because it did not go so far as to say what would happen upon the certificate of character coming back in the negative, because a police certificate of character shows convictions.

Sen. Nicholas: This category of vehicles is a specified category that deals with hired vehicles and, therefore, we are talking about persons who are transporting children, taxis, buses; that sort of thing. And, therefore, on a policy decision we have decided to go that way.

Sen. Al-Rawi: Thank you.

Sen. Nicholas: And it is also the existing law.

Madam Chairman: Are there any further concerns with clause 51?

Sen. Prescott SC: Save that we had agreed to defer for one particular purpose.

Clause 52.

Question proposed: That clause 52 stand part of the Bill.

Sen. Prescott SC: Madam Chairman, in respect of clause 52, may I invite your attention to the first line?

A person shall not learn to drive

There are those who might think that this places an obligation on the person. I would much prefer if you said:

shall not be taught or instructed to drive

Madam Chairman: Sen. Prescott SC, could you hold your thought for a minute and could I invite the AG to read his amendment to clause 52, please? There is a circulated amendment for clause 52(3).

Sen. Prescott SC: I am on clause 52(1), would you mind if we go?

Madam Chairman: I think the procedure is that once there is a circulated amendment, it is placed into the record and then we discuss further concerns.

Sen. Prescott SC: Thank you very much.

Sen. Nicholas: Madam Chair, I move that the amended clause 52 be adopted as circulated.

Clause 52(3) In paragraph (c), insert before the words “a knowledge test”, the word “take”.

Madam Chairman: Are there any queries/concerns with clause 52?

Sen. Prescott SC: Thank you very much, Chairman. Clause 52(1), I am recommending that instead of saying:

A person shall not learn to drive

We should say that he shall not be taught or instructed—the words are optional—to drive or operate a vehicle, so that the burden remains with the instructor.

Sen. Nicholas: I think from a policy decision we would like to maintain it in that way so that even though we know the cultural norm of teaching persons to drive without the necessary requirements, we would like to instil it in the law.

Sen. Prescott SC: Would it be a defence to have breached a 52 for the instructor to say that person is not learning at all?

Sen. Nicholas: Sorry?

Sen. Prescott SC: Would it be a defence for the driver to say that person is not learning anything at all.

Sen. Nicholas: I see your point.

Sen. Prescott SC: I am grateful. So would it not be really that what we want to do is to prevent people from being taught to drive by persons who are not themselves holders of a valid driver's licence?

Sen. Al-Rawi: Unless your obligation is to attract two different parties, the person who is being taught, as well as the person who is doing the teaching.

Sen. Prescott SC: That would be very oppressive, would it not?

Sen. Al-Rawi: Yes.

Sen. Nicholas: So, your amendment is to remove “learn” and insert “be taught”?

Sen. Prescott SC: Either “be taught” or “instructed”. I imagine “instructed” might be—

Sen. Al-Rawi: “Taught” would communicate a little better the idea of teaching.

Sen. Prescott SC: I do wish to add that I have done before, I cannot recall if it was taken up generally, that these offences are—do forgive me, I am pausing because I realize you were, should I go on?

Sen. Nicholas: Let me hear.

Sen. Prescott SC: Yes, I had in prior provisions, suggested that we should specify that we mean being taught to drive on a road and I do not recall that it was picked up. I am saying it should go in here, that we are talking about while being taught on a road or a public place. I think public place was eventually—

Sen. Nicholas: I remember—*[Interruption]*

Sen. Prescott SC: Yes, we did have this discussion. So would that be taken into account here, please?

Sen. Nicholas: We accept the proposed amendment by Sen. Prescott. So it should now read:

A person shall not be taught to drive or operate a vehicle on a road unless he is the holder of a valid learner's driver's licence for that class of vehicle.

Sen. Prescott SC: Thank you.

Sen. Al-Rawi: May I raise—

Madam Chairman: Could I just clarify that?

A person shall not be taught to drive or operate a vehicle on a road.

Sen. Al-Rawi: I was looking at subsection (3). Thank you for spotting the omission of the word “take”, which is in the circulated version of amendments, to be included just before the word “a”.

I was wondering whether we needed to say who would prescribe the knowledge test and rules of the road. So, a knowledge test of the rules of the road, road signals and road signs, is it as may be prescribed by the Authority? I have raised it only insofar as in other sections we have used the prescriptive attachment.

Sen. Nicholas: Those issues would be dealt with in regulations.

Sen. Al-Rawi: Precisely that. So I am giving you the opportunity to amend from time to time, because there is nowhere in here that speaks to—well perhaps there is. Perhaps I am mistaken. Is there a clawback in any other section that the

regulations shall include this sort of material? Because we have regulated—
[*Interruption*]

Sen. Nicholas: What is your concern, the regulations?

Sen. Al-Rawi: My concern is that we allow for going forward, the ability for the Authority to be the standard mark setter for rules including road tests, et cetera. So I was wondering whether you needed to include it as a speaking clause.

A knowledge test on the rules of the road, road signals and road signs as may be prescribed by the Authority.

I do not know whether it needs to go in.

The second concern that I had was in relation to subclause (5). In subclause (5) it reads:

An application under subsection (2) must be made on the prescribed form and accompanied by proof of identification such as a valid passport, national identification card and electronic birth certificate.

I was not very happy with the language used here.

Again, “proof of identification as may be prescribed from time to time” would certainly be a lot better because it would allow you to evolve as we move along. In any event, the use of the conjunctive “and” between national identification card and natural electronic birth certificate was unusual. This also does not, because of the ejusdem generis rule, factor the foreign applicants’ position. This clause as a whole also seems to ignore the position where one may be the holder of an international driver’s permit.

I accept that later in the Act, there is an international driver’s permit position which is of reciprocity by international convention for acknowledgement, but I wondered whether this had to be put in as an exception to this particular clause which deals with learner’s driver’s licences. We also had and I do not—

[*Interruption*]

Sen. Nicholas: Okay, let me deal with at least the first three. I am dealing with the last one first. If someone has a foreign driver's permit and we are dealing with the reciprocity issue, then there will be no need to go through the application for a learner's permit.

Sen. Al-Rawi: Until after the expiry of 90 days. So the law with respect to an international permit, as set out in this Bill, says after 90 days you have to then do the testing.

Sen. Nicholas: That is correct.

Sen. Al-Rawi: So it is the proof of identification factors that I am looking at there.

Sen. Nicholas: Proof of identification would be for a national acquiring a driver's permit.

Sen. Al-Rawi: So what about now the foreigner? That is my point. This Bill deals with national here but we allow—[*Interruption*]

Sen. Nicholas: A national identification card is not a Trinidad national identification card. It is a national identification card.

Sen. Al-Rawi: Okay. And its association by use of the word “and”, so a national identification card and a national electronic birth certificate.

Sen. Nicholas: And/or, as we well know.

2.15 p.m.

Sen. Al-Rawi: In some circumstances when you are dealing with offences, but when you are dealing with ejusdem generis it is not necessarily “or”. So I just thought the language was a little off, AG. I do think that you need to have—I would have been more comfortable and it is up to you in terms of your perspective. I would have been more comfortable with saying, “such proof of identification as may be prescribed”, because then that would allow you to give a list with free hand

to those who come up with the regulations, and who wish to amend from time to time. I did not know that we needed to necessarily tie in the examples of identification right here in the primary legislation.

Sen. Nicholas: I will let the Minister address that.

Mr. Cadiz: I think what we are looking at there is that a valid passport is a primary proof of identification, and that if you did a proof of identification and allowed it to be in the regulations, it might drift into other areas, as proof of identification, but something like a passport or national ID card would be two of the main pieces of identification that any person would have. I mean—

Sen. Al-Rawi: Forgive me, hon. Minister, I join you with your explanation of the example, but—

Sen. Nicholas: Can I just ask before you go on, Sen. Al-Rawi, let me just hear from Sen. Prescott. I see he—

Sen. Prescott SC: I am favouring using the words “as may be prescribed”.

Sen. Al-Rawi: What happens if we go biometric? Fifty years from now passports are now irrelevant, DNA testing on a pinprick is done or just on a fingerprint scanner. So, my thought in drafting legislation which will last us 100 years, is: should we not give those who have to operate the legislation, the degree of flexibility to come up with whatever is required from time to time? When I put technology static examples like this in primary legislation, I am asking for it to be amended at some point in the future. That is why I raised it.

Sen. Nicholas: I am not at all against what you are saying. I simply wanted to hear another viewpoint.

Sen. Al-Rawi: I appreciate it.

Sen. Nicholas: Not that I ruled out your—

Sen. Al-Rawi: No, no, understood, thank you for being cautious.

Sen. Prescott SC: Sorry, forgive me just appearing to gild the lily, but clause 270(1)(a) speaks to the Minister making regulation for anything which by this Act may or is to be prescribed, as though it is a requirement and it says “prescribed”, and that was my reason for supporting it. I think Sen. Al-Rawi, is usually on the right track on his own.

Sen. Nicholas: I know that your reasoning would always be supported, Sen. Prescott. [*Laughter*]

Sen. Prescott SC: I appreciate that, but Sen. Al-Rawi has made a good point.

Sen. Nicholas: Having heard both Sen. Al-Rawi and Sen. Prescott, we suggest the following amendment for clause 5(a):

Proof of identification such as a valid passport, national identification card and a national electronic birth certificate, or such other form of identification as may be prescribed.

Does that meet with your approval?

Sen. Prescott SC: Yes.

Sen. Al-Rawi: Yes, Sir.

Sen. Prescott SC: Do forgive me, I was a little too economical with my words. In relation to the learner driver also at 52(3), that requirement for the knowledge test on which Sen. Al-Rawi raised a question, I think that too might benefit from saying “as may be prescribed, knowledge test that may be prescribed”. So that is 52(3)(c).

Sen. Nicholas: Yes, “as may be prescribed”.

Sen. Prescott SC: Thank you very much.

Sen. Al-Rawi: May I raise another query?

Sen. Nicholas: You may.

Sen. Al-Rawi: Much obliged. I am looking at page 30, subclause (11):

“The Authority shall not issue a learner driver’s licence in respect of a vehicle in Class 1, 2, 3 or 4 unless the person –

- (a) is twenty-one years of age or over; and
- (b) already holds a driver’s licence in the above class for a minimum period of one year.”

I was concerned about the age limit of 21. And secondly, the fact that 11(b) does not have the tie-in of—sorry, I was saying that (b) does not have the tie-in with respect to the exceptions for international permits, because it speaks specifically. So where we come to international permits, there is no clawback. So it does not say “subject to clause X”. It prescribes only 21 and you must already hold a driver’s licence in this above class for a minimum period. Is it that holding a driver’s licence is to be read as holding a driver’s licence in Trinidad and Tobago? Or will it suffice that it is anywhere else, which would take care of the international situation?

Sen. Nicholas: It is not specific. So it could be interpreted as any driver’s licence. I will hear Sen. Prescott.

Sen. Prescott SC: This is a bit uncertain—would we prefer a foreigner, who claims to be authorized in whatever country to drive in Classes 1, 2, 3 and 4, not to subject himself to a test on our roads? They are a little different from some, both in Grenada and in London. It might be that he is such a person—I am not talking about Class 5, which is the ordinary—Class 1, 2, 3 and 4 are peculiar vehicles.

Sen. Nicholas: I think once they can show by the documentary evidence that they have, in fact, qualified—

Sen. Prescott SC: “Yuh would be happy with dat?”

Sen. Nicholas:—we should take it.

Sen. Al-Rawi: And we are bound by international treaty in certain situations to

accept it. As a matter of choice on the one hand, the question is if you procedurally want to exempt yourself out of that, but I do not know if that will also be treated with reciprocity.

Sen. Prescott SC: May I make another observation under clause 52 at (2)? This is really a question of style, but I am grappling firstly with when does a person attain the age 17 or over, it does not creep up on you? So I would suggest “where a person has obtained the age of 17 simpliciter”.

Sen. Nicholas: Agreed.

Sen. Prescott SC: Thank you.

Sen. Al-Rawi: I was wondering, AG, if you would not mind speaking to the rationale behind the 21 years of age?

Sen. Prescott SC: That is in the other one?

Sen. Al-Rawi: Yes, in clause 11.

Sen. Nicholas: The rationale is that not only does it pertain at the moment, but we believe that a certain amount of maturity is required when dealing with those levels of vehicles. That is the policy.

Sen. Al-Rawi: Thank you. May I also enquire? This is an architectural question which is relevant in subclause (16) here. We have adopted a mechanism of prescribing offences as we must for breaches or certain events, certain things which cause offences to be triggered. The budget every year makes adjustments in respect of offences almost on a continuous basis. I wondered whether it would not be more sensible to take all of the offences that we have identified in the legislation, schedule them out to a seventh schedule or whatever schedule may apply, and then say, “Shall commit an offence as set out in schedule 7”. It allows for ease of use on the one hand, and two, it allows the budget to track the changes and prescriptions for penalties on an annual basis. It is something which we used

in the securities and insurance formulae.

Sen. Nicholas: We prefer to leave it as is.

Sen. Prescott SC: Chairman, may I again? AG, please forgive me, for I appear to be jumping all over, but could we go back to clause 52(7)? I think it bears reading for me to make the point. Maybe in the way I read it, that alone may do. Clause 52(7)? [*Interruption*]—all sorts of things: Why is:

“Subject to such restrictions as may be imposed on a learner driver’s licence other than a learner driver’s licence for a motor cycle or motor driven cycle issued by the Authority, a person while having his learner driver’s licence in his possession, shall be entitled to drive a vehicle of a particular class to which the learner driver’s licence relates, on a road or highway when accompanied by a person, other than a driving instructor...”

Is it intended that there may be two other persons in the vehicle? Or did we mean to say, “when accompanied by one person only”, being the driving instructor? How many persons are permitted to be in the vehicle with a learner driver?

Sen. Nicholas: This actually takes into consideration the provision for a parent teaching a child.

Sen. Prescott SC: So there may be more than one other person in the vehicle?

Sen. Nicholas: No.

Sen. Prescott SC: This says—forgive me:

“...when accompanied by a person, other than a driving instructor, who—
(a) holds...”

So there is one person, there is a driving instructor, and one of them holds.

Sen. Nicholas: No, no, no, no, no, the person holds.

Sen. Dr. Mahabir: The person who is not a driving instructor.

Sen. Prescott SC: So perhaps—now that I am getting it, this relates to one other

person in the vehicle, it could be a parent? So it says:

“...when accompanied by a person, other than a driving instructor...”

May I suggest, “who holds a driver’s licence, who occupies a front seat position and who is not a driving instructor”. So that the confusion which I have experienced, is not replicated in years to come.

Sen. Nicholas: Let me just reread this:

“...on a road or highway when accompanied by a person, other than a driving instructor...”

Sen. Prescott SC: And I was suggesting that—

Sen. Nicholas: So we are dealing with someone else. One person who:

“(a) holds valid driver’s licence for at least five years in relation to that class of vehicle.

So that person; and

Occupies a front seating position, and there is no other person in the vehicle at the time.

So that it is speaks specifically to one person.

Sen. Prescott SC: I now know what it means. I did not prior to this. Therefore, I am saying in the event that there are others like me who may read it the same way, “accompanied by a person other than a driving instructor”. If I am in my car, I am accompanied by my wife, other than the other people in the back. Good.

Sen. Nicholas: Well, that is why it speaks—it goes on to say:

“...and there is no other person in the vehicle...”

Sen. Prescott SC: That is what lead to my confusion. May I suggest a format that may well remove a lot of words and make the same point? It says:

When accompanied—I am reading from that top line on page 50, when accompanied;

I am reading from that top line on page 50, “when accompanied”.

Sen. Nicholas: Yes.

Sen. Prescott SC: “...when accompanied by a person.

- (a) Who is not a driving instructor;
- (b) Holds a valid driver’s licence; et cetera
- (c) Occupies a front seat position.”

Sen. Nicholas: Sen. Prescott, I usually concur with your suggestions—

Sen. Prescott SC: But you are not about to?

Sen. Nicholas:—at this time, it can go—

2.30 p.m.

Sen. Prescott SC: Permit me one more effort at it.

Sen. Nicholas: Sure.

Sen. Prescott SC: The driver is accompanied by one person:

- (a) he is not a driving instructor;
- (b) he holds a driver’s licence; and
- (c) he occupies a front seat position.

There will be no need thereafter to say “and there is no other person in the vehicle at the time”, because he is accompanied by one person, and that person needs three qualifying criteria. He needs to attain them: must not be a driving instructor; must hold a valid driver’s licence; must occupy the front seat. All of the other language disappears. Give it some thought.

Sen. Al-Rawi: I was also confused in reading the clause, AG. I have next to my commentary mark-up, “language”.

Sen. Nicholas: For this one, I think we are prepared to go with it as it is, please.

Sen. Dr. Mahabir: Madam Chair, could I come in? Surprisingly, I understood the clause very well. There was no confusion in my mind that it referred to—so I do

not know if I am missing a deep legal point. It is just a grammatical issue. I thought 18 months is plural in clause 52(4). I do not know if the verb should be “have”. Clause 52(4) says:

“...to take another knowledge test unless eighteen months has elapsed...”

It should be “have” as far as I could tell. Unless we say “a period of”, then the verb is correct, but it is easier to change “has” to “have”.

Sen. Nicholas: Yes, you are absolutely correct.

Sen. Dr. Mahabir: Very well, thank you very much.

Sen. Al-Rawi: On the same subclause (7), “have” or “a period of”, one of the alternatives.

Sen. Nicholas: “have” is fine.

Sen. Al-Rawi: We are introducing here a person must have it in his possession, but elsewhere in the Bill I have seen that we say “or in the car”.

Madam Chairman: Which clause, Senator?

