

SENATE

Tuesday, March 07, 2017

The Senate met at 10.30 a.m.

PRAYERS

[MADAM PRESIDENT *in the Chair*]



LEAVE OF ABSENCE

Madam President: Hon. Senators, I have granted leave of absence to Sen. The Hon. Paula Gopee-Scoon who is out of the country and to Sen. Khadijah Ameen who is ill.

SENATORS' APPOINTMENT

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

“THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

APPOINTMENT OF A TEMPORARY SENATOR

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

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

TO: MR. AUGUSTUS THOMAS

WHEREAS Senator PAULA GOPEE-SCOON is incapable of performing her duties as a Senator by reason of her absence from Trinidad and Tobago:

NOW, THEREFORE, I, ANTHONY THOMAS AQUINAS CARMONA, President as aforesaid, in exercise of the power vested in me by section 44(1)(a) and section 44(4)(a) of the Constitution of the Republic of Trinidad and Tobago, acting in accordance with the advice of the Prime Minister, do hereby appoint you, AUGUSTUS THOMAS, to be temporarily a member of the Senate, with effect from 7th March, 2017 and continuing during the absence from Trinidad and Tobago of the said Senator Paula Gopee-Scoon.

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 6th day of March, 2017.”

“THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

APPOINTMENT OF A TEMPORARY SENATOR

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

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

TO: MS. RACQUEL GHANY

UNREVISED

WHEREAS Senator KHADIJAH AMEEN is incapable of performing her duties as a Senator by reason of her illness:

NOW, THEREFORE, I, ANTHONY THOMAS AQUINAS CARMONA, President as aforesaid, in exercise of the power vested in me by section 44(1)(b) and section 44(4)(b) of the Constitution of the Republic of Trinidad and Tobago, acting in accordance with the advice of the Leader of the Opposition, do hereby appoint you, RACQUEL GHANY, to be temporarily a member of the Senate, with effect from 7th March, 2017 and continuing during the absence of Senator Khadijah Ameen by reason of her illness.

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 6th day of March, 2017."

OATH OF ALLEGIANCE

Senators Augustus Thomas and Racquel Ghany took and subscribed the Oath of Allegiance as required by law.

THE TAX INFORMATION EXCHANGE AGREEMENTS (UNITED STATES OF AMERICA) BILL, 2016

Bill to repeal the Tax Information Exchange Agreements Act and replace it with a new Tax Information Exchange Agreements (United States of America) Act which would make provision for the implementation of agreements between Trinidad and Tobago and the United States of America providing for the exchange of information for the purposes of taxation, the validation of the sharing of personal information held by the Board of Inland Revenue or financial institutions and for related purposes, brought from the House of Representatives [*The Minister*

of Finance]; read the first time.

Motion made: That the next stage be taken later in the proceedings. [*Hon. C. Imbert*]

Sen. Mark: Madam President, we have no objection in proceeding. But I just want to bring to the attention of your good self that the documents that we had to study, very voluminous, and I must admit that a number of our colleagues, admittedly, received these via email. And it is only this morning that we were able to get hard copies and I want to tell you that a number of us have been placed at a severe disadvantage. Whilst we are agreeing in this round to facilitate Standing Order 62(1)(b), I want to make it very clear that we need four clear days' notice in the future so that we can study these things properly.

Question put and agreed to.

PAPERS LAID

1. Value Added Tax (Amendment to Schedule 2) Order, 2017. [*The Minister of Finance and Acting Minister of Energy and Energy Industries (Hon. Colm Imbert)*]
2. Annual Report of First Citizens Bank Limited for the financial year ended September 30, 2016. [*Hon. C. Imbert*]
3. Annual Report of First Citizens Investment Services Limited and its Subsidiaries for the financial year ended September 30, 2016. [*Hon. C. Imbert*]
4. Report of the Auditor General of the Republic of Trinidad and Tobago on the Financial Statements of the Mayaro Civic Centre for the year ended September 30, 2011. [*Hon. C. Imbert*]