Sen. Al-Rawi: Forgive me, Madam Chair, subclause (7) of this same clause 52. I wondered why we were using two different types, because here we are saying that you must have it in your possession, and in other clauses we say that you must have it in the car. It is a little bit later on.

Sen. Nicholas: When we get to the other clause, we can amend accordingly.

Sen. Prescott SC: It may be though that the distinction is between a learner driver not owning the car. The person who owns his car may have his driver’s licence anywhere in it, and it is in his possession. It may be that the learner driver is—

Sen. Nicholas: Sen. Al-Rawi, I got the impression he was referring specifically to learners here.

Sen. Al-Rawi: Here we go, section 65:

“A person who drives or is in charge of a motor vehicle on any road or a

learner driver who is in a vehicle on any road or highway receiving instruction on driving or operating a vehicle, shall have on his person or in the vehicle for production...”

We have used a totally different formula in 65(1) versus 52(7), and I just wondered why.

Sen. Nicholas: It says the same thing. It says exactly the same thing.

Sen. Al-Rawi: I could see a policemen on a day of total policing having a very different point of view, seriously.

Sen. Dr. Mahabir: I want to support Sen. Al-Rawi on this.

Sen. Nicholas: Actually I am very interested to find out from Sen. Faris Al-Rawi how that could be—expand.

Sen. Al-Rawi: I understand that on the day of total policing, that things, including your oil level, were checked, and that people were pulled aside on the side of the road, and things happened. We are still awaiting a report on that, nor am I permitted to go into the full benefit of the Joint Select Committee’s work, but I really did wonder about the inconsistency in language. In clause 65 you are also not the owner of the vehicle. It contemplates a scenario where you are receiving instructions.

Sen. Nicholas: I specifically would like to hear from you, Senator, how a policeman could differentiate, based on your considerable legal experience.

Sen. Al-Rawi: Hon. AG, it is one of language here. So I am looking at it from a drafting harmony perspective, where we use two totally different phrases. Then a judge, when invited to consider this point, is going to say, “Well, what did Parliament in its wisdom intend, insofar as there are two different terms of art or two different expression formulae used between the various sections?”

Sen. Nicholas: Am I to assume from your answer that you cannot actually

distinguish?

Sen. Al-Rawi: No, I can think of all sorts of terrible conjectures that can be brought to life, and then causing people to be in argument.

Sen. Nicholas: If you could convince me of just one of the many that you have conjured.

Sen. Al-Rawi: The young man may say, for instance, when pulled over by the police, “But I have it in the glove compartment, and the policemen may look at him and say, “Well, this is not in your possession. Is this your car?” No. “Does it not say that it should be in your possession? Possession means in your pocket.”

Sen. Nicholas: And if he had a joint in that glove compartment, would he be deemed to have it in his possession?

Sen. Al-Rawi: You see, that is a different one, where *animus* and constructive liability. But AG, if that argument is accepted—let us say I accepted that argument, then why in 65(1) do we use a totally different formula and then say in 65(1): “A person who drives...shall have on his person or in the vehicle for production...”? If I accept your argument wholesale, why does Parliament “in its wisdom” then say it must be on your person or in the vehicle for production?

Sen. Nicholas: Because possession actually covers both—

Sen. Al-Rawi: Constructive and actual, I agree.

Sen. Nicholas: So that in this particular clause, possession deals with both situations and in the other clause it is separated but means the same thing.

Sen. Al-Rawi: I think that is a little stretched, hon. AG.

Sen. Nicholas: So let us proceed, please.

Madam Chairman: Hon. Senators, are there any other concerns with clause 52?

Sen. Al-Rawi: Madam Chair, perhaps the last question here. Subclause (16):

“A person who fails to comply with any condition or restrictions specified in

his learner driver's licence, commits an offence and is liable on summary conviction—

- (a) to a fine of three thousand dollars and imprisonment for six months; and
- (b) to cancellation...”

Hon. AG, is it that we are not interested at all, from an architectural perspective, in scheduling out all of these events?

Sen. Nicholas: That is correct.

Sen. Al-Rawi: Thank you. Thank you, Madam Chair.

Sen. Ramkissoon: Madam Chair, if you permit me. In clause 52(15) there is a small typographical error:

“shall renew the applicant's learner driver's licence.

Subclause (15) on page 30:

Shall renew the applicant's learner driver's licence.

Sen. Dr. Mahabir: It is the spelling of “learner”.

Mr. Cadiz: It says “leaner”.

Sen. Ramkissoon: It is supposed to be “learner”?

Mr. Cadiz: It is “learner”, not “leaner. “

Sen. Nicholas: Thank you for picking that up. [*Laughter*]

Madam Chairman: Hon. Senators, any further concerns into clause 52?

The question is that clause 52 be amended as circulated and further amended in subclause (1) by deleting the word “learn” and substituting the words “be taught” and inserting the words “on the road” after the word “vehicle” and before the word “unless”.

Sen. Nicholas: Madam Chair, “on a road” as opposed to “on the road”.

Madam Chairman: And inserting the words “on a road” after the word “vehicle”

and before the word “unless”. And further amended in subclause (2) by deleting the words “or over”.

Sen. Prescott SC: Was there an acceptance of “has attained” instead of “attains”?

Sen. Nicholas: Sorry?

Sen. Prescott SC: I had recommended “has attained” instead of “attains”. I am not strong on it, I am just wondering whether you had accepted it and the Chair missed it, or if it had not been accepted at all?

Sen. Nicholas: Which clause are we speaking to?

Sen. Prescott SC: Clause 52(2). It says, “Where a person attains...”

Sen. Nicholas: “Has attained” would be the better language.

Sen. Prescott SC: I had recommended “has attained”.

Sen. Nicholas: Yes.

Sen. Prescott SC: Thank you very much.

Madam Chairman: And further amended in subclause (2) by deleting the word “attains” and inserting the words “has attained” and deleting the words “or over” after “years”. And further amended in subclause (3)(c), by inserting a comma after the words “signs” and inserting the words “as may be prescribed from time to time”?

Sen. Nicholas: No, just “as may be prescribed”.

Madam Chairman: And further amended in subclause (4) by deleting the word “has” after “months” and inserting the word “have”. And further amended in subclause (5)(a) by adding after “certificate” the words “or such other forms of identification as may be prescribed”. And further amended in subclause (15) by deleting the word “leaner” and inserting the word “learner”.

Sen. Nicholas: Madam Chair, I just have one further amendment, and that is in subclause (7) on page 30, the first line. It reads: “learner driver’s licence relates on

a road or highway”, to remove “or highway” because a road covers highway.

Madam Chairman: And further amended in subclause (7) by deleting the words “or highway” after the words “on a road”.

Sen. Prescott SC: I confess I have one more. Clause 52(9)(a)—I believe that the word “except” is missing from the first line:

“Where a person is issued with a learner driver’s licence under subsection (6), that person shall—

(a) not drive or operate a vehicle on any road or highway except at such times as may be specified...”

Would that be correct?

Sen. Nicholas: Yes, that is correct.

Sen. Prescott SC: Delete “or highway” and put “except”.

Madam Chairman: And further amended in subclause (9)(a) by deleting the words “or highway” and inserting the word “except” after “road”.

Question put and agreed to.

Clause 52, as amended, ordered to stand part of the Bill.

Clause 53.

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

Sen. Nicholas: The proposal is, Madam Chair, that clause 53 be accepted as amended and circulated.

Madam Chairman: Are there any—Sen. Al-Rawi.

Sen. Al-Rawi: Much obliged, Madam Chair. I am concerned with respect to physical fitness as to the condition that exists for persons with known disabilities, and the fact that there is no requirement for the provision of notice upon revocation. So if we look at 53(4):

“Where the holder of a driver’s licence or learner driver’s licence suffers the

loss of use of an eye or limb or the ability to hear, the Authority shall revoke the licence and the holder shall return the licence to the Authority within three months from the date of suffering the disability.”

There is no requirement that they inform the Authority, so I do not know how the Authority is going to know. So there is no positive obligation on the person, save for the knowledge that this is an offence, but it does not speak positively.

Then when we go to subclause (7):

“Where—

- (a) the holder of a driver’s licence or learner driver’s licence is advised by a registered medical practitioner that he; or
- (b) it comes to the knowledge of the Authority that the holder of a driver’s licence or a learner driver’s licence is unfit to drive a motor vehicle by reason of some physical or mental incapacity, the Authority shall revoke the licence and the revoked licence shall be return forthwith to the Authority.”

2.45 p.m.

Would it not be a little bit more proportionate to include the requirement of the provision of notice to the person who is affected by this loss of licence and privilege, because then, in subclause (9):

“A person who fails to return a driver’s licence under this section commits an offence and is liable on summary conviction to a fine of one thousand dollars and to a further fine”—I note the amended circular—it should be “of five hundred dollars for each day the offence continues after conviction”.

And I have a secondary point on this particular clause, but let me tie it to the logic I have read so far. With respect to subclauses (4) and (7) the positive obligation (a) on the person who has the affliction to provide notice that he so has;

and, secondly, the obligation of the Authority to provide notice to the person prior to actually revoking, because he may show cause. So, take for instance, one of our learned Senators who suffers from disabilities. I do not know if finding themselves abled-bodied drivers, as they do, both Sen. K. Singh and Sen. Roach drive, very efficiently, do I just want to revoke their permits just because an event has happened or do they want to have the option to show cause why it should not be revoked?

Sen. Nicholas: Sen. Al-Rawi, would it satisfy you if there is a clause creating an obligation for the person who has suffered such loss to inform the Authority?

Sen. Prescott SC: Or else what?

Sen. Al-Rawi: Sen. Prescott is chiming in as to the sanction aspect of that.

Sen. Nicholas: Yes.

Sen. Al-Rawi: So, there is a sanction for a person who fails to return a driver's licence. I was looking at the due process point:

1. the positive obligation to inform so the Authority does not have to go and look for it;
2. before the Authority revokes, to say, well, hold on, you have now informed us of this and we have a special test in subclause (5), why should we not put you through a special test so you do not have to go through the double jeopardy of having to reapply again, double discrimination.

Yes, it would satisfy me if there was a positive obligation on the person to inform, and a person who without reasonable excuse fails to inform would have some form of sanction visited upon him. And I would also think it proportionate that we, before invoking the revocation of the permit, allow for the person with disability to show cause why he should not undergo a special test or have his licence revoked.

Sen. Nicholas: Do you have a proposed amendment?

Sen. Al-Rawi: I have not thought that far ahead as yet. I can perhaps look at it now.

Sen. Nicholas: I think the proposal here is that we amend 53(4) in line two after “the Authority” and substitute “shall” for “may”.

Madam Chairman: “The holder shall return the licence to the Authority”, and then put in the part about revoking. That creates an obligation.

Sen. Prescott SC: So, he shall return the licence upon the revocation?

Madam Chairman: No, it should be the other way around.

Sen. Al-Rawi: I follow Madam Chair’s logic, that if you put the obligation for the holder to return the licence, but even better yet, if the holder had an obligation to report the events that have happened, the disability he may now be encumbered with, and then return in the event of a revocation. So I followed Madam Chair’s good logic there.

Sen. Nicholas: We also have the issue that Sen. Prescott raised with regard to sanction for not reporting.

Sen. Al-Rawi: Exactly.

Madam Chairman: That is in (9).

Sen. Prescott SC: This may be one of those cases where a person who fails to return should really be found with criminal sanctions because he may well be endangering many lives, so it may be that if we place the burden on such a person to notify or inform the Authority and return his licence until he can pass a test, there is no reason why he should not be penalized.

Sen. Dr. Balgobin: We are talking about—sorry, Madam Chair, if I may — grievous injury, this is not a superficial cut. The person may well be laid up for a period of time that exceeds three months, what would happen in a situation like

that? Would the person be laid up in the hospital bed and be in breach of the law and subject to criminal sanction?

Sen. Al-Rawi: Correct. That is why the sanction should be without reasonable cause and the period a proportionate one.

Sen. Al-Rawi: Thank you very much.

Sen. Dr. Balgobin: Well, you know I am a bush lawyer, you know.

Sen. Al-Rawi: Well, you dealt good with it. [*Laughter*]

Sen. Dr. Balgobin: That would satisfy me, Attorney General.

Madam Chairman: So, we shall notify and shall return the licence to the Authority within a reasonable—

Hon. Senator: Faris, give them the word.

Sen. Al-Rawi: I am looking for the “wordiology”. [*Interruption*]

Madam Chairman: But, I mean, if you have an insurance claim to put in, there is a time limit within which you have to put in your insurance claim. So, those persons around you have some kind of responsibility.

Sen. Nicholas: Then, they may not necessarily want to go—they will be interested in the insurance, not necessarily the revocation of the licence. [*Laughter*]

Mr. Cadiz: Let me read the clause, a person applying for a revocation or if you are going to revoke a licence, you will not necessarily revoke his licence if he fails to bring it down in three months' time. It is either revoke or non-revoke.

Sen. Al-Rawi: Yes, the issue is to return the licence. [*Inaudible*]

Mr. Cadiz: What is the legal term?

Sen. Nicholas: No, I think they just need to put in the words, “without lawful authority”.

Sen. Al-Rawi: AG, may I suggest that this involves some deeper thought than we probably—is it that you want to review it?

Sen. Nicholas: We understand what is necessary, but we will probably need some time to just redraft it properly.

Sen. Al-Rawi: Perhaps.

Sen. Nicholas: Yes.

Sen. Prescott SC: In the circumstances, Chairman, may I throw in another pebble? If in (5) in reference to the special test, you should introduce the words “such as may be prescribed” because, for now we do not know the length and breadth of a special test, and we do not want to leave it up to the whim of the testing officer.

Sen. Nicholas: Sure.

Sen. Prescott SC: And there is one more.

Sen. Dr. Balgobin: What is a special test?

Sen. Prescott SC: I am thinking the AG's apparent acceptance suggests, he is now going to prescribe a special test: one that applies to vision; one that applies to hearing; one that applies to mental fitness or whatever, which will take away the issue of what a special test is.

Sen. Dr. Balgobin: Which is where I was going.

Sen. Prescott SC: And the final one, if you would permit me, Chair, 52(8), I do not know if anybody else is troubled, but there is creeping into this language, the use of the apostrophe in the wrong place. In line two we have two apostrophe “s” which, even if in 53(a), even if it means “who is licence” is wrong. Could it possibly be “whose”?

Madam Chairman: “A person W-H-O-S-E licence”.

Sen. Prescott SC: It seems to be giving trouble to the other side. Have you not found it?

Sen. Nicholas: Line two of 53(8).

Sen. Al-Rawi: The second line, middle.

Sen. Prescott SC: Does “who” apostrophe “s” not startle you?

Madam Chairman: W-H-O-S-E. [*Interruption*]

Sen. Prescott SC: Thank you.

Sen. Al-Rawi: May I in inviting the considerations, throw also into the mix as subclause (9) the need for reasonable excuse. If it is that you are prescribing a sanction by virtue of this offence, this prescriptive formula for all fixes in this subclause, that is failing to inform, et cetera, beyond what we have considered in the draft here, then the need for a mitigation on the animus, the mental intention may probably be necessary. So, in circumstances to take care of Sen. Dr. Balgobin’s prescription, his thought that you may suffer a disability but not be physically able to inform, to take that away, the issue of a reasonable excuse, perhaps, ought to be factored there, so you may want to look to the language there, hon. AG.

Sen. Nicholas: I thought we had dealt with it.

Sen. Al-Rawi: Thank you, Sir.

Sen. Small: Madam Chair, before we move on, just one other consideration, AG, if you would consider. In terms of the data capture for this, you have how many public health institutions in the country? If someone loses a limb, I think there could be a data capture point for that information, to take up the point made by Sen. Dr. Balgobin, the person may be hospitalized. But there is no issue with the hospital capturing information as a data capture point and sharing that information in summary to the Authority on a prescribed form or somewhere, perhaps in the regulations?

Sen. Al-Rawi: There is from a medical disclosure point of view.

Sen. Small: I hear you and I understand you, but—

Sen. Nicholas: Sen. Small, I think, whilst your intention is laudable, it probably would be difficult in the circumstances with confidentiality, et cetera, and it is also dealt with in the inclusion of the words “without lawful excuse”.

Sen. Dr. Mahabir: Madam Chair, 53(1), I have a concern and I will suggest a proposed amendment. It is a policy matter. We are introducing as per 53(1) the requirement now, that for a person to obtain a driver's licence he must pass a vision, hearing and mental and other fitness test. This clearly requires the individual, as stated here, to undergo a medical examination of some sort. I do not know what the intention is of the Government, whether they are going to impose upon all individuals 17 years and up, the requirement now for a medical examination, which is going to be, I think, necessary, but costly, and we are adding cost on to people, a lot of young people who are getting a driver's licence for the first time. I would recommend to the Government that since, by far and wide, the majority of people who are applying for the driver's licence are going to be, in any event, people of good health, we should not impose upon them, because the way it is written here, they must go to a private medical institution or somewhere, to get a medical certificate of physical fitness, mental fitness.

3.00 p.m.

I am recommending for the consideration of the hon. Minister the following: “Notwithstanding section 55(3), the Authority shall not issue a driver's licence to any person unless”—that person passes a vision, hearing and mental fitness test administered by the Authority or a state agency acting on behalf of the Authority.”

The reason I want to push this amendment is that the onus is on the Authority as they now have a vision test where they ask you to block one eye, it is free.

If the Authority can devise, and we will have a medical practitioner on the

board, the Authority should be able to devise a basic standard test to indicate whether the thousands of people applying on a year, really routine and passing, and it is only when the individual has failed that basic test he goes on and is referred to a medical practitioner for the costly test, but I think if we do not do that we are opening the door for every applicant to go and have to pay a few hundred dollars in addition to the charges now for getting his driver's licence and I would like to avoid that since it is avoidable. Thank you very much.

Madam Chairman: Senator, are you also suggesting that the applicants turn up at the medical health facility, the health office or something.

Sen. Dr. Mahabir: Madam Chair, as long as the Authority sanctions the health office or the public health institution, and they are administering the test on a Friday and with the approval of the Authority that will work, but that is for the Authority, as long as it is free. As long as it is not going to impose additional cost to the applicant, the 17/18-year-old applicant, I would be very happy with that. But it is really a cost avoidance issue, and I see a lot of money here to be made by medical practitioners charging \$500 to do a test that can be done for free by the Authority.

Madam Chairman: Why am I doing this test?

Sen. Dr. Balgobin: Could I just ask, what is the mischief that you are trying to address here? I mean a lot of people—[*Crosstalk*] what is that, why you are so concerned with my bodily and mental—so what if I have some little problem, what happens next? So I am just trying to understand what is the—and I am asking this, Attorney General, in relation not to the issue, not to the first issue of a driver's permit, but what happens as you get on, as you mature, you hit middle age and you go past that, is a renewal not also considered an issue?

Sen. Nicholas: Reading 53(1), it does not speak to a medical certificate. It is just

a general observation. So that someone comes, something might be noticed that is not necessarily reported, and therefore there is that discretion on the Authority to issue or not to issue. Of course, if you believe that you have been wronged in the discretion then you can appeal.

Sen. Dr. Mahabir: Hon. AG, I have a serious concern with that, you know, and I will tell you. Given the perception of corruption and the reality of corruption in the licensing office, given the necessity of individuals to have this driver's licence, and given the penchant of public officers who want to make extra money on the side to observe what they do not see, there is a moral hazard issue here of looking at someone and saying, I think you know you are not mentally or physically fit but we could organize that, and that is the mischief I want to avoid.

Now, I understand the need for a fitness test, but I would not like it to be done via observation. Let there be an objective assessed criterion and we will be able to say, okay, the person has failed the test; of the hundreds who take it, one or two might fail it, administered by the Authority or the health centre, that individual will be subjected to paying the medical fees, but I am not happy at all leaving these tests up to the observation of some bureaucrat in the Ministry of Transport.

Mr. Cadiz: AG—

Sen. Nicholas: Hold on, let me just go through this procedure. Person A comes to the Motor Vehicles Authority. There is nothing that is obviously wrong, he is issued his driver's permit. The clerk on the other hand observes something to be physically wrong and suggests that that might prevent the person from being issued a driver's permit. You then go to (2). The person may then request that a test be conducted to ensure his suitability. So you only go to the test if after the first physical observation is made out. Yeah? If it is—

Sen. Dr. Mahabir: Hon. AG, may I interject here. Are we in regulations going to

train these clerks to look for evidence of mental incapacity or physical infirmity or any kind of physical deformity? Are we training these clerks? Is it now that is going to be a requirement of the clerks?

Sen. Nicholas: Here is the other thing. Without this possibility, you may have people who are obviously not suitable but the clerk cannot do anything about it. So what you have done is actually created a situation, it is almost an additional check and balance in the system. If that check and balance is used unfairly there is an appeal process, and if it is that any clerk is seemed to be abusing their discretion then you can take other action. But this is specifically to deal with obvious deficiencies and I think it is important, and the Government thinks it is important, that the clerk has this ability to at least question one's suitability to be issued based on what might be before that clerk.

Sen. Dr. Mahabir: Then I imagine in the regulations, you would have qualifications as to what are the requirements for being a clerk. The clerk must have some medical training. Because what you are speaking about, hon. Attorney General is prejudice, you know. You are talking about a clerk looking at someone and saying, I feel your hand is not straight. I do not want this kind of—or you have crossed eye.

Mr. Cadiz: No, no. Sen. Mahabir, right now, before you can get your learner's permit, when you go down to the licensing office you read an eye chart, okay? We will be moving from an eye chart where there is an actual instrument that you view and then you just call out what you are seeing. These are simple basic tests to say that, if a person came in there who is without a doubt, visually impaired, okay, what is the clerk to do. And therefore there has to be some very basic test that would be—

Sen. Dr. Balgobin: Hon. Minister—

Sen. Dr. Mahabir: Hon. Minister, before, let me just—we are on the same wavelength. I am talking about the clerk administering an objective simple test, not the clerk just feeling that this individual is visually impaired.

Mr. Cadiz: The vision test would be one of those tests.

Sen. Dr. Balgobin: Hon. Minister, I do not think that anybody in here would contest the need for, even a cursory vision test, because you need it to drive. I think the question is, what exactly is the mischief that these two clauses, 53(1) and (2) are intended to resolve? Because it is conceivable that you are asking people to make ad hoc diagnoses of medical conditions. You come before me and I have some distant relative who is bipolar, I see you do something that looks like what they do and I say, well this person is bipolar, you know, you have to go and do a test, right? Or the person is a little larger or thinner than I am accustomed to and I say, well you are obese or you are anorexic and you could faint away while you are driving, you need to go for a test.

So this is why I am asking the question, which has not been answered really, what is the mischief? Or if you cannot answer that, which is fine, where did these two clauses come from? Is there a mirror in legislation elsewhere in the world that has these unique features?

Sen. Prescott SC: Madam Chair, talking about a clerk—

Madam Chairman: I recognize Sen. Prescott.

Sen. Prescott SC: Thank you. Hon. Attorney General, what does the average Trinidadian do to determine his mental fitness? In some cases I know it is driving across a busy intersection.

Madam Chairman: Sen. could you put your microphone closer.

Sen. Prescott SC: What does the average Trinidadian, including the licensing inspector do to determine a person's mental fitness? How often have we said you

are mad if you drive across a busy intersection? How does he—assuming that we are right and that we do need these tests, my concern is, the test for mental fitness cannot be left in the hands of almost anybody except a trained person. It might be madness to go to the licensing office in a vest and pants, but that does not make you mentally unfit to drive. [*Crosstalk*]

Sen. Nicholas: It is the existing law, but I was actually trying to move past that, because the issue of becoming satisfied is an important issue, and therefore I believe in moving forward we need to satisfy ourselves that we can be satisfied. And I suspect that is satisfactory.

Sen. Dr. Balgobin: And more than that I believe that he can handle—

Sen. Nicholas: Yes, so we are trying to work that out now and we will revert shortly as to how we will deal with it.

Madam Chairman: But this is a person who would have passed a test. Not so?

Sen. Dr. Balgobin: No, it could be someone who is renewing their permit. So you run this jeopardy every three years.

Madam Chairman: Well they know after a certain age they have to bring a medical certificate. But then from 65 you have to come every year, not so?
[*Crosstalk*]

Sen. Nicholas: We will come back to that, Madam Chair.

Madam Chairman: Okay, so clause 53 is deferred. We will revisit.

Assent indicated.

Clause 53 deferred.

Sen. Vieira: Chair, just an observation. On the last occasion we were talking about the traffic wardens and I just want to flag, I do not think that we resolved that matter. I do not want to break the rhythm, but the other thing I wanted to say is that, the mischief that my fellow Senators are talking about is the possibility of

fraud and advantage and bribery. I think one of the defects in the legislation is that maybe under the miscellaneous or the penalty provisions, I think there should be specific provisions treating with fraud, bribery, taking advantage of, on the part of people working at the Authority and employees or agents of the Authority. And I have some provisions that I am going to suggest that we could look at or incorporate. If we have those it could take care of a lot of these concerns.

Sen. Al-Rawi: May I also endorse that, it is something I had raised in my submission in the debate. A very useful example of one that we did recently was in the Planning and Facilitation of Development Bill where we put in a corruption clause for officers of the Authority in that instance there. So it may be useful to look at there. I wish to support that wholeheartedly.

3.15 p.m.

Sen. Nicholas: Quite honestly, though, I think if we are able to clearly set out the procedure, we would not have to trouble ourselves with issues of corruption. Sorry?

Sen. Al-Rawi: Sorry, I was trying to flag out to you that I am sure you are very concerned about issues of corruption and that you would want to put it in because it can stand on its own for other reasons.

Sen. Nicholas: No, we are concerned, and that is why I am saying that if we have proper procedure spelt out, then it would be very difficult to go beyond or around the procedure, if it is properly spelt out. So my concern here is to identify the procedure for identifying or satisfying oneself with one's fitness and, therefore, once the population is aware of the criteria to be satisfied, then it would be very difficult for a corrupt officer to suggest otherwise.

Sen. Al-Rawi: I thank you for your consideration.

Madam Chairman: Can we move on?

Clause 54.

Question proposed: That clause 54 stand part of Bill.

Sen. Al-Rawi: May I make an inquiry as to 54(5)(b)?

“Where an applicant desires permission—

(b) to drive a particular class of vehicle only, or if the applicant is being tested under the provisions of section 52, the examiner shall issue a certificate on which any appropriate restrictions are clearly set forth, after satisfying himself by a means of such test as he considers suitable that the applicant is qualified to drive a vehicle...”

Would it not be more appropriate to remove the subjectivity of he setting his own test to satisfy himself, that he instead implement a test as may be prescribed?

Sen. Nicholas: Just point me to exactly what you are referring to.

Sen. Al-Rawi: It is the third to last line of page 32. “as he considers suitable” I wondered whether, after satisfying himself by means of such test “as may be prescribed”.

Sen. Nicholas: Absolutely.

Madam Chairman: So we delete “as he considers suitable”?

Sen. Nicholas: Yes, Madam Chair.

Hon. Senator: And replace it with?

Sen. Nicholas: “as may be prescribed”.

Madam Chairman: Thank you, Senator. Any other concerns? The question is that clause 54 (5)(b) be amended by deleting the words “he considers suitable”, and inserting the words “may be prescribed”.

Question put and agreed to.

Clause 54, as amended, ordered to stand part of the Bill.

Clause 55.

Question proposed: That clause 55 stand part of the Bill.

Sen. Nicholas: Madam Chair, it is proposed that clause 55 be adopted as amended and as circulated.

A. In paragraph (a), delete the word “or”.

B. In paragraph (b), delete the full stop and substitute a semicolon.

C. Insert after paragraph (b), the following paragraphs:

(c) five years from the date of removal where on such date the holder of the licence has not yet attained the age of seventy years and the holder of the licence is a person with a permanent disability; or

(d) one year from the date of issue or renewal where the holder of the licence is a person with a degenerative disability.”

Madam Chairman: Any concerns?

Sen. Al-Rawi: Yes, Madam. AG, this clause goes a step further than other clauses do in the Bill. For instance, we say a person shall, 30 days prior to the expiry of his licence, apply for a renewal, but we do not say what happens if he does not apply for the renewal of his permit within 30 days. This clause is a little bit different. This clause says that you should pay for your driving test within 60 days and then it goes on to say, well, if you have not paid within 60 days, then you must retake the test.

I was wondering why this particular prescription of stating what happens when you failed to take advantage of the event, has not found itself into some of the earlier clauses that we have considered in the Bill so far, and in particular I mean those provisions which say that you shall, within 30 days prior to an event happening, do something, and where we do not go on to state what the consequence of a failure to do so amounts to, or results in.

Specifically, on this clause here, I wondered with respect to 55(2), why it is

we have elected for 60 days. If it is just a matter of policy then, is this driven by some form of data? And then, specifically, with respect to subclause (9):

“Notwithstanding subsection (1), a person issued with a driver’s licence shall not drive a vehicle unless that person successfully undergoes a defensive driving course administered by an institution certified by the Authority.”

Did we want to go a step further by requiring that that person produce a certificate? Because all it says here is that you successfully undergo a defensive driving course. But what is the proof of that? Or is it to be implied from the language?

Sen. Dr. Balgobin: May I just intervene, Madam Chair, to come back to 55(2) before we get on to the excitement of 55(9), and to point out that 55(2), when juxtaposed against 54(4), creates this peculiar condition where only a learner driver wanting to take a driving test has to pay the Authority the fee in advance, but everybody else has 60 days after to pay. So that is a peculiarity that you might want to address when you are picking up Sen. Al-Rawi’s point.

Sen. Prescott SC: May I make a further comment on—

Madam Chairman: Sen. Vieira.

Sen. Vieira: I will give way to Sen. Prescott.

Madam Chairman: Sen. Prescott.

Sen. Prescott SC: Clause 55(4) speaks to a person being required to retake a driving test if 60 days after having passed the test he has not paid for his licence. Are motor vehicle inspectors going to be going out searching for people who have not paid so that they can insist that they take a test? Or is this really meant to bite when the person does appear and seeks to get the licence? It needs some more words.

Sen. Nicholas: Let me deal with 55(2) first, from Sen. Balgobin. The issue with

a learner driver paying prior to the test would naturally be different from the person having passed the test, having to pay for the issuance of the driver's permit. That is what that deals with. In terms of the 60 days, the answer would be, yes. If it is that the person has not paid within the 60 days and then comes subsequently to pay for the driver's licence, then that person will be required to redo the test because that period would have elapsed.

Sen. Prescott SC: In what circumstances would he be required to do? When he presents himself for some purpose.

Sen. Nicholas: Yes. Well, he would not be issued the driver's licence until he pays.

Sen. Prescott SC: So this is what is missing from (4), that he shall be required to retake a driving test before he can receive a driver's licence. Is that it?

Sen. Dr. Balgobin: I think what Sen. Prescott is implying is that you may be creating the conditions whereby officers may be having to go out and find the people who have not paid and compelling them to take another test.

Sen. Prescott SC: They are in the business of receiving money, so as soon as 60 days pass, we come by your house and say, "Hello, we have not received your money"?

Sen. Nicholas: No, no, no. You pay—

Sen. Prescott SC: It is when you present yourself.

Sen. Nicholas: You are paying for a service that goes beyond passing the driver's test. It is for the issuing of the permit.

Sen. Prescott SC: So presumably, (4) could be expanded to include the suggestion that the test result or his right to have the licence has expired and in order to activate himself again, he must first take the test. This does not say in what circumstances do we find him to insist that he take a test.

Madam Chairman: Sen. Vieira.

Sen. Vieira: I am on the same point with Sen. Prescott, but let me preface it by saying that I find, generally, the wording a bit prolix, and it becomes confusing and unclear. So for example, instead of “where a person passes a driving test” under section 54, that person “shall”, you simply say, “A person who has passed a driving test under section 54 shall, within 60 days.” In this one, subclause (4), you have:

“Where a person fails to comply with subsection (2), that person shall be required to retake a driving test.”

I would have simply put: “A person who fails to comply with subsection (2) may be required to retake a driving test.” We could trim down the language. It will become a lot tighter and a lot clearer.

Sen. Prescott SC: You want to say “shall”, do you not?

Sen. Vieira: I would say “may”.

Sen. Prescott SC: What you want to tell me is when is this person obliged to take it.

Sen. Nicholas: Whenever he chooses.

Sen. Al-Rawi: There is a lot of merit in “may” as well, eh.

Mr. Cadiz: If the person has doubts now as to whether or not they want to drive and they do not want to take the test, they let it expire and off they go. The day they want to come back to take the test, they come back.

Sen. Vieira: Supposing he was away, or he was sick, or there was a reason—

Sen. Al-Rawi: Reasonable cause. He was one day late.

Sen. Vieira:—there was reasonable cause, why “shall”? You could come with a reasonable explanation.

Sen. Nicholas: For example, in the current legislation, if someone gets a learner’s

permit, that learner's permit is for a period. It is 12 months. If that person does not pass the driving test within that period, then he has a re-apply for a learner's permit. This is exactly what—well, this is similarly what is being done here. You go through the procedure, you have passed your test and then you are required within 60 days to pay for your driver's licence.

Sen. Prescott SC: Could we just simply say that “a driver's licence shall not be issued in respect of a driver who has passed the test more than 60 days ago and has not paid the fee”?

Sen. Nicholas: Well, it says the same thing.

Sen. Prescott SC: Yes, but to me, it reads differently if you say you have not paid and you are sitting at home not paying and somebody is saying you are already under an obligation by law to take a test.

Sen. Al-Rawi: May I get back as well in that thought—to “may” versus “shall”? In the instance suggested by Sen. Vieira, “may” includes “shall”, because you may decide to do it or you may not, and it leaves room for reasonableness. The Chief Justice had to intervene in the Magistrates' Court to pass a direction to say, “Well, you could pay your ticket at any time up to the date of the hearing of a summons for a ticket”, relieving significant burden and workload. There may be reasonable circumstances that the rules may want to permit for those who are one day out of time or not, but it at least leaves the discretionary environment intact. So I am rather attracted to the use of the word “may” as opposed to “shall”.

I also do not think that it means the same thing, what Sen. Prescott has proposed. I think that it can mean two entirely different things. The question is driven by the policy. What is the policy? What is the mischief being sought to be addressed? Prolivity is—it is prolix.

Sen. Dr. Balgobin: Attorney General, before you struggle on there between

“shall” and “may”, just to treat with Sen. Prescott’s point, I thought what he was trying to say for clause 55(4) was that entire sentence that might end as this: “That person shall be required to retake a driving test prior to the issue of a driver’s licence.” I thought that is what he was getting at. I make this small—

Sen. Prescott SC: I confirm it is. I confess it is.

Sen. Dr. Balgobin: And if you accept this small suggestion, it leaves you more free to brawl with the question of “shall” or “may”.

3.30 p.m.

Madam Chairman: Sen. Mahabir.

Sen. Dr. Mahabir: Yes, thank you very much. Again on 55(4), I think we need to be clear on what is the mischief that we want to avoid. Is it that there is a concern on the part of the Ministry of Transport or the Transport Authority that after 60 days the individual who has not paid the fee has lost driving skills, or is it that there is a loss of revenue to the Authority? My view is that there is a loss of revenue, not necessarily the fact that the individual has had his driving skills deteriorated. I would suggest that instead of requiring the individual to retake the driving test after 60 days of failing to comply with the payment of the fee, we simply ask him to pay an additional fee as determined by the Authority.