5. Report of the Auditor General of the Republic of Trinidad and Tobago on the Financial Statements of the Mayaro Civic Centre for the year ended September 30, 2012. [*Hon. C. Imbert*]
6. Second Report of the Auditor General of the Republic of Trinidad and Tobago on the Financial Statements of the Accreditation Council of Trinidad and Tobago for the year ended September 30, 2008. [*Hon. C. Imbert*]
7. Second Report of the Auditor General of the Republic of Trinidad and Tobago on the Financial Statements of the Accreditation Council of Trinidad and Tobago for the year ended September 30, 2009. [*Hon. C. Imbert*]
8. Report of the Auditor General of the Republic of Trinidad and Tobago on the Financial Statements of the National Library and Information System Authority for the year ended September 30, 2010. [*Hon. C. Imbert*]
9. Audited Financial Statements of National Infrastructure Development Company Limited for the financial year ended September 30, 2014. [*Hon. C. Imbert*]
10. Audited Financial Statements of National Infrastructure Development Company Limited for the financial year ended September 30, 2015. [*Hon. C. Imbert*]
11. Report of the Central Bank of Trinidad and Tobago (CBTT) on Insurance and Pensions for the year ended December 31, 2014. [*Hon. C. Imbert*]
12. Report on the Operations of the National Insurance Board of Trinidad and Tobago and the Audited Financials of the Board for the financial year ended June 30, 2016. [*Hon. C. Imbert*]
13. Annual Report and Audited Financial Statements of the Trinidad and Tobago Heritage and Stabilisation Fund for the year ended September 30, 2016. [*Hon. C. Imbert*]

14. Annual Report and Consolidated Financial Statement of Accounts of the Central Bank of Trinidad and Tobago (CBTT) for the year ended September 30, 2016. [*Hon. C. Imbert*]
15. Annual Report of the Police Service Commission for the year 2014. [*The Vice-President (Sen. Nigel De Freitas)*]
16. Response of the Tobago House of Assembly to the Second Report of the Joint Select Committee on Local Authorities, Statutory Authorities and Service Commissions (Including the THA), into certain aspects of the Tobago House of Assembly. [*Sen. N. De Freitas*]
17. Annual Administrative Report of the Accreditation Council of Trinidad and Tobago for the period October 01, 2014 to September 30, 2015. [*The Minister of Agriculture, Land and Fisheries (Sen. The Hon. Clarence Rambharat)*]
18. Ministerial Response of the Ministry of Education to the First Report of the Public Accounts (Enterprises) Committee on the Examination of the Audited Financial Statements of State Enterprises (NSDSL, eTeck, NFM, NQCL, GHRS, NIDCO and TTMF). [*Sen. The Hon. C. Rambharat*]
19. Annual Report of the Trinidad and Tobago Civil Aviation Authority for the financial year ended September 30, 2016. [*Sen. The Hon. C. Rambharat*]
20. Annual Report on the Administration of the Dangerous Drugs Act, Chap. 11:25 for the years 2015 and 2016. [*Sen. The Hon. C. Rambharat*]

JOINT SELECT COMMITTEE REPORT

Tax Information Exchange Agreements Bill, 2016

(Presentation)

Sen. W. Michael Coppin: Madam President, I have the honour to present the following report as listed on the Order Paper in my name:

UNREVISED

Report of the Joint Select Committee appointed to consider and report on the Tax Information Exchange Agreements Bill, 2016.

URGENT QUESTIONS

The Minister of Agriculture, Land and Fisheries (Sen. The Hon. Clarence Rambharat): Madam President, the Minister of National Security is here to answer the two Urgent Questions directed to him, and I am asking for a deferral of the two questions directed to the Minister of Education for later in the sitting. Thank you.

Madam President: Sen. Richards, we will defer the questions to the Minister of Education until later in the proceedings. Sen. Mark.

Leaked Police Report (Systems to Safeguard Victims)

Sen. Wade Mark: Thank you very much, Madam President. To the Minister of National Security: In light of the leaked Police Report regarding a rape victim in Tobago, what systems do the Police have in place to safeguard the rights of victims of sexual offences?

The Minister of National Security (Hon. Maj. Gen. Edmund Dillon): Thank you, Madam President. Madam President, this situation is being investigated at this moment by a senior officer in the Tobago Division, Assistant Superintendent Joanne Archie. The police operates in a degree of professionalism and a degree of discipline in accordance with police regulations and based on the investigation, anyone found culpable will be dealt with by the Police Commissioner with respect to any breach of confidentiality. The systems that are put in place is really one based on professionalism and training with respect to confidential in breach and

based on any investigation the Commissioner of Police will take the necessary action.

Sen. Mark: Madam President, in light of the gravity of this development, would the Minister not agree that once an investigation has been launched and completed it would be, in the interest of the public, to have that said report released for public consumption? Would the Minister therefore agree that upon the completion of the investigation into this matter that the report be made public in light of the gravity of the situation?

Hon. Maj. Gen. E. Dillon: Madam President, on the outcome of that report, the necessary action will be taken.