So he comes in 65 days afterwards, or a year afterwards and he says, “I am ready for my licence now”. You say, “But you passed this test a year ago. You will have to pay an additional fee before we issue you this driver’s licence. I think if we do that we satisfy the revenue aspects of the Authority. My concern is to make this Revenue Authority self-financing and this is an opportunity to send a signal that if you do not pay us the revenue in time there shall be a penalty associated, and in my mind the mischief is really revenue shortage as opposed to driving skill deterioration.

Sen. Nicholas: Sen. Mahabir, the policy is administrative efficiency. With regards to the suggestion of inserting “prior to the issuing of a driver’s licence” after 55(4) is agreed. The suggestion for the removal of “that person” in 55(2) and inserting “he”—so it would read:

“Where a person passes a driving test under section 54, he shall within 60 days from the date of passing the driving test paid the fee specified in the Fifth Schedule.”

That was your—

Sen. Vieira: Yeah. Just on a point of drafting style. There is a lot of authority and I tend to go with it, that “shall” is an ambiguous word and to be avoided. In this instance, I would have referred “must”. So my recommendation would have been “a person who has passed a driving test under section 54, must within 60 days from the date of passing the...test, pay the fee as specified”. I think that is a lot clearer than “where a person passes he shall”. So just as a general style and—

Sen. Nicholas: Because the Bill has adopted “shall”, I think we will confuse by introducing “must” now. I know that your contribution is valid, I know that you consult with the authority on drafting on a regular basis, but I think in this case in order to maintain consistency that we will go with “shall”.

Sen. Al-Rawi: May I point out just for usefulness of assistance in the other sections now deferred? Subclause (8):

“Where the holder of a driver’s licence suffers a change in medical condition that may impair his ability to drive or operate a vehicle, he shall forthwith inform the Authority of his medical condition.”

So a useful position save that it only deals with medical as opposed to physical and mental as we were looking at before. So insofar as the other clauses dealt with physical or mental, and indeed one clause went so far as to speak only to vision,

hearing and loss of limb, then there seems to be some degree of inconsistency with what it is one is obliged to report and then the events when one is required to do that, the circumstances.

Sen. Nicholas: Thank you for your observation. So that in moving forward the amendments proposed are 55(2) to read, where a person passes a driving test under section 54, “that person” will be removed and substituted with “he”. So it will read:

“He shall within sixty days from the date of passing the driving test, pay the fee specified in the Fifth Schedule.”

In 55(4), towards the end “retake a driving test,” and we will insert “prior to the issuing of a driver’s licence”.

Sen. Al-Rawi: Issuance.

Sen. Nicholas: “The issuance of a driver’s licence” and, Madam Chair, I beg to move that clause 55 be amended—

Sen. Al-Rawi: Nine. Sorry, subclause (9). He should only—“successfully undergoes a defensive...course administered”. Is there any certification of that success, or does one walk out and say I have been successful?

Sen. Nicholas: Well the driving course would have been certified by the Authority. So that—

Sen. Al-Rawi: So it is implied there that you have the certification?

Sen. Nicholas: Yes.

Sen. Al-Rawi: And there is no reason here for prescription?

Sen. Nicholas: Not at this time.

Sen. Dr. Mahabir: Again, Madam Chair, I have a concern with (9) you know. Yes, I do have a concern with (9). You see, I raised it in my contribution and I will raise again. Here we have an individual who has undergone a course of 20 lessons

with a driving instructor through now a driving school that is certified by the Authority. Driving instructors are now trained by, I think, the Ministry of Tertiary Education, and the person has a driving licence, he has passed the test, what we are saying is that:

“...a person issued with a driver’s licence shall not drive a vehicle unless that person now successfully undergoes a defensive driving course administered by an institution certified by the Authority”.

Now I fully understand the need for defensive driving, but my view is that the Authority having issued a driver’s licence is indicating that we, the Authority, hold the view that this individual is competent to drive. Now we have the same institution saying, “Well, we do not think you are that competent unless you undergo a defensive driving course”. Is it that the Authority is not convinced of its own internal procedure? Again for cost, you know. A good careful driver—at age 19, I was one of the safest drivers. I am a little more reckless now. But at age 19 a very careful driver is going to be compelled to take this defensive driving course for how much now, \$1,000/\$2,000. It is opening up the avenue for individuals to have these defensive driving schools simply to offer to individuals as a requirement now of the law, that in addition to your licence you have to have this certificate.

I do not like it because it questions the integrity of the driver’s licence now issued to the individual, it creates money for agencies out there, it taxes the citizens twice and it is in my mind something that is best left to the insurance companies. If an insurer with an actuary looks at a driver and says, “Based upon the law of probability, I think as a 22-year-old you really need a defensive driving course before we give you adequate coverage”. Then I would say let the insurer decide, but this is a matter I think the State should not decide.

Sen. Nicholas: Just to address Sen. Mahabir's concerns. The reality is that young people are the largest number or segment of persons who die in motor vehicle accidents, and the policy position is to protect those young people. Now the driver's test would be a test teaching persons to drive, but younger people tend not to be as concerned about defensive driving even after they have learnt to drive. So we have gone a step further not just to teach you to drive. It is not just the basic driving test, but the defensive driving which would allow you to look out for different things and to be a little more concerned.

Now, no insurance policy or insurance company really would look to the particular person to protect that person per se. Yes, they may loathe the policy because of age and they may choose to give a discount when there is a defensive driving certificate as now pertains, but from a Government point of view it is our policy to protect the young people in our society, and that is why we have gone down that road.

Sen. Dr. Mahabir: And my concern from a public interest point of view is that nowhere in the law is there a limit or a cap on the cost of this defensive driving course. So it is quite likely that since it is going to be law, that the agencies out there which offer this particular driving course will charge fees which are at the monopoly level as high as the market could bear. I do not know if in regulations you are going to cap the fees, or if you are going to take some kind of measures to ensure that the motoring public, the young driver—because it could be someone who is 45 getting a driver's licence for the first time as well. The clause is not age specific. It says anyone getting it for the first time will have to undertake this. Is it that the fees are going to be regulated? If not, I would want to have some kind of assurance from the Government that the fees to be paid for this driving course are going to be regulated by the Authority.

Sen. Vieira: I would like to support Sen. Mahabir. I think that substantively this is a case of double jeopardy. It is an additional, unnecessary and perhaps hidden cost that is going to be sprung on citizens. And, from a drafting point of view, if it is Government's policy that you are going to have this defensive driving course, then why have it as subclause (9). Have it at the beginning. So if you are going to get a driver's licence, you also have to do this. This comes like almost an afterthought. So it is wordy and it is disjointed.

Sen. Hadeed: Chair, could I?

Madam Chairman: Certainly.

Sen. Hadeed: Our experience in the industry is that if you do a defensive driving course, the cost that you pay you get it immediately by way of a massive reduction both in premiums and also to the value that you will have as a deductible. Your deductible automatically disappears and sometimes that deductible could be as high as \$20,000 or \$25,000. So it is to me important that if you put it in the front or in the back, wherever, the benefit goes directly right back to the person who pays the premium because they do have it if you are a young driver.

Sen. Vieira: That may be so, Senator, but my concern is, we have a situation where we have opportunistic business people and once this becomes a law and it is a statutory requirement, you are going to find people raising the cost of these defensive driving permits just as a matter of opportunity cost and we want to guard against that. If it is going to be a requirement, there should be some cap—

Sen. Hadeed: Put a cap.

Sen. Vieira:—or some regulation.

Sen. Nicholas: Madam Chair, through you, please? At present, you would be aware that there is a proliferation of driving instructors, and certainly a driving instructor knowing full well that one must take a driving test before one can be

issued a driving licence could fall under that same category of person, but it does not happen. At present, the fees are almost self-regulated by competition and you do not have that issue. So based on the current climate it is not likely that going the next stage of defensive driving that one could or should expect the issue to change, and I go one step further with this and why it is important.

Over the last two weeks, Senator, there have been three road deaths relating to, I think a 17-year-old, an 18-year-old and a 19-year-old very recent. In other jurisdictions, such as in Canada, they go a lot further with regards to moving from driver's permit, or first driver's permit, to fuller driver's permit. I think you are supervised for a period of three to five years if I am not mistaken. We are simply trying to protect our young people.

3.45 p.m.

And whether it appears before the driving test, after the driving test, the point we are trying to get across is that it is important that some kind of defensive driving is mandated for our young people who we know—even though there are some persons in the society who are extremely responsible, the thing about young people is that they do not value mortality. They are indestructible and we need to go that step further to protect our young people, and that is a policy position of the Government, and we would like to proceed on that policy.

Sen. Vieira: AG, you are knocking on an open door with defensive driving classes, you know. If you know how to deal with a skid, if you know how to deal with tricky situations, it is protecting not just the young people, but other people using the road. We have no quarrel with that.

Let me give you an example. In the FIU Regulations, there is now provision for an external audit on listed business activities—listed businesses. So we were requested to get these external audits done. You have “ah mad scramble” to find

out who does these external audits. The accounting firms are now figuring out whether they can do it and what they need to do in order to comply. Then, you have this huge disparity, firm X charging one amount, firm Y charging Z amount, but one thing it is for sure, once it becomes part of the legislative regulatory landscape, they are going to be shooting fish in “ah barrel”. Men are going to be charging you for these external audits.

So all we are saying is, by all means, have the defensive driving, but you need to have it regulated because people are going to exploit it.

Sen. Al-Rawi: Correct.

Sen. Small: Madam Chair, permit me to join in? I fear that this is going to remove the opportunity for several members of the society to get a driver’s permit at all. I understand the position put forward by Sen. Hadeed about the reduction in insurance issues, but suppose your family has a little old clunker, and you barely have enough money to pay to get the driver’s permit. Having to go to pay additional, you place an additional burden. It is a barrier. It becomes a barrier to the average normal range person in the society from getting a driver’s permit.

And hear me, I am a full supporter of having the defensive driving as part of—I have no problem with that, but I am concerned about the fee effectively blocking a section of the population from getting access to a driver’s permit because for a lot of people, \$500 is a lot of money. Yeah? So that I think we need to have—I am suggesting, if this is the way it is going to go, regulation, for me the Government should pick up that fee, because I think that—I understand why it is required. [*Crosstalk*] Yeah, I am saying that because I believe—I am fearful of it. There is a large portion of our society who are operating at the margins.

Sen. Nicholas: May I propose, therefore, Sen. Small and other hon. Senators, that we insert after “certified”, “and regulated” by the Authority? Would that satisfy

you?

Sen. Vieira: I was even going to suggest let the Authority run the defensive driving programmes for free and give a certification that this person has done it.

Sen. Small: Had to be.

Sen. Prescott SC: May I offer a suggestion in all of this? If you go back to clause 52, which deals with the application for the driver's licence—no, 52, forgive me—53. It may be that we can simply introduce the idea of the defensive driving certification as a criterion for the issue of the licence and put it together with 53(1). And then if it is the view of the Authority that it wishes to offer those courses, it may do so. The cost is something that I think all drivers should bear. If you wish to go on the road, you must have a defensive driver's certificate, so I am not concerned with whether it is costly or not.

But the Motor Vehicles Authority or a government may say, well, we will save people these costs and we will offer the defensive driving course ourselves. If you put it as an element of the requirement to get a driver's licence in 53, that to me, brings an end to all of the speculation about whether it will cost or it will deter or other—

Sen. Dr. Mahabir: I beg to differ, Madam Chair, with my colleague, Sen. Prescott. I am very concerned about the cost. The cost is of paramount concern to me, not defensive driving. I have a counter suggestion and we state on 55(9)—this is what I would recommend. You see, because the way it reads is as follows:

“...a person issued with a driver's licence shall not drive a vehicle unless that person successfully undergoes a defensive driving course administered by an institution”—only institution—“certified by the Authority.”

So we are talking about “by an institution”, we mean a company, an organization, a business enterprise. Could we insert “administered by an institution or individual

certified” and by individual, I mean a parent. I mean I thought it could mean—
[Crosstalk] Yeah, yeah, it could be someone who is certified.

Mr. Cadiz: Senator, okay, maybe we could deal with this—the same way the Ministry of Tertiary Education and Skills Training will be certifying our driving instructors, I am pretty sure that the administration would find a way, either working with the Ministry of Tertiary Education and Skills Training to start off and/or the Authority itself to start doing this defensive driving. We have approximately 25,000 new applicants a year. That is the norm. And therefore, when you think about a defensive driving course for 25,000 persons a year, that is a fair amount of work that you would have to do. And I am pretty sure that we can, in discussions with tertiary education, persons—

Madam Chairman: How many providers do we have administering these courses?

Mr. Cadiz: There are certain people, for instance, if you work in energy companies and what have you, before you can drive their vehicles, you have to undergo a driving—so it is a handful. Right now, it is a handful.

Sen. Vieira: Minister, I like that suggestion, but I would just suggest that in terms of the cost factor, if the Ministry is doing it, it should be offered at no or nominal cost.

Mr. Cadiz: I think what can happen there is that you can have the Ministry, for instance, providing it or the Authority providing it, you can also have private institutions who would also provide it at a cost, and it is your preference as to where you would want to go. So there is an option that you would have then.

Sen. Prescott SC: So it is a matter of policy, but we are drafting legislation—

Mr. Cadiz: Yes, and I agree with Sen. Vieira that we are knocking on an open door where as far as the defensive driving is concerned, that that is absolutely

essential to get rid of the carnage on the roads. As to who is going to pay for it, again, somebody has to pay. At some stage, somebody has to pay. So whether it comes out of taxes or it comes out of your own personal pocket, somebody will have to pay.

Sen. Vieira: Insurance companies might find it worth their while to run those courses for themselves.

Mr. Cadiz: And that again is a discussion that can be had. It is our view also that, for instance, even in the secondary education level that driver education, et cetera, down to primary school—that we hope to be able to reach there at some stage. Right now, we have a situation on our hands and we have to deal with this situation now. And I think, without a doubt, the defensive driving courses are part and parcel of the change.

Sen. Ramkissoon: Madam Chair, I do have a comment on the controls to put in place for the defensive driving. Now, yes, the course is something but in terms of what it entails, because different driving courses have—defensive driving has different things. Like some companies only have a theory part and no actual training where you drive between the cones and these things. So you need to know what you want your defensive driving to entail. Because I can sit in a classroom and learn exactly what I can defensively do and have no practical part of it, and people offer the certificate for that. So, as a young person, I know about this.

Sen. Nicholas: Senators, having listened very carefully to what you have said, it is being proposed that the driving instructors be certified as being competent to actually teach defensive driving as part of the driving course, and that becomes the requirement of the MVA.

Sen. Vieira: Yes, that makes sense.

Sen. Dr. Mahabir: And therefore, are you going to consider adding to institution

or individuals because the driving instructors may be operating as individuals as well, not as institutions?

Sen. Nicholas: No, the test therefore, as prescribed, will include defensive driving.

Sen. Dr. Mahabir: Excellent.

Sen. Vieira: AG, I think that is an excellent idea.

Sen. Nicholas: So it becomes one test.

Sen. Dr. Mahabir: One test with defensive driving. That is what we want.

Sen. Vieira: It avoids the possibility of bobol and predatory business and we can still keep defensive driving as one of the things that a court might order for somebody who has committed—so you do further courses and stuff. But I think this is much better.

Sen. Dr. Mahabir: And therefore, the driver's licence issued by the Authority is a driver's licence that shows that the individual has a level of proficiency in driving and that is it. Thank you very much.

Sen. Dr. Balgobin: Attorney General—well perhaps, I should not disturb you from your side bar—Minister. Is there anything in this legislation that governs driving instructors?

Mr. Cadiz: Yes, the driving instructors would have to be certified by the Authority and the form of instruction, et cetera, and the programme that will be used will be determined by the Authority.

Sen. Dr. Balgobin: Because that is a very wild industry right now, you know.

Mr. Cadiz: And that is why we are going to regulate it.

Sen. Dr. Balgobin: Could you just point me to where in the legislation that is?

Mr. Cadiz: I think we have gone past that already.

Sen. Vieira: Is it not in functions?

Sen. Dr. Balgobin: Is it there? I just want to make sure it has not been mistaken—[*Crosstalk*] no, well they are going to enlighten me. I read it, I did not see it, so maybe—

Sen. Vieira: Sen. Balgobin, I think in the functions about regulate driving schools, that was one of the functions of the Authority.

Mr. Cadiz: Yeah, it is in Part XV, clause 184.

4.00 p.m.

Sen. Vieira: But, Minister, on that point, perhaps we could—where you have at clause 7(2)(vii), we could say:

Register and regulate driving schools and driving instructors
—just to hammer home the point.

Sen. Dr. Balgobin: You see, this was precisely my point.

Sen. Al-Rawi: Of which clause?

Sen. Dr. Balgobin: Minister—

Sen. Vieira: Clause 7(2)—

Mr. Cadiz: Clause 7(2), where?

Sen. Al-Rawi: In the powers and functions clause.

Sen. Vieira: In the functions, clause 7(2)(vii) on page 9, register and regulate driving schools and add “and driving instructors”.

Sen. Dr. Balgobin: Where is that, register—?

Sen. Vieira: Actually it is (vii); Roman numeral (vii); 12.

Sen. Prescott SC: Top of page 9?

Sen. Al-Rawi: Fifth item on page 9, coming down.

Mr. Cadiz: Register and regulate driving schools?

Sen. Vieira: And add “and driving instructors”. I suppose driving schools would have included, driving instructors for this.

Sen. Dr. Balgobin: Yes, you see, again, that is my point. If you look at clause 184, it really does not say anything other than you give somebody a certificate, and then—

Mr. Cadiz: No, but the certification would be developed by the authority in order to—the courses and what have you, to certify a driving instructor, there will be a programme that they would have to go through to be able to be certified.

Sen. Dr. Balgobin: But I am not just talking—

Sen. Vieira: But you want to regulate them.

Sen. Dr. Balgobin:—about certificating a driving instructor. I am talking about regulating the conduct of their affairs, because they go in residential areas all over the place and conduct their business.

Sen. Vieira: It is better to have it, because you might want to be able to pass regulations, and rules and practices.

Sen. Dr. Balgobin: Yes, of course, so that they do not go and create a nuisance—

Sen. Al-Rawi: I wish to support that.

Sen. Dr. Balgobin:—all over the place, which they do at present.

Sen. Vieira: We need to have it in the functions, yes.

Sen. Al-Rawi: You have to have it in the functions to allow for prescriptions and regulations, but you should at least make it vires to avoid the ultra vires argument.

Sen. Prescott SC: It may well be if you put in the regulation section, clause 270, a provision that the authority shall make regulations, the Minister shall make regulations for the management of/or the operations of institutions, for driving instructors or whatever you call it.

Madam Chairman: Clause 270?

Sen. Prescott SC: No, I am suggesting that he put some power there to treat with driving schools, management and operation of—

Madam Chairman: That would be—

Sen. Al-Rawi: It is adumbrated, page 142 onward.

Madam Chairman: That would be efficient—

Sen. Prescott SC: I am pleased to hear you say that.

Sen. Vieira: You see, if you have it in the functions—

Sen. Al-Rawi: It should be in both places. It should not be without prejudice to inclusions in the function. It is easy fit in (vii).

Sen. Vieira: I think we should put it in the functions as well.

Sen. Al-Rawi: Clause 270, page 148. Sorry, not page 148.

Sen. Prescott SC: Page 142.

Sen. Nicholas: What is your suggestion?

Sen. Prescott SC: That you should include there a subclause that says: in respect of all matters including the registering and regulation of driving schools. So it is simply an insertion. Well, we have not come to clause 270 as yet.

Sen. Nicholas: In clause 184—

Sen. Prescott SC: Clause 184?

Mr. Cadiz: Clause 184.

Sen. Prescott SC: I do think it is adequate, neither clause 184, nor 193, nor a combination of them.

Sen. Al-Rawi: No, certainly, it is too vague.

Sen. Prescott SC: Simply empower the Minister to create the regulation.

Sen. Nicholas: Clause 270, let me hear your amendment.

Sen. Prescott SC: It is an insertion of a subclause in 270. To register and regular the—how do you call it here?—the driving schools, the management and operations of driving schools.

Madam Chairman: Okay, well, would that take care of the—

Sen. Prescott SC: And you may say instructors there, but—

Sen. Al-Rawi: There should also be an amendment to clause 7 which is in the “powers section”; powers and functions, at 2(vii).

Hon. Senator: Clause 2 (12).

Sen. Al-Rawi: Clause 2 (12), sorry.

Sen. Nicholas: So just to be clear when we get to clause 270, you would want it to read: that the Minister may make regulations that would register—

Sen. Prescott SC: No, for the registration and regulation and management of management or management and operation of; registration, regulation, management and operation of.

Sen. Nicholas: So hold that for when we get to clause 270.

Sen. Prescott SC: That is my preference, Sen. Vieira was—

Sen. Vieira: Only to say that I have a few things to say about regulations altogether, but I will wait until we get there.

Sen. Nicholas: Very well, but we will agree now that the MVA will regulate the schools and the persons—

Sen. Vieira: Driving instructors.

Sen. Nicholas:—who are teaching persons to drive; the driving instructors, yes?

Sen. Al-Rawi: That would allow for the mischief in direct provisions of services to be monitored.

Sen. Nicholas: That is correct.

Madam Chairman: So do we have any changes to clause 9?

Sen. Nicholas: Except that there will now be no need for clause 9. Is that the general agreement?

Sen. Prescott SC: Was that not your admirable suggestion earlier on? No need for clause 9?

Hon. Senator: Yes.

Madam Chairman: Delete clause 9?

Sen. Nicholas: Yes, please.

Madam Chairman: Are there any other—Sen. Prescott, your mike is on.

Sen. Prescott SC: Oh, and do forgive me.

Sen. Al-Rawi: Then are we going to revisit clause 7(2)(xii) to expand the functions there, notwithstanding clause 270 broadening?

Sen. Nicholas: We will have a look at it.

Sen. Al-Rawi: Okay, thanks.

Clause 55 be amended as circulate:

- A. In paragraph (a), delete the word “or”.
- B. In paragraph (b), delete the full stop and substitute a semicolon.
- C. Insert after paragraph (b), the following paragraphs:
 - (c) five years from the date of renewal where on such date the holder of the licence has not yet attained that age of seventy years and the holder of the licence is a person with a permanent disability; or
 - (d) one year from the date of issue or renewal where the holder of the licence is a person with a degenerative disability.”

And further amended in subclause (2):

By deleting the words “that person” and substituting the word “he”;

In (iv) by removing the full stop after “test”, inserting a comma and the words “prior to issuance of a driver’s licence.

And deleting subclause (9).

Sen. Prescott SC: Would permit me a query of the Attorney General, please?

Madam Chairman: Certainly, Sen. Prescott.

Sen. Prescott SC: Attorney General, clause 55(5), which deals with older folks. Is it intended that a person who is of the age of 70 shall come up for renewal at 72? Yes.

Hon. Senator: Yeah that is what it is. “Yuh worried?”

Sen. Nicholas: Yes, it would appear so.

Sen. Prescott SC: In which case 55(5)(a), can be avoided by making sure that you have applied at age 69 and 11 months, and then you will get it until 74, would you not or 5, late 74? So that maybe you need to address the language once again, and maybe put a statement that says: you shall not drive without a renewed certificate or without a certificate that has no more than two years to go. What is the legal language? I am merely saying, address it from the point of view that a person who has achieved the age of 70—

Sen. Al-Rawi:—is obliged to attend.

Sen. Prescott SC: Yes.

Sen. Vieira: I prefer direct language.

Sen. Al-Rawi: A check in clause at age 70 regardless of whether you have four years, five years, three years or what.

Madam Chairman: I think what happens is that they do not issue it, even if—

Sen. Al-Rawi: If you went there at age 69, 11 months—

Sen. Prescott SC: Well, this law says that you must.

Madam Chairman: They issue your renewal up to age 70, and then that is it. Whether you get one year or half a year.

Sen. Prescott SC: Ah, so let us do a piece of legislation that says that: that authority shall not issue any licences that takes beyond 70.

Sen. Al-Rawi: Correct. It does not say that right now. It does not speak positively that way.

Sen. Prescott SC: Let us put the practice into legal language, because as it stands now, what is being recommended here obliges him to issue to me at 69, 11 and five, and I will happily go out there until 74. I do not mind doing it now, but—

Madam Chairman: No, they would not do it—

Sen. Al-Rawi: They are obliged to do it.

Sen. Prescott SC: I think that would—oblige it, this would oblige them. So, I am suggesting to you, Attorney General, that we now consider establishing a ceiling.

Sen. Nicholas: Okay, so that essentially, what we want to do is to create at the point of 70, no one issued a driver's permit for more than two years, or permitted to drive—

Sen. Prescott SC: Unless he has a certificate which limits him—

Sen. Nicholas: So that if we say: a driver's licence issued under subsection (2), shall unless suspended, cancelled or revoked by the authority, (3) or surrendered the holder be valid for (a), five years from the date of issue or up to the age of 72?

Sen. Prescott SC: Why not renewal? Why did you remove renewal?

Sen. Nicholas: Sorry: five years from the date of issue or renewal.

Sen. Prescott SC: But not beyond the age of 70.

Sen. Prescott SC: No, you could actually take it to 72, because if the person is 69 and you are only issuing two years from 70, then you go to 72.

Sen. Prescott SC: Fair enough, but not beyond the age of 72?

Sen. Nicholas: Not beyond the age of 72.

Sen. Prescott SC: And in the second part would say, but if you came in at 70, you will get two.

Sen. Nicholas: Two years, yeah?

4.15 p.m.

Sen. Dr. Balgobin: Where did we get 70 from?

Sen. Nicholas: Once you get to the age of 70—

Mr. Cadiz: It was at 65 prior. Some jurisdictions go to 80, some jurisdictions go to 75; 70 is a happy medium.

Sen. Dr. Balgobin: You know, 70 is the new 50. So what is it that happens at 70, that does not happen at 69?

Mr. Cadiz: I would not want to explain in the Senate. [*Laughter*]

Sen. Dr. Balgobin: Well you all ought to enlighten me.

Sen. Dr. Mahabir: With respect to driving, Minister—

Sen. Dr. Balgobin: Most 70-year-olds I know are actually in excellent health.

Mr. Cadiz: Agreed, and that is why we thought that 65 was a little too early for you to be—

Sen. Dr. Balgobin: So we do not want to say 75 then?

Mr. Cadiz: Literally, you could flip a coin to say whether or not it should be 70 or 75 or 80. Some jurisdictions go over 80.

Sen. Dr. Balgobin: If I had to flip a coin I would land on 75.

Sen. Prescott SC: Madam Chairman, in the circumstances if that is—and that is a good point—maybe we should go back to saying “not beyond the age of 70” and thereafter you do it in two-year renewals.

Mr. Cadiz: That is what we are saying here.

Sen. Prescott SC: Rather than 72, which was the shortcut, let us say, “not beyond the age of 70” and then have a provision that says, “at age 70 you shall apply and your renewals will be in blocks of two or as decided at the discretion of the Authority”. [*Crosstalk*]

Sen. Dr. Mahabir: I support Sen. Balgobin on the age of 75, based upon life expectancy and health care, and based upon all the good things the Government is doing in the Ministry of Health.

Mr. Cadiz: Will all declare their interest, please. [*Laughter*]

Sen. Dr. Balgobin: Very good work being done in health. Do not put this on people at 70—75, 75, concede 75. [*Crosstalk*]

Mr. Cadiz: We checked with the Ministry of Health before we moved it from 65. They had absolutely no problem in doing it, and therefore we just thought we would have a happy medium which was 70; so 75 we do not have an issue with that.

Sen. Dr. Balgobin: Excellent.

Sen. Dr. Mahabir: Since we are legislating for the future and life expectancy is rising, very soon we are going to get 75-year-old people as very functional in the workplace. [*Laughter*]

Madam Chairman: Women. [*Crosstalk*]

Sen. Nicholas: Five years from the date of issue or renewal, up to the age of 75 for (a), or (b) we remove 70 and put 75—but we add five to the 70. [*Crosstalk*]
Not beyond 75.

Sen. Prescott SC: You say “issue up to 75”, I am saying not issue beyond—

Sen. Nicholas: So 55(5)(a) will read:

Five years from the date of issue or renewal, not beyond the age of seventy-five years;”—but not beyond the age of 75 years—or

(b) two years from the date of issue or renewal where on such date the holder of the licence has attained the age of seventy-five years and over.

Madam Chairman: The question is that clause 55 be amended as circulated, and further amended in subclause (2) by deleting the words “that person” and inserting the word “he”; in subclause (4) by deleting the full stop after “test” and inserting a comma and the words “prior to issuance of a driver’s licence.”; and subclause

(5)(a) by deleting the words “on such date the holder of the licence has not yet attained” and inserting the words, “but not beyond” and deleting the words “seventy years” and inserting the words “seventy-five years”; and in subclause (5)(b) by deleting the word “seventy” and inserting the word “seventy-five”; and deleting subclause (9).

Sen. Dr. Mahabir: Before we go there, a matter of housekeeping. As my colleague, Sen. Vieira, pointed out, after clause 6 we need a full stop—just a housekeeping matter.

Madam Chairman: Thank you.

Question put and agreed to.

Clause 55, as amended, ordered to stand part of the Bill.

Clause 56.

Question proposed: That clause 56 stand part of the Bill.

Sen. Dr. Mahabir: Thank you very much, Madam Chair. I do not know if Sen. Al-Rawi has something on 56(1), but 56(2) I see a time period of six months where an individual can have his licence renewed, but I am considering the practicality. If we are to take into account the needs of people who are going abroad to study.

Usually the period of study abroad would exceed six months. I am simply putting forward for consideration of the Minister whether he is not going to change that from six months to 12 months. So that someone who has a driver’s licence, is away for about 10 months in the year, can return, renew his licence without penalty at the end of say a 10-, 11-, 12-month period.

I think if we were to consider a 12-month period, we would certainly achieve the objective of fairness to the people who we want to capture, people who are travelling frequently, young people on scholarship, young people travelling, individuals on business and so on. I think a 12-month period is going to be much

fairer, with respect to their ability to renew the licence without penalty.

Sen. Al-Rawi: May I add to that. Yes, Ma'am, thank you.

Madam Chair, I find the construction of clause 56 to be somewhat awkward. The consequence to flow from a failure to observe clause 56(1) is one issue. What happens if you do not do it within the specified time frame? Subsection (2) then comes in. So 56(1) says:

“...a holder of a driver’s licence who wishes to renew his driver’s licence shall apply to the Authority in the prescribed form within thirty days before the expiration of the driver’s licence and shall pay...

(2) Notwithstanding subsection (1)...”

We now provide an exemption in respect of people who are out of the country. However, there may be very legitimate reasons beyond travel which could prevail. Somebody could have been suffering an infirmity; some other position. It may be that we cannot predict every circumstance that could arise, and so there may be need to include some form of discretion on the part of the authority here.

In subclause (3):

“A person on applying for a renewal of his driver’s licence under subsection (1) shall submit himself for a vision examination.”

Why only that, in view of the mental or physical considerations that we have in other clauses? I think there is some degree of inconsistency between the provisions that we hold as goalposts in this particular clause, versus those in other clauses, and perhaps the hon. AG may give us some degree of understanding as to why we have constrained ourselves in these circumstances. [*Crosstalk*] Subclause (3) is otiose in view of the other aspects.

Sen. Dr. Balgobin: Delete (3) altogether.

Sen. Vieira: Thank you, Chair. I am not trying to sound facetious here, but all of

these requirements for vision tests may well be redundant. There is a lot of new technology with what they call “autonomous and robotic cars”. Driverless cars are going to be a feature of the landscape in the near future.

Madam Chairman: You would not need a licence then.

Sen. Vieira: We already have cars that reverse themselves; that is common technology. What I am just saying is, one of the things that I talked about that is not in this legislation is provision for just this. All of this need for vision tests, if you have a driverless car, a car that does self-driving, you do not need it. I am just saying that is something that we should be looking at down—

Sen. Nicholas: To satisfy your concern we will remove (3).

Sen. Dr. Balgobin: May I ask a question about 56(1)?

Sen. Nicholas: Just before you go there, Sen. Balgobin, I accept the contribution of Sen. Al-Rawi, and consistent with other changes we have made, remove “shall” and put “may” for the three months.

Sen. Al-Rawi: Thank you. Where is that?

Sen. Nicholas: The second line, 56(1): “renew his driver’s licence shall”—it is “may”.

Sen. Dr. Balgobin: Just a few words down from that. Why is it 30 days from the date of expiration?

Sen. Nicholas: For convenience, to ensure that the process is carried out and the person is not left without a driving licence at the expiration.

Sen. Dr. Balgobin: Do you feel that that is an appropriate time or you want to give them a little longer? Because 30 days, you go there sometimes, you do not get service. People are very busy; there are only 20 working days in the month. You may want to give a little more time.

Sen. Al-Rawi: If you were to broaden (2) to include “such other circumstances as

the Authority may consider reasonable”, then it takes care of—

Sen. Dr. Balgobin: Then somebody has to make a judgment about what is reasonable. Why not just give 60 days and say, “Look, within two months of the expiration of your permit you can renew”.

Sen. Nicholas: I think you all are speaking at cross purposes, on different issues.

Sen. Dr. Balgobin: I am talking about (1); I am still on (1).

Sen. Al-Rawi: I too have a problem with 30 days being narrow.

Sen. Dr. Balgobin: I am asking that you go with 60 days.

Sen. Nicholas: Sixty is acceptable to the Minister.

Mr. Cadiz: Sixty days is no problem. I just want to say, the issue of what exists at licensing office now, the purpose of this new Motor Vehicles Authority is to do away with all of that. So the lines, et cetera, and going there and you cannot get the services and what have you, that is not the purpose of this Bill; it is to do away with that. But 60 days, we do not have a problem with that.

Sen. Prescott SC: May I invite attention to 56(2) and enquire what it is intending to do to deal with persons who plan to be out of the country

“...the Authority may receive...”—and I will come back to receive in a while—“an application for renewal of a driver’s licence or a learner driver’s licence within six months from...”—and that probably means after the date of expiration—“where the applicant has proven to the satisfaction of the Authority that he would be out of the country...”

Is it intended that he is to come before you when he plans to go abroad and say, “I propose to be abroad, here is the proof”, not that he has gone and the time has passed?

4.30 p.m.

Mr. Cadiz: For instance there are a number of comments about people going to

university, for instance. You know you might not come back during your course and therefore you might be away for three years and therefore your licence might expire then, and therefore you just show your acceptance at your university, et cetera and that would be enough proof for them.

Sen. Al-Rawi: But, Minister, it does not say that, you know.

Mr. Cadiz: Sorry, just let me finish, proven to the satisfaction of the Authority.

Sen. Prescott SC: Sorry, and the word “receive” is what you mean? “The Authority may receive”—do they need to do anything with it? Can they grant something? Can they extend? Or renew? Or process?

Sen. Al-Rawi: Correct. So, there is a problem with the word “receive” as opposed to “grant”, because you can receive it and do nothing with it. But, look at the flow here:

“Notwithstanding subsection (1), the Authority may receive”—question mark—“an application for renewal within six months from the date of expiration of the licence.”

What does that mean?

Sen. Nicholas: That would be after.

Sen. Al-Rawi: Well, if it is after, then how can you prove that you would be out of the country at the point? So, if it is that it is six months prior to expiry, yes you would be out. But it certainly cannot be read as after, and then you would be out.