Sen. Ramdeen: Minister of National Security. What steps, if any, have been taken to provide any form of counselling to the victim in this particular matter, having regard not only to the offence that has been committed against her, but also with regard to the incident being the subject matter of the question.

Hon. Maj. Gen. E. Dillon: Madam President, I do not have that information as to what steps have been taken at this point in time. However, I can get that information and provide it accordingly.

Sick-Out Action by Police Officers

(Measures to Address Situation)

Sen. Wade Mark: Thank you very much, Madam President. To the hon. Minister of National Security: In light of recent reports that Police Officers of the IATF, which is the Inter Agency Task Force, have embarked on sick-out action over changes to their working conditions, can the Minister inform the Senate what measures are being taken to address this situation?

The Minister of National Security (Hon. Maj. Gen. Edmund Dillon): Thank you, Madam President. Madam President, the very article that Sen. Mark refers to,

apparently he only extracted the first part of the article that speaks to IATF sick-out. In the very same article, if you would permit me:

“However, *Newsday* spoke with a senior member of the IATF yesterday who dismissed”—the report that there was a sick-out.

In fact, my information is that there was no sick-out whatsoever. In the norm, during the Carnival period there may be some people who have reported sick but there was no sick-out per se in the IATF. So therefore, I do not understand the question from Sen. Mark.

Sen. Mark: Is the Minister aware that the President of the Social and Welfare Association of the Police Service has, in fact, confirmed that there is, in fact, some action being taken by the members of his Association.

Hon. Maj. Gen. E. Dillon: Madam President, I am aware of the statement that was made in the *Newsday* of today with respect to this President of the Social and Welfare Association. However, I am in contact with the Commissioner of Police and senior officers of the division and as far as my information is that there was no sick-out in the IATF.

ORAL ANSWERS TO QUESTIONS

The Minister of Agriculture, Land and Fisheries (Sen. The Hon. Clarence Rambharat): Madam President, we intend to answer all the questions on notice at this time, the exception of Question No. 19, which I am asking for a deferral to later in the proceedings.

Ultra-Low Sulphur Diesel Plant at Petrotrin

(Details of)

22. Sen. Wade Mark asked the hon. Minister of Energy and Energy Industries:
Could the Minister inform the Senate of the following:-

- (a) The name of the Company that has been retained by Petrotrin to be project manager of the Ultra-Low Sulphur Diesel Plant?
- (b) The date that Company was retained?
- (c) The process by which the Company was procured?
- (d) The value of the contract awarded to the Company?

The Minister of Finance and Acting Minister of Energy and Energy Industries (Hon. Colm Imbert): Thank you, Madam President. I am just checking to make sure that I have the correct question. Right. The answer to part (a) is, Petrotrin has retained SNC-Lavalin as project manager for the project.

The answer to part (b), SNC-Lavalin was retained in 2009. Answer to part (c), the company was procured through a two-stage competitive bidding process comprising of prequalification, first stage, followed by a second stage in which bids were invited from the prequalified companies. Answer to part (d), the original award value of the contract when SNC-Lavalin was retained on July 29, 2009 was for the sum of US \$9,390,807. The value of the contract with variations up to April 30, 2016, was US \$ 23,019,617.65.

Sen. Mark: Madam President, can I ask the hon. Minister whether there are any moves that he is aware of to have this particular company replaced?

Hon. C. Imbert: Madam President, Sen. Mark will know that I was the one who raised the complaint about SNC-Lavalin in and around 2012/2013, because they were banned by the World Bank at that time from participating in the World Bank funded projects, because of corruption matters. I am grateful to the Senator for the question. It did raise my eyebrows and I am looking into the matter to get further and better particulars with respect to why Petrotrin is continuing its relationship with this company.

Sen. Mark: Madam President, again, through you to the hon. Minister. Could the hon. Minister indicate to us, what is the period of duration of the said contract? If I did not hear you properly, if you could just repeat it for me, the period of the contract?

Hon. C. Imbert: Madam President, that was not part of the question. The question simply asked for the name, the date it was retained, the process and the value. There is no period in this response, because you did not ask for that. But what I would say is that they were retained in 2009 and there is still a relationship between Petrotrin and the company.

Sen. Mark: Madam President, in light of the fact that this is almost about eight years now this company has been in Trinidad and Tobago and having regard to the position adopted earlier in another incarnation by the hon. Minister, would the Minister not agree with me that it is an extremely long period of time to have this company in Trinidad and Tobago having regard to the serious charges that were brought against that said company by the World Bank?