Sen. Nicholas: No, this deals with prior.

Sen. Prescott SC: “Six months from” means prior?

Sen. Al-Rawi: That is the only way the word would make sense.

Sen. Nicholas: Six months from the date of expiration.

Sen. Prescott SC: May I just suggest, if you go back to 56(1), you would see a better use of before and after. It says, “... shall apply 30 days before the

expiration”. Does “six months from” mean the same thing? Six months before?

Sen. Nicholas: It should be six months before.

Sen. Prescott SC: Okay, let us use those words. So, we say:

“The Authority may”—and we say—“he will process an application within six months before the date of expiration”—

—so that you can prove that you propose to be out of the country.

Sen. Nicholas: Correct.

Sen. Prescott SC: Okay, so may I suggest a simple change to say the word—

Sen. Nicholas: Your suggestion has been adopted.

Sen. Prescott SC: Oh, thank you very much. And what about “receive”, would you like to reconsider? Give them a positive obligation to do some [*Inaudible*] than the mere acceptance of the documents.

Sen. Nicholas: Well, I think because 56(1)—

Sen. Prescott SC: I am lost, could you use the word “licences” and—

Sen. Al-Rawi: Because they ought to go a step further than received.

Sen. Nicholas: Yes.

Sen. Al-Rawi: Grant may suffice.

Sen. Nicholas: You may grant.

Hon. Senator: You may grant?

Sen. Nicholas: Yes.

Sen. Prescott SC: Yes, grant an application.

Sen. Al-Rawi: May as it is right now—

Sen. Prescott SC: He may renew.

Sen. Nicholas: Granting an application.

Sen. Al-Rawi: So, he may renew. [*Interruption*] We know it is an application. Or renew on application.

Madam Chairman: An application?

Sen. Prescott SC: On application. O-N application, so that you are obliged to put it in. On application he may renew.

Madam Chairman: May renew an application.

Sen. Prescott SC: Not an, O-N.

Sen. Al-Rawi: To put in a positive obligation to—

Sen. Nicholas: “The Authority may renew on application a driver’s licence”.

Sen. Al-Rawi: It needs to be massaged out a bit. But, AG, while you are massaging it—

Sen. Nicholas: We will massage it properly, it sounds very comfortable.

Sen. Al-Rawi: Was there also an intention here, because when I first read it I wondered if you were intending to give relief for somebody who had missed the 30 days before, had met himself with a licence that had expired through unforeseen circumstances and who did not want to have to undergo a full application all over again. So, insofar as that may be the flipside of the consideration, then I wonder if we ought not to consider that, because we have dealt with it for learner’s permits, but we—

Sen. Nicholas: That is dealt with in 57.

Sen. Al-Rawi: Expired, I see.

Madam Chairman: Hon. Senators, any more?

Sen. Dr. Mahabir: Yes, I just wanted to know whether the Government accepted my logic because I heard nothing about it, and may I rephrase in the sense that the driver’s licences are now issued for five years and I am envisioning someone who is leaving the country to study in, say, July of 2015, but his five-year driver’s licence is going to expire in June of 2016, now he intends to come back in a year—he has a one-year scholarship—within the six months his licence would

already have expired when he is studying abroad. If we were to extend the period 12 months prior, then it means he can renew his licence in June of this year, or July, before he goes. When he comes back, his licence he knows is already renewed and he can continue driving. I do not see too much benefit by way of these young foreign students who will be away for a year if they only have a six-month period prior the renewal of your licence.

Sen. Prescott SC: I would not be surprised—

Sen. Nicholas: 57(1)(b), “where the period from the date of expiration of the driver’s licence to the date of submission of the application for renewal is more than six months but does not exceed three years”.

Madam Chairman: That is if it is expired.

Sen. Nicholas: Yes, that is if it is expired.

Sen. Al-Rawi: So, he means the expiry, but the point is that there is a monetary sum to be paid for which is a penalty. If 57(2) was modified you may find that the door to that—

Sen. Nicholas: Yes, that is the existing law. I recall having to make that payment when I was abroad studying.

Sen. Dr. Mahabir: And let us try to avoid the payment now for the next generation. Our objective is to make their lives a little easier.

Sen. Nicholas: Absolutely.

Sen. Prescott SC: Before we commit, Chairman, are we going to have online renewals and so?

Madam Chairman: Okay, the question is—

Mr. Cadiz: Chairman, there are a couple things, yes that eventually we will be able to do that.

Sen. Prescott SC: We could do it from whichever location.

Mr. Cadiz: Correct, and then the other thing we will be doing also is the notification of the expiration, that you will receive notification that your licence will be expiring, for instance, in 60 days' time, email or mail—

Sen. Prescott SC: Twelve months might be unnecessary, Attorney General.

Mr. Cadiz: Well, I do not think we should be worried about that, I think 12 months is fair and we can go with the 12 months, and as the MVA progresses other things will kick in as we go along.

Sen. Robinson-Regis: Thank you very much. May I find out, this 12 months that you are talking about, that is in relation to what exactly?

Mr. Cadiz: This is if your licence will expire in the 12-month period, but you will not be in the jurisdiction to have it renewed, and therefore by the time you return it would have already expired and then there is another fee that you would have to pay for renewing your licence after it has expired. What we are saying, is like, for instance, for students going away they could actually get it renewed before they leave. Just to eliminate the additional fee, through no fault of your own, you were not here and therefore you could not get it done.

Sen. Robinson-Regis: It is just, I do not know, I have never seen legislation dealt with this way. Is there a policy that you all are working with? Or you are just, whatever somebody while we are on the floor—

Mr. Cadiz: No, we had six months, we had 30 days, it was suggested we move to 60 days, we had six months, it was suggested we move to 12 months, it could have, you know—but, I mean, the fact is the policy is that we will allow you to have that facility, the term is negotiable. I do not have a problem with the term.

Sen. Robinson-Regis: This is strange.

Madam Chairman: Hon. Senators, the question is that clause 56, be amended, by: in subsection (1), deleting the word "30" and inserting the word "60". AG, do

we have an amendment in line two with “shall”?

Sen. Nicholas: Yes, we do, “shall”—[*Inaudible*]

Madam Chairman: Okay. Somebody was trying to get my attention?

Sen. Nicholas: No, I think I was trying to.

Madam Chairman: The question is that clause 56 be amended in subsection (1) by deleting the word “shall” after driver’s licence, in line two and inserting the word “may”. And in line three by deleting the word “30” and inserting the word “60”; and in subclause (2) by deleting the words “receive an application for renewal of” and inserting the words “renew on application a driver’s licence”.

Sen. Prescott SC: “Renew,”.

Madam Chairman: “May renew, on application, a driver’s licence” and deleting the word “six” in the third line and inserting the word “twelve”

Sen. Prescott SC: Did you agree to change “from” to “before”?

Madam Chairman: And in the third line deleting the word “from” and substituting the word “before”, and deleting subclause (3).

Question put and agreed.

Clause 56, as amended, ordered to stand part of the Bill.

Madam Chairman: Hon. Senators, this is a good time to suspended the current committee stage so that we may have an interval for tea. We will therefore resume at 5.15 p.m.

4.42 p.m.: *Committee suspended.*

5.15 p.m.: *Committee resumed.*

Clause 57.

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

Sen. Prescott SC: Madam Chairman, may I—

Madam Chairman: Sen. Prescott.

Sen. Prescott SC: Thank you. There is an “on the road” provision there, is it? 57(2). What is, may I ask Attorney General, “an on the road driving test” without a definition? Clause 57(2), line four. It says, you should have:

“...passed an on the road driving test in accordance with section 54...”

Sen. Nicholas: A driving test will suffice.

Madam Chairman: I think it should be a “road test”.

Sen. Dr. Balgobin: Normally that would be where a driving test would take place.

Madam Chairman: It is called a “road test”.

Sen. Al-Rawi: Perhaps you may want to use the words “a driving test as may be prescribed”, to allow for the kind of circumstance that you are thinking of. But, hon. AG, on this very clause as well, I wondered what if this person was the holder of an international driving permit for the period exceeding five years.

Madam Chairman: Or an existing permit in another jurisdiction, a valid permit.

Sen. Al-Rawi: Because they would be valid by reciprocity arrangements in another country and driving.

Sen. Nicholas: Actually it would not necessarily be so, from experience in the existing law, personal experience.

Sen. Al-Rawi: Sorry AG, would you care to elaborate so that I can understand a little better.

Sen. Nicholas: Having acquired a UK driver’s permit as a student—

Sen. Al-Rawi: Yeah.

Sen. Nicholas: When I came back here, the driving permit was not taken into consideration for the 12-month period that I was away after the expiration of the driver’s licence and I was required to redo a test.

Sen. Al-Rawi: Thank you. I appreciate that. I am looking at this circumstance if I may:

“An applicant for the issue of a new driver’s licence who is the holder of a licence that is expired for a period exceeding five years shall whether the period of expiration of the driver’s licence was spent in or outside of Trinidad and Tobago, be required to produce a certificate as having passed”—a driving test as may be prescribed—“in accordance with section 54 and shall pay...”

But, let us say we had someone who is working in Saudi Arabia, 50 years old, living there for five years, driving there for five years, did so on a Trinidad and Tobago driver’s licence, then obtained an international driving permit from Trinidad and Tobago as this Bill contemplates, and then comes back just after five years. Should he really go through an entire provision of recertification, particularly, when we have section 68 of the Bill which deals with a citizen of Trinidad and Tobago who obtains an international driver’s licence? And we keep a register for that.

I do not know what the treaties, by way of reciprocity make provision for. So in Trinidad and Tobago I would agree after five years reconfirm, but if you were out of Trinidad and Tobago and driving in another place. And I believe we also make exceptions for Caricom as well. I am not saying that there should be a blanket, eh, but some degree of discretion to the Authority that the circumstances may prevail so as to not do it over again. I see no objection in regularly requiring the testing of people for permits in any event.

Madam Chairman: They would have to do the defensive driving.

Sen. Al-Rawi: Yes, so that is why I was suggesting a driving test as may be prescribed, because there may be different types of tests for more seasoned drivers. A driver who rolls up and has been driving in a Commonwealth country for 25 years and then comes to Trinidad and Tobago, the question is, is that person in

similar circumstances to a 17-year old who has just arrived on the road for the first time? I am not quite sure. I have no problem with saying that people should obey our laws, per se, either.

Sen. Dr. Balgobin: Well, I have a question, may I? I just have a quick question on that. Thank you, Chair. In some jurisdictions, I know in the past, for example, the United Kingdom would recognize, I think it is a Barbadian driver's permit, and issue, a British one on the strength of that. Do we have any of those kinds of reciprocal arrangements with anybody, and does this legislation contemplate anything like that?

Sen. Nicholas: It must be borne in mind that Barbados is still under British rule. Their Head of State is still the Queen, and therefore they can make those laws that are pertinent to their territories, et cetera. I would like to ask Sen. Al-Rawi, if his amendment is that we insert, "as may be prescribed" after "driving test". Is that what you are proposing?

Sen. Al-Rawi: I think it may have given you the flexibility to allow for that development, yes, hon. AG.

Sen. Vieira: We are still on clause 57?

Madam Chairman: Yeah.

Sen. Vieira: I just had a suggestion, and it would read as a new subclause:

If the Authority is satisfied that the applicant continues to meet the requirements for the issue of a licence, the Authority must renew the licence.

Sen. Al-Rawi: That is interesting, why I pause as well to think about it. It puts a positive obligation, "must" being the more modern word of "shall", less ambiguous. However, I think that the—and this is just for consideration to all, I think that the Authority should always have a discretion to refuse a licence in proper circumstances. I believe that there is a section further which allows for the

provision of notice for the suspension of a licence. So I was wondering if Sen. Vieira, how he felt about that. Sen. Vieira?

Sen. Vieira: It was to avoid exactly discretion and people being perhaps treated differently and unfairly that I put the matter beyond doubt by saying once you have all the qualifications and you meet the requirements you should be given your driver's licence.

Sen. Al-Rawi: So that is where the satisfaction would include all of the other prescriptive things that one would have to—

Sen. Vieira: Yes, meet the requirements for the issue of a licence.

Sen. Al-Rawi: Come over—yes. I see. [*Crosstalk*]

Madam Chairman: Is it different from the current law?

5.30 p.m.

Sen. Nicholas: Madam Chair, the suggestion is for a new 57(3) that will read:

“Notwithstanding subsection (2), where the Authority is satisfied that an applicant satisfies the requirements of the Act for the purposes of driving a motor vehicle, the Authority shall renew the applicant's driver's licence.”

Sen. Al-Rawi: I only see one potential problem with that and that is, as again, section 58 of the Act which comes just after, where there a discretion on any first issuance or renewal, that is entirely open to discretion in the “may” formula usage. So the question is whether 57(3) is going to collide with 58.

Sen. Vieira: Senator, I do not see a conflict at all because the language used is where the Authority is already satisfied that the requirements are met. But on 58, my proposed amendment would have read a new sentence:

“The Authority must have regard to any representations made by the applicant before making its decision.”

Again, I do not think that there is a conflict, but you just want to ensure fairness.

Hon. Senator: AG, let us deal with 57.

Sen. Al-Rawi: Sure. I just wanted to flag the fact that 58 deals with this point, but I understand then that it is because you would be satisfying a position.

Sen. Vieira: And 58 says "...where the applicant fails to meet the requirements..." So there is not a contradiction.

Sen. Al-Rawi: Okay, good. Thank you so much.

Madam Chairman: Are there any other concerns? The question is that clause—

Sen. Al-Rawi: I am sorry, Madam Chair, just to ask whether a decision had been taken on the conundrum of an international driver's permit in subsection (2) or not.

Sen. Nicholas: Yes, we have suggested that "an on the road" be replaced with "a driving test as may be prescribed".

Sen. Al-Rawi: Thank you very much.

Madam Chairman: Could you say that again? You are amending (2) to read—

Sen. Nicholas: Line four that starts "required to produce a certificate as having passed", remove "an on the road" and substitute it with "a" and continue "driving test" and insert "as may be prescribed".

Madam Chairman: After "test"?

Sen. Nicholas: And remove, Madam Chairman, "in accordance with section 54".

Madam Chairman: "...as may be prescribed..."

Sen. Nicholas: "...as may be prescribed and shall pay to the Authority..."

Madam Chairman: Any other concerns?

The question is that clause 57 be amended in subsection (2) by deleting the words "an on the road" and substituting "a" and deleting the words "in accordance with section 54" and substituting the words "as may be prescribed" and inserting a new subsection (3) to read:

"Notwithstanding subsection (2), where the Authority is satisfied that an

applicant satisfies the requirement of the Act for the purposes of driving a motor vehicle, the Authority shall renew the applicant's driver's licence."

Question put and agreed to.

Clause 57, as amended, ordered to stand part of the Bill.

Clause 58.

Question proposed: That clause 58 stand part of the Bill.

Madam Chairman: Sen. Vieira.

Sen. Vieira: A couple observations and suggestions. As I said earlier, one aspect was, I think, that there should be a requirement that the Authority must have regard to representations made before making its decisions. With that, I think that there should also be some indication to the applicant as to why he did not get the driver's licence.

The third observation has to do with why do we limit it to just "may refuse to issue or renew a driver's licence"? Could you not, for example, vary the duration of the licence, or add to, or put terms, or give a conditional licence, or attach conditions to the licence? I am just wondering. Because if the Authority wanted to have those kinds of wider powers and could give a nuanced approach, this would be the place to make those amendments.

Sen. Al-Rawi: May I add to that by saying, architecturally, in terms of the Bill, section 59 then goes on to deal with suspension; 60 deals with suspension; 61 gives you the right of hearing; notice of intention to suspend. So if we come back up to 58 now: "The Authority may refuse to issue or renew a driver's licence", when we go to the subsequent clauses we get the notification in writing, 14-day period and then the ability to make representations as to whether you agree or do not.

The question is: is 58 to be construed in view of the subsequent sections? Certainly, interpretation of legislation suggests that that is the correct thing to do.

But will it also be viewed to be standing alone as it relates to renewal of a driver's licence? Because the other sections deal with suspension or revocation. So it can be argued that clause 58, Parliament in its wisdom did not intend to (a), give the right to notice or (b), the right for representations to be made by the person to be affected prior to refusal of renewal or issuance. But it does do differently in respect of suspension or revocation—totally different treatment. So the due process is not in 58. But due process for licence renewals and refusals is not there, but it is there for suspension or revocation.

Sen. Vieira: And the fact that you have the word “may” suggests that there is an element of discretion going on. So once you are exercising a judicial type of discretion, then I think all those other things kick in.

Sen. Nicholas: I am sorry, I cannot remember if it was Sen. Vieira or Sen. Al-Rawi who raised the point about reasons.

Sen. Al-Rawi: Both.

Sen. Nicholas: Besides reasons, what would you like to see?

Sen. Al-Rawi: “Notice.” Well, “notice” will be reasons. So (a), you would be provided with—well, in this case here, if you are exercising the discretion not to renew, or not to issue because you fail to meet requirements, one would need to know what you have failed to meet. That is the “notice” point. Whether one needs to go so far—well, that could be viewed to be reasons as well, which is why I say both.

The next prescription is the right to be heard on it. So, for instance, you did not pass your road test. I actually had a very real example of this. I am one of a twin. My sister and I went to write our driving test side by side, I, in a Pres. uniform, she, in a Naps. uniform. We both received the examination papers. We wrote it. I passed and they told her she failed. So we both looked at each other.

She said, “How could I fail”? And it was only because she was wearing a Naparima Girls’ uniform that they looked and said, “Well, hold on. Something looks fishy here. You do not look as if you should have failed because of the school you have come from.” It turned out that they had mismatched the answer-to-question sheet and it is only on that basis that they realized that she had, in fact, got 100 per cent in the exam.

So if there was an examination requirement, if you failed to meet something, they need to tell you, “Well, you have failed because of this”. In that instance there, she had an actual review because of pure circumstances. So (a), identification of reasons, and (b), the opportunity to be heard, lest you have to go and incur further positions. But more differently than that; more importantly than that, it is applying two different standards of due process and therefore, do we, as a Parliament, have a rationale for that?

Sen. Nicholas: Sen. Vieira, is that your similar concern?

Sen. Vieira: Yes, and more. I am trying to draft a clause for your consideration.

Sen. Nicholas: Very well. Then, Madam Chair, that being the case, could we come back to 58?

Madam Chairman: Okay, we shall revisit 58.

Clause 59.

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

Sen. Prescott SC: Madam Chair, I have a little quirk about the use of language and I want to recommend in line three of 59(1) that we should say “has failed”.

Sen. Nicholas: That is a proper use of the language.

Sen. Prescott SC: Thank you.

Madam Chairman: So what is your amendment?

Sen. Nicholas: The introduction of “has” between “licence” and “failed” in line

three of 59(1).

Madam Chairman: Any other concerns in clause 59?

The question is that clause 59 be amended in subclause (1) to insert the word “has” after “licence” in line three.

Sen. Al-Rawi: May I just ask just in terms of understanding? So suspension or revocation, discretion on the Authority to revoke or suspend, notice provided save in the instance where you voluntarily give it up, which is what section 63 refers to, what happens next? So you can then go to give your—you give your reasons, so it is the appeals committee that deals with that. So when we look to 61(4)—and permit me for just raising it insofar as it claws back into this particular clause: “A person whose driver’s licence has been suspended by the Authority under this section and section 59...”

So, I see, 59 in its entirety. Okay. So thank you. I think I have worked it out—mapped it out.

Sen. Nicholas: Fantastic.

Sen. Al-Rawi: Thank you so much for allowing me to indulge, apparently, myself.

Question put and agreed to.

Clause 59, as amended, ordered to stand part of the Bill.

5.45 p.m.

Clause 60.

Question proposed: That clause 60 stand part of the Bill.

Sen. Al-Rawi: May I ask why “shall be suspended for a period not exceeding six months”? Why six months? No, I mean, clearly there is a very good legitimate legislative aim in prescribing an administrative approach to managing the Motor Vehicles Authority as it relates to licensing, as well as a penal approach in terms of

prescription of offences. So the bifurcated system is a good one, administrative and criminal.

I was just wondering why stymie the ability of the Authority to just six months when it may be approximate for such other period?

Sen. Nicholas: As you may propose?

Sen. Al-Rawi: Well I am not sure what drove the policy for it, from where the idea came, what the draftsmen had in mind in terms of the policy prescription. So I do not know enough about it to interrogate it with any real sense. I was just wondering if perhaps the policy could be described.

Sen. Dr. Balgobin: Is it that you are saying that you are operating the points system here, and therefore, once you have hit a certain critical point you lose your licence and the determination is that you will lose it for no more six months?

Sen. Nicholas: We believe that to be a fair period.

Sen. Vieira: AG, let me see if I understand this. This is a clause put out to protect the public against a delinquent, against a driver who is really just—he does not care. He has racked up penalty points, the Authority recognizes it is not in the interest of public safety for this person to hold a driver's licence, or he is not competent to drive or to operate a motor vehicle. These are powerful words and we say he can only be suspended for up to six months? That does not make sense to me. You might want to have at least three years or even wider powers. I just find that you stack up all these penalty points and then you get a slap on the wrist.

Sen. Al-Rawi: I bear in mind that that is counterbalanced by the fact that you can revoke or that an offence can still be put against you by an appropriate officer, but I want to share Sen. Vieira's concern that insofar as there is a due process clause attached to this and you go to the Appeal Committee, and if you do not want to go to the Appeal Committee you then have judicial review of that which is albeit an

expensive and limited circumstance of appeal. That is why I am asking what drives the six-month policy?

Sen. Vieira: Better to have than to want.

Madam Chairman: Sen. Prescott.

Sen. Prescott SC: Thank you very much, Chair. Maybe, through you, Attorney General, if we look at 60(3) you get the impression that it is not that the Legislature is concerned to declare a person not competent to drive. We are already saying that you are a bad boy and you get worse as you get more points. You may be very competent to drive. So if we moved away from casting a value judgment on the person's ability to drive and simply treat with the number of defalcations that he has, some of our anxieties may disappear. Because (3) does say points would be awarded for certain kinds of behaviours, and as they mount you are getting closer to the point where we will require to suspend your licence and it really does not require a comment on the competence of the driver to operate a motor vehicle. He will not necessarily cease to be competent.

I do not think that satisfies my colleague, but I get the feeling that we are not—we need not worry about why six months either because six months may represent the maximum penalty that could be applied.

Sen. Vieira: If you are not competent to drive will you—[*Interruption*]

Sen. Prescott SC: And that is why I am saying let us stay away from that lack of competence.

Sen. Nicholas: It is not about competency to drive as Sen. Prescott quite rightly pointed out. It is a matter of accumulating points for certain—

Sen. Prescott SC: I will say defalcations. You like that word?

Sen. Nicholas: Violations.

Sen. Prescott SC: Violations.

Sen. Vieira: But it is for the purpose of establishing not in the interest of public safety for the person to hold a driver's licence.

Sen. Prescott SC: We need to move away from that.

Sen. Vieira: But that is what the Act says.

Sen. Prescott SC: No, it is our turn to say it is not that we really are after. They think you are a bad boy, you get points.

Sen. Dr. Balgobin: So we have to soften 60(1) then.

Sen. Prescott SC: 60(1) and (2). The one that speaks to competence and interest because 60(2) tells us how to treat with (1). It says:

“For the purpose of establishing...it would not...the interest of public safety”—that he drives or that he—“is not competent...”—we must do the following things.

So I say let us go back to (1) and say this is not a question of—your conduct is such that you put the public safety at risk, but what we are concerned here with is imposing penalty points for certain violations. So that he does not apply for his next job and is told, “I am sorry but you were once declared incompetent to drive. I am not satisfied that you are competent just because six months have passed”.

Sen. Nicholas: Yes. Would you suggest an amendment to—

Sen. Prescott SC: Given time. Given time. Yes, given time I might be able to come up with something, but I think you have the basic idea.

Sen. Al-Rawi: AG, could I invite some thought onto this? We the lawyers tend to dominate this sort of session because we tend to bring our backgrounds into the fore, but I am a little concerned about the consultation as to what we are doing because on the one hand I feel comfortable as somebody with some degree of experience in these matters to make submissions. But as to whether the submissions ultimately hold water from a public's point of view and how it is

accepted and how people view it, I harbour some concerns particularly because on the one hand in this examination there is merit in saying that you are not competent to drive or operate a motor vehicle.

You may subsequently become competent by way of training or by way of some other position. On the other hand, there is merit in Sen. Prescott's position in saying well look, the sanction of a six-month does not seem to balance with the prescription that you are incompetent because it is not six months and you must undergo a defensive driving test, or you must attend some form of course or remedial training. So without that, the competence factor becomes an issue. But I am concerned to know what the public's reflection, what the users' reflection on this, through various representative organizations, would be. So I am really expressing the need for caution in terms of the kind of amendments that we make. I just wanted to put it on the record, Madam Chair.

Sen. Nicholas: I would like to propose that we remove from "as a driver" in the third line:

"...as a driver establishes that it would not be in the interest of public safety for him to hold a driver's licence or that the person is not competent to drive or operate a motor vehicle" and simply insert "inconsistent with public safety".

Sen. Prescott SC: I will offer an option when you are through, I am in the place right now where I can offer you an option if you are through.

Sen. Nicholas: Yes.

Sen. Prescott SC: May I, Chairman? I will just approach it first and then we think. We will start in the middle of 60(2) reading from line three, "the Minister":

"...the Minister may prescribe by Regulations, a system of awarding penalty points against persons convicted of an offence under this Act including

offences specified in regulations made under this Act.

60(2) Regulations made under subsection (1) shall specify—

(a)—and—“(b)”.

Yes? (3) will now become (2).

Sen. Nicholas: Oh, you are suggesting that (2) becomes (1)?

Sen. Prescott SC: I have commenced 60(1) with the words “the Minister may prescribe”.

Sen. Vieira: I think architecturally, I prefer that formulation myself.

Sen. Prescott SC: In line two. Sorry, 60(2)?

Sen. Nicholas: Yes.

Sen. Prescott SC: I am commencing 60(1) from the words “the Minister may prescribe”.

Sen. Nicholas: I hear you.

Sen. Prescott SC: And I have made (3), (2); and therefore, change the reference to subclause (2) to subclause (1). Then subclause (3) will say, going back to 60(1):

“A driver’s licence issued under section 49 shall be suspended for a period not exceeding six months where the maximum number of penalty points has been imposed against a driver.”

That is your (3).

Sen. Vieira: The advantage of that is it takes away any kind of discretion being exercised, judicial requirement for fairness and all of that. You racked up the points, bam, you take the penalty.

Sen. Prescott SC: So we do not treat with public safety or competence or any of those value judgments?

Sen. Nicholas: Your amendment is well received.

Sen. Prescott SC: Well, if it has been dictated and taken down, you will be better

off because I am not going to be able to repeat it.

Sen. Al-Rawi: And then there is the question of the obligation to provide notice.

Sen. Prescott SC: Notice; (4) will remain (4).

Sen. Al-Rawi: Yes, but I was wondering about the circumstance where somebody alleged I did not provide notice. Now I do know that on the acquiring of a licence the application form must include a valid address, et cetera, and I presume that the notice is issued in accordance with the record, but I was wondering if—I am in two minds about saying this. On the one hand the burden of notification versus the due process of the notification. So the prejudicial versus the beneficial value. Perhaps my learned colleagues will help me out with that.

Sen. Nicholas: I wonder if Sen. Prescott would be able to conjure the amendment to the third clause, the new 60(3), please.

Sen. Prescott SC: The new 60(3)?

Sen. Nicholas: Yes.

Sen. Prescott SC: Yes, I could try again. I am starting with the first two lines of 60(1) as it stands now.

“A driver’s licence issued under section 49 shall be suspended for a period not exceeding six months where the maximum”—and I am now quoting—
“the maximum number of penalty points has been imposed.”

Is it “has” or “have” the maximum number?—“has been imposed.” And you may say “on a driver” if you wish.

Sen. Nicholas: Full stop?

Sen. Prescott SC: Yes. Then (4) will say as it does now:

“Where the points awarded have reached fifty per cent, he shall be suspended.”

Sorry, my thinking was not clear there because (4) says suspend him at 50 points.

Sen. Al-Rawi: (4) says, give him notice at 50 per cent before you suspend him. So you are warning him, look you have 50 per cent.

Sen. Prescott SC: Oh yes, thank you very much. So (4) does not need to be changed except to say “made under subclause (3)”.

Regulations made under (2). (2) remains, yes. The regulations are under (2).

“Where the penalty points are awarded against a person by Regulations made under subsection (2).”

Yes?

Sen. Nicholas: Well it could not be the same.

Sen. Prescott SC: Sorry, yes. The new 60(1) is the “Minister may prescribe”.

Sen. Nicholas: So it was incorrect before?

Sen. Prescott SC: I am getting a bit confused here. “The Minister may prescribe by Regulations, a system of awarding penalty points”.

6.00 p.m.

Oh yes, so it may be that (4) could refer to subclause (1). Do you think you have got all?

Sen. Nicholas: That is correct.

Sen. Prescott SC: And then (5) will similarly—we need to change the numbering to (4)?

Sen. Nicholas: That would be (2).

Sen. Prescott SC: To (2). Subclause (2) is the one that says he is suspended? No, (3).

Sen. Nicholas: Well, the old (3) becomes the new (2).

Sen. Prescott SC: “Where the driver’s licence of a person suspended by Regulations made under...” 60(2)—no. Same thing, (1). I just need a little help

here. Which one now contains the regulation-making power?

Sen. Nicholas: Well, (2) becomes (1) and (3) becomes (2).

Sen. Prescott SC: Yes, so:

“...the driver’s licence of a person suspended by Regulations made under...”

Which?

Sen. Nicholas: “made under subsection (2)”.

Sen. Prescott SC: (2), thank you.

Sen. Nicholas: And the new (2) that begins regulations, it will be:

“...Regulations made under subsection (1)”—

Clause 60(1) will read:

The Minister may prescribe by regulations a system of awarding penalty points against persons convicted of an offence under this Act including offences specified in regulations made under this Act.

(2) Regulations made under subsection (1) shall specify—

Sen. Prescott SC: May I assist you? Subclause (2) becomes—

Sen. Nicholas: Subclause (3) becomes subclause (2).

Sen. Prescott SC: Save for the one change in line one. Save that subclause (2) there becomes (1).

Sen. Nicholas: That is correct. Subclause (1) will become subclause (3) and will read:

A driver’s licence issued under section 49 shall be suspended for a period not exceeding six months where the maximum number of penalty points has been imposed on a driver.

Sen. Prescott SC: But you have been using the word “awarded”, I just thought it incongruous that it should be an award, but “awarded” is the word you have used,

not imposed.

Madam Chairman: Has been awarded.

Sen. Prescott SC: That is the word that has been used.

Sen. Nicholas: I must agree that “imposed” is a better word than “awarded”. It is not a prize. [*Laughter*] But has been awarded—

Sen. Prescott SC: Against a driver or against a person?

Sen. Nicholas: Against a person.

Sen. Vieira: You are really talking about the imposition of the points.

Sen. Nicholas: “Imposed” would have been the better language but—

Sen. Prescott SC: Not too late.

Madam Chairman: What is the word?

Sen. Nicholas: We will go with “imposed”, please.

Sen. Prescott SC: In the entire clause?

Sen. Nicholas: Yes. Where there is “awarded”, it would be “imposed” throughout. So just to reread this, in the second line starting:

...period not exceeding six months where the maximum number of penalty points has been imposed on a person.

Sen. Prescott SC: “Against a person” are the words you have been using.

Madam Chairman: Against a person.

Sen. Prescott SC: Now, it should really be instead of “awarded against”, “imposed on”, or do you mind against?

Sen. Nicholas: Well “imposed” would be on, “awarded” against.

Sen. Prescott SC: So where you have said “awarded against”, we mean “imposed on”.

Sen. Nicholas: What we mean is “imposed on”.

Sen. Vieira: I still find six months too short. I think it is better to have than to

want.

Mr. Cadiz: Senator, can I just say that the six months, I mean, when you think of it, you might be a chronic speeder but not excessive speed, okay? So if the speed limit is 50 miles an hour, “they always catch you doing 56 miles an hour”. But because of the way the point system is that you will rack up these points. So you are not that much of a danger to society, all right, but you need to be taught that there is a speed limit and you must keep within the speed limit.

Sen. Vieira: Minister, I am a chronic speeder.

Mr. Cadiz: Well, you will be the first one to get these—

Sen. Vieira: To knock wood, but what I am saying is the way you have it is not exceeding. So once you have not exceeded, it does not mean—you are not saying once you rack up the points, you will get six months, you know. This clause suggests that there is a discretion. It could be one month, two months, as much as six.

Sen. Nicholas: For the penalties involved here, Government believes that six months should be the maximum.

Sen. Vieira: Then say six months.

Sen. Nicholas: Not exceeding. It said the maximum.

Sen. Vieira: Yeah, but I read that as imposing a discretion. And what I am hearing the Minister saying is that you will get six months.

Mr. Cadiz: I mean, there are other serious charges where you go before the court and the court can pull your licence for good, eh, you will never drive a car again. So there is that other side of it. I mean, many people who drive, for instance, depend on their car for their livelihood et cetera, et cetera. So it is felt that in this first instance, really and truly, under the point system, that there is—yes, they could give you one month, they could give you six months.

Sen. Nicholas: It is a discretion.

Sen. Prescott SC: This reminds me—thank you, Minister; thank you, Chair. We are maintaining the court's jurisdiction to suspend or even to revoke a driver's licence. So should 60(1) say that notwithstanding any law to the—well, any existing law?

Sen. Nicholas: This deals specifically with points and I suspect—

Sen. Prescott SC: The new 60(3) says that:

A driving licence issued under section 49 shall be suspended for a period not exceeding six months if points...

Okay, thanks. Yeah, I think we could—

Sen. Nicholas: Yeah.

Sen. Al-Rawi: But hold on, just explore that a little bit further, Sen. Prescott. Can someone who is hatching an argument come forward and say, “Well, hold on, on a point's basis alone, I disagree with an officer having brought me before the court, because there was an alternate route suggested in the legislation that I must be dealt with by awarding of penalty points. You do not really have the discretion to now suspend me.” Telling the court that. So, to put it crudely, could an ouster argument be raised, a tiered approach?

Sen. Prescott SC: Just look at (6) first, which might bolster your approach.

Sen. Nicholas: It is for specific offences that prescribe for the points, it is not every offence. So as pointed out, for instance, drunk driving, you go before the court.

Sen. Prescott SC: And driving without permit you get your licence suspended.

Sen. Vieira: I am just looking at the Interpretation Act. Under “Penalties”, section 68:

“(1) Where a punishment is provided by a written law for an offence

against the written law, the provision indicates that the offence is punishable by a punishment not exceeding that provided.

- (2) Where in any Act or statutory instrument provision is made for any minimum penalty or fine, or for any fixed penalty or fine, as punishment for a criminal offence, such Act or statutory instrument shall have effect as though no such minimum penalty or fine had been provided, or as though the fixed penalty or fine was the maximum penalty or fine, as the case may be.”

So I just want to put that in the context here. No, I understand what Minister says. Fixed penalty systems are a very useful and convenient way of relieving pressures from off the courts, but you really want to put it in such a way that, okay, you choke up X, this is the consequence and do not bring in too much room to “ramajay” I would say. Keep it straightforward.

Sen. Al-Rawi: So the question is: notwithstanding the language in subclause (6), whether more is needed to say without prejudice to the court’s power?

Sen. Prescott SC: Before we commit to that, let us look at clauses 242, et cetera, which deal with the magistrate’s power.

Sen. Al-Rawi: Page 134?

Sen. Prescott SC: No, pardon me. Clause 242 on page 134:

“The Court before which a person is convicted of any offence in connection with the driving of a vehicle may, in addition to any other penalty provided...”

So presumably, the court must look to the penalty points issue when he is making a determination.

“...order that the offender be disqualified...”

It seems as though it was intended that a magistrate would be minded to look at the

points racked before determining the extent of any disqualification or—whether he should disqualify or suspend and for what period. Was that the thinking?

Sen. Al-Rawi: It appears to be so.

Sen. Vieira: It is based on the Authority doing one thing and the magistrate doing another.

Sen. Al-Rawi: Yeah, one is an administrative and then one is a judicial.

Sen. Vieira: So if you are doing the administrative, you have got to keep it simple as an administrative act and not to plant the judicial—

Sen. Al-Rawi: Discretion. Hence the claw back to that question as to whether an ouster argument could be made albeit on a limited basis. And then when (6) comes up into Clause 60(6):

“Where a person is disqualified by an order of a Court from holding or obtaining a driver’s licence any points awarded against that person shall thereupon be cancelled.”

Do you always want to cancel the points, is the question?

Mr. Cadiz: Well, again and it is depending on why you awarded the points, okay, that once it was—you can then go into a second cycle , for instance.

Sen. Al-Rawi: So the policy is that you did not want a double jeopardy. There is a clean slate approach to this, as advocated here.

Mr. Cadiz: No, if your licence was suspended for say the six months, those points are not going to stay on your—

Sen. Nicholas: You start over.

Mr. Cadiz: You start over; you start from scratch, again.

Sen. Al-Rawi: Sorry, I understood it, hon. Minister, that it is only where a court disqualified you; not where you were suspended on the administrative authority basis. They still stay. It is only in subclause (6) that:

“Where a person is disqualified by an order of a Court from holding...”

Then, tabula rasa.

Sen. Prescott SC: That is a good point.

Sen. Al-Rawi: So is it that you intended the other approach as well? [*Crosstalk*]

Madam Chairman: Hon. Senators, at this point, we will suspend the committee stage—[*Discussion with Clerk*] Sen. Singh.

Sen. G. Singh: Madam Chairman, perhaps we should suspend the committee stage for the purposes of the procedural Motion.

6.15 p.m.

Senate resumed.

PROCEDURAL MOTION

The Minister of the Environment and Water Resources (Sen. The Hon. Ganga Singh): Thank you, Madam President. In accordance with Standing Order 9(8), I beg to move that the Senate continues to sit until later in the proceedings when we take the adjournment, subject to the grace of the Chair.

Question put and agreed to.

Madam Chairman: We will now resume committee stage.

MOTOR VEHICLES AND ROAD TRAFFIC BILL, 2014

Committee stage resumed.

Madam Chairman: Continuing with clause 60, Attorney General.

Sen. Nicholas: With regard to the concern about the points, that is dealt with in 61(6), Senators. Clause 61(6) deals with the issue of the clearing of the slate.

Sen. Al-Rawi: Only by court order though.

“Where a person is disqualified by an order of a Court...”

Sen. Nicholas: No, clause 61(6).

“At the expiration of a period of suspension, the Authority shall forthwith

return the driver's licence to the holder thereof and the points awarded against him shall be cancelled.”

Sen. Al-Rawi: I see.

Sen. Nicholas: Yeah?

Sen. Al-Rawi: Thank you.

Sen. Nicholas: We can proceed, Madam Chair.

Sen. Vieira: Thank you, Chair. I suppose that clause 61(4) is a mopping-up clause. I was just looking at the Wilkinson's and what happened in England when they were doing their fixed points. I read here—because you are dealing with the taking-away of rights—a guy will no longer have the right to drive his car and perhaps earn his living or whatever.

It is inevitable that from time to time miscalculations of points would be made and fixed penalty notices will be issued when they should not have been. So, in such circumstances, all is not necessarily lost for the prosecution, provided that the fixed penalty clerk spots the mistake.

What I am saying here, there was provision to rectify mistakes because when you read it they talk about you may send it to the wrong address, you may have the wrong name, a person may have a penalty point award against them that ought not to have been imposed. Here, what it means is after the sanction has been imposed you have a right of appeal. I am just wondering whether we should build into the system something for rectification and challenge. Because it is the Authority acting here. It is not before a judge where you are going to go to court and make submissions.

Sen. Al-Rawi: Or where there is a liberty to apply.

Sen. Nicholas: Yes, well you have 14 days to appeal in clause 61(4). Is that what you are—

Sen. Vieira: No but that is where your licence has been suspended. Suppose then, in racking up the points, okay I admit I may have been speeding a couple times or parked incorrectly another time, but some of those points I do not deserve. They are improperly imposed on me. Could I have an opportunity to go to the Authority and say: “listen these points are racking up, but I do not think that this is fair. I want to challenge X and Y. I would like an opportunity to rectify.”

Sen. Nicholas: Clause 61(1) deals with that.

Sen. Al-Rawi: Before suspension.

Sen. Vieira: Again, the points have been racked up.

Sen. Nicholas: Yes, but it deals with it. So that you are given notice. You can come in and say: “Well I do not like this, I do not like that, I do not think this is fair” and it can be dealt with at that point.

Sen. Al-Rawi: I guess Sen. Vieira is raising the—these are markers where an event is going to happen. So we have one marker where you have racked up 50 per cent of your points and you get a notice from the Authority. Is it envisaged that the rules, perhaps, or regulations may set out in, for instance, how the Appeal Committee operates? Will there be a procedure which allows you the right of audience in the event that you wish to challenge something per se, anything? Look, I have been told I have 50 per cent points. The first thing that comes to my mind, “my name Andy Samaroo is not the same Andy Samaroo you are looking for. These 50 per cent points are not mine”. Would there be a right of audience to challenge anything other than when you have just reached to suspension or not? You find out that something is improperly recorded against you, because you happen to have a similar name as someone else; as we do in searching judgments and lis pendens when we are doing conveyancing or mortgaging transactions we come across people with similar names. So does the locus need to be anchored in

the legislation as it is here?

Sen. Vieira: I would give you an example.

Sen. Nicholas: Let me just consult, because I am prepared to say yes but I just want to ensure.

Sen. Al-Rawi: Sure

Sen. Vieira: I would just tell you about something I once read about in Florida. Some high school students got revenge on a teacher that they did not particularly like. Over there, what they have is as you break red lights, traffic lights, the camera snaps the license plates. So what they did is they got into a car and they created the teacher's license plate and posted it on and they broke every traffic light in the town. So my boy got served with "one set of" penalty offences. Now, in such a situation what is your position?

Sen. Nicholas: The answer is, indeed, yes.

Sen. Al-Rawi: So you do have the right at any point in time to knock on the door and challenge at the Appeal Committee stage?

Sen. Nicholas: You can challenge. You can appeal any decision of the Authority through the appeal stage.

Sen. Al-Rawi: So as a point is awarded, full stop, you can check it?

Sen. Nicholas: You can appeal any decision of the Authority.

Sen. Al-Rawi: So, insofar as we have a positive obligation on the Authority to tell you when you are at 50 per cent, to tell you prior to suspension, prior to revocation, we have reserved now and will come back to, if I refuse to renew or issue you with a licence. In those circumstances, you are saying that—well are we saying that there ought to be, therefore, a notification each time you are given a penalty point?

Sen. Nicholas: No.

Mr. Cadiz: Every time you are given a penalty point is because there has been

some violation but you are going to receive a fixed penalty as you go along. So every time you get a fixed penalty you know that you are going to be racking up points?

Sen. Al-Rawi: So the answer is yes? So you will have notice by some mechanism?

Mr. Cadiz: Yes. I mean if you got a fixed penalty, for instance, in the mail and you decided to contest it—*[Interruption]*

Sen. Prescott SC: A fixed penalty is a thing, a hard document, a piece of something?

Sen. Nicholas: A fixed penalty notice.

Sen. Prescott SC: It is a notice?

Mr. Cadiz: Yes.

Sen. Prescott SC: Does it say that?

Sen. Al-Rawi: We are talking about a penalty point, notice of a penalty point being acquired.

Sen. Prescott SC: Yes. That is what is meant by a fixed penalty? Something comes to you so you can challenge it? Can we hear that again?

Mr. Cadiz: With the fixed penalty system you will be notified because there is a fine to the fixed penalty and therefore it is envisaged that you will receive in the mail the fixed penalty as what we know is a ticket that you would have to pay and it will also tell you, based on that fixed penalty, how many points would have accrued based on that fixed penalty.

So anybody who is mindful of their driving habits and mindful of what the law says and they know when they reach a certain amount of points that you have to be very, very careful about what you are doing.

Sen. Nicholas: Of course, the further notice comes in just in case you are not

keeping count.

Sen. Vieira: I am just imagining that the teacher I described earlier is in Trinidad. He makes the appeal to the Appeal Committee, the Appeal Committee says: “yes, we accept your evidence” am I to assume that within this Bill, there is power within the Authority to rectify errors and mistakes in the recording system to say well we quashed this and we changed the allegation? So you have a clean slate?

Because I looked for it under “registration and certification of vehicles” and my note to myself was the need of power to rectify errors and mistakes.

Sen. Cudjoe: Minister, through you Chair, I have a little concern, this point system and the notification and the mailing of the notification. It is my first time hearing it. I have not seen it in the legislation. So it is not covered in the legislation. I do not understand where it came in because it is my first time hearing of it and I have read the legislation. Would this be covered in the regulations or something like that?

Mr. Cadiz: That is the fixed penalty.

Sen. Cudjoe: And the notification system that he just spoke about.

Sen. Al-Rawi: Hon. AG.

Sen. Nicholas: I did not hear the question.

Sen. Cudjoe: The question of notification and the points system and as to how and when somebody would be notified, the question that Sen. Prescott would have just asked. The Minister’s response was that the notification would be mailed so that you would know what your situation is. Yeah? I had not seen that in the legislation. Where in the legislation speaks to this, or is this something that is newly introduced that is going to be stated in the regulation? Because the legislation does not say so. So, are we following this new rule? Are we adhering to this new position because the Minister just said so, or is it going to be placed in

the legislation?

Sen. Nicholas: It would be in the regulations. The Minister did not just say so.

Sen. Al-Rawi: Hon. AG, may I ask a question?

Sen. Vieira: Chair, through you, I am asking the AG. Hon. AG we have 272 clauses in this Bill.

Sen. Al-Rawi: Same question I was going to ask.

Sen. Vieira: We are at number 60. That means we have 212 clauses to go by my calculation. We have been, this is, I think, the second or third day we have been at it. We would be here for a very long time. And this is important legislation that is going to affect everybody in Trinidad and Tobago. It is going to be before the courts all the time. I really wonder whether it might not be more expedient and better lawmaking for this to go to a joint select committee.

Sen. Al-Rawi: May I also concur? I was literally about to say exactly the same thing and I would say it this way as well, hon. AG. If I could ask the Leader of Government Business as well for his perspective on this. I am very concerned, leader, most respectfully.

As you can tell we all value doing our work assiduously in this Senate. I think that we are equal in that purpose and certainly I have great regard for the kind of attention that we are paying on all sides, all Benches. I am concerned, for instance, that tomorrow we have the insurance legislation. That is a very significant amount of work yet to done on our Bench in preparation for tomorrow and that is as important as this legislation is. Both are going to be very significant pieces of law.

I am very concerned that we have the benefit of careful consideration and I wish to commend all parties involved, all Benches, for pouring in effort but I am very concerned that, perhaps, the method by which we are going through the

amendments is not apposite to efficiency and I wonder whether there would be some consideration for getting this thing right, in terms of the kind of interactions.

A committee would, for instance, allow for an open interrogation and sharing of ideas from some of your team in a little across-the-floor exchange, et cetera, not putting anything, of course, past the competence of all parties who are present. But I am concerned that we are not making—I am getting very anxious about the extent of other work to be done as well, including work for tomorrow, Leader of Government Business. Plus, you would recall that today was put, some of us have been in court all day as well and are in court tomorrow as well.

6.30 p.m.

Sen. Cudjoe: May I, through you, Chairman, because the reason why I raised this, I am not too much concerned about the time, as I am troubled about what seems to be like we are the making legislation or regulations off-the-cuff, just on the floor, because I am hearing some new things, especially as it relates to this notification and points that I had not hear before, and it is only now the AG is saying, well, this would be placed in the regulations. I am concerned about that. It seems like we are making legislation off-the-cuff. As I stated before, in my contribution, and I am becoming more and more troubled as we go along, that some more thought needs to be placed into what is happening. So that is the reason I raised the issue.

Sen. Prescott SC: Chair, May I? I have some anxieties also. If I could, through you? Hon. AG, if we could look at clause 60 again, to exemplify what I think I am hearing from my colleagues. In the new 60(1), we had said:

The Minister by prescribe by regulations a system by of awarding penalty points against persons convicted of an offence under this Act, including offences specified in regulations.

I am beginning to hear that points are going to be awarded where there is no

conviction. So that, for example, parking in the wrong place—and I am just using an example that may have no sense at all—could get you a point, but you do not have to appear before a court and be convicted to get points.

So when we speak of sending to—mailing to a person his fixed penalty points, it would not be in relation to an offence that he has been convicted off? It would be his mere appearance in a place where he ought not to have been.

Secondly, and this adds to the anxiety, in our new regulation, in our new clause 2, subclause (2) we may have unwittingly continued to use this clause before it may be established, that it would not be in the interest of public safety for that person to hold a driver's licence, or the person is not competent, because I do not recall us deleting it, which was what we had intended when we started making changes. I am merely saying as we are doing it as people say off-the-cuff or on the fly, things are not getting the kind of careful attention that ought to be given. That clause 62 alterations, unless I missed it, did not elide—

Madam Chairman: I have it.

Sen. Prescott SC: Did we?

Madam Chairman: I have it deleted here.

Sen. Prescott SC: I see. Well, I am sorry, but I do wish to join—I am beginning to become anxious about the why we are doing this.

Sen. G. Singh: I think that Members are—we all had very tiring sessions over the weekend. We have been at this Bill for quite a while. There has been a furrow. We may have been engaged in engaged in other activities, but I certainly—I saw some athleticism by other parties.

I think that—and we have a Senate session tomorrow. We will, in fact, be meeting twice for the week until the Parliament is dissolved. So I understand the necessity for significant work, but I think also that Members are fairly tired, having

regard to the time we have been at this, and that there is need for the technical staff to look at the recommendations that have been made, and to really go with some measure of granularity, deal with some measure of granularity.

So I think this is a timely period, Madam Chairman, in which we can report that some progress has been made, and we seek to adjourn the House until tomorrow. Tomorrow as agreed is Private Members' Day starting—and we had agreed that we will start early, and upon completion, then go to the Insurance, which was the subject of a select committee.

Sen. Prescott SC: Tomorrow—? You said that there would be two days per week.

Sen. G. Singh: Yeah, tomorrow is the second day.

Sen. Prescott SC: Private Members' Day is regarded as a second day?

Sen. G. Singh: Yeah.

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

Sen. G. Singh: Sure.

Sen. Robinson-Regis: Thank you. I heard you say that it would give time for the technical staff to go through with sometime granularity, based on some of the issues that have been raised, but it appears to me as though we are going through this Bill clause by clause, as we are supposed to do, but on each occasion we are coming up with new issues that need to be amended or new problems or new challenges. So on each occasion it would seem they have to go back and go through with granularity. I mean, I do not know if it might serve us in good stead to do it a little differently, because we have over 200 clauses still to be completed.

Sen. G. Singh: Yeah, well, in this case we will give them some time. There will be sufficient time for that.

Sen. Nicholas: What would be deemed sufficient?

Sen. Robinson-Regis: No, I am just saying that when we broke on the last occasion, we made a similar suggestion, and that was based on things that had been said, and as we go to each clause other issues come up. So I do not know if this is the most productive way of doing it.

Sen. G. Singh: I think that we will make certain recommendations, but I think that at this stage, we will want to adjourn today's proceedings.

Sen. Prescott SC: May I have one further?

Sen. G. Singh: Sure.

Sen. Prescott SC: Is there any likelihood that we can be provided with a track change document by the time—

Sen. G. Singh: The what?

Sen. Prescott SC: A track change by the time we next come back here—of the changes that have been made so far?

Sen. G. Singh: Yeah, I am certain the CPC department can do that.

Sen. Prescott SC: I will be grateful. We know that they are working hard, but it will help us.

Sen. G. Singh: Yes, sure. I will give an undertaking that that is so.

Mr. Cadiz: Madam Chair, in accordance with Standing Order 53(12), I move that progress be reported.

Question put and agreed to: That the progress on the Bill be reported to the Senate.

Senate resumed.

The Minister of Transport (Hon. Stephen Cadiz): Madam President, I wish to report that some progress has been made, and seek leave to sit again at a future date.

Question put and agreed to.

ADJOURNMENT

The Minister of the Environment and Water Resources (Sen. The Hon. Ganga Singh): Madam President, as I indicated, this Senate do—request that the Senate be adjourned to tomorrow, May 26th—the tributes they indicated, and not everybody was aware of the untimely passing, so tomorrow we will do the tributes—Tuesday, May 26, at 10.30 a.m. when we will continue the private Members Motion of Dr. Wheeler, and bring that to an end, and then subsequently, we will start the Insurance Bill.

Question put and agreed to.

Senate adjourned accordingly.

Adjourned at 6.40p.m.