Hon. C. Imbert: Well, I do not know why Sen. Mark is asking why his Government kept this company on after I raised the corruption matter in 2012. But with respect to this Government, I have given an undertaking that I will get better and further particulars from Petrotrin as to why they are maintaining a relationship with this company. I cannot explain why the UNC Government for five years and three months maintained a relationship with SNC-Lavalin.

**National Gas Company
(BGTT's Natural Gas Sales to)**

25. Sen. Wade Mark asked the hon. Minister of Energy and Energy Industries:
What is the percentage of BGTT's total natural gas sales made to the National Gas Company of Trinidad and Tobago?

The Minister of Finance and Acting Minister of Energy and Energy Industries

(Hon. Colm Imbert): Thank you, Madam President. The answer to Question 25. The percentage of BGTT's total natural gas sales, now Shell's total natural gas sales made to the National Gas Company of Trinidad and Tobago for the period January 1, 2016 to December 31, 2016, is 22.8 per cent.

Sen. Mark: Madam President, I was wondering if the hon. Minister would be kind enough to let us know, what is this company contractually committed to supply to NGC? Is the Minister in a position to let us know what that percentage amounts to and what is the total supply that it is supposed to meet in its obligation to the NGC, that is BGTT?

Hon. C. Imbert: Madam President, Sen. Mark is too experienced to be asking trick questions. If you want to know these things put them in writing and I would answer them. I am most happy to answer that question if it had formed part of this question. [*Crosstalk*] I did not walk with an encyclopedia of information to answer strange Supplemental Questions.

Sen. Mark: May I just ask another strange one to the hon. Minister. Madam President, I want to ask the hon. Minister whether he is aware that this particular company, BGTT, is actually supplying or selling to NGC a disproportionate volume of natural gas and in this regard a larger portion of the gas is being sold to the Atlantic LNG. Are you aware of this development?

Madam President: Sen. Mark, I would not allow that question.

Petrotrin**(Royalties Details)**

- 26. Sen. Wade Mark** asked the hon. Minister of Energy and Energy Industries:
- (a) Does Petrotrin owe the State any royalties related to the production and monetisation of crude oil and condensate?

- (b) If the answer to (a) is in the affirmative, can the Minister state the amount owed and for what period was the liability incurred?

The Minister of Finance and Acting Minister of Energy and Energy Industries (Hon. Colm Imbert): Thank you, Madam President. The Petroleum Company of Trinidad and Tobago, also known as Petrotrin, owes the Board of Inland Revenue taxes relating to the monetization of crude oil. The company currently owes the Board of Inland Revenue the sum of \$1,780,506,782.52 comprised of petroleum profits tax and unemployment levy of \$1,191,973,658.52 for petroleum profits tax and \$588,533,124 for supplemental petroleum tax.

Sen. Mark: Madam President, could the hon. Minister indicate, having regard to the fact that Petrotrin is in clear violation of the laws of Trinidad and Tobago, what steps or measures are being taken by the Government to ensure that Petrotrin meets its financial obligations in terms of royalty payments, taxes to the State, through the Board of Inland Revenue.

Hon. C. Imbert: Sure, Madam Speaker. The non-collection of petroleum profits tax substantially began under the last UNC Government when in 2013 they failed to collect \$196 million; in 2014, they failed to collect \$1 billion; in 2015, they failed to collect \$566 million. The deficit for 2016 is only \$2 million and I can say that under this Government Petrotrin has resumed once again to start paying taxes to the Treasury which it was allowed not to do under the UNC Government. [*Desk thumping*]

Sen. Mark: Madam President, could the hon. Minister indicate what steps are being taken to address the outstanding taxes owed by Petrotrin to the Board of Inland Revenue?

Hon. C. Imbert: Certainly, Madam President. Well, this gift of outstanding taxes of \$1.8 billion is similar to the gift of \$5 billion in back pay that we were gifted

upon assuming office. It is not a simple matter, but we are addressing it in a proactive and professional manner.

Sen. Mark: Madam President, could the hon. Minister indicate to this Parliament, to this Senate, what time frame does he anticipate to have this matter addressed in terms of getting Petrotrin to meet its obligation to the Board of Inland Revenue. Is there any time frame, Madam President?

Hon. C. Imbert: Again, Madam President, Sen. Mark is too experienced a Senator to ask trick questions. If you wanted to know that you should have asked it. Pose the question and I will most certainly answer it.

Sen. Mark: I do take strong objection to the gentleman saying that I am tricking him. I do not engage in trickery.

Madam President: Sen. Mark! Question No. 27.

Sen. Mark: Thank you very much, Madam President. I am very straightforward as you know.

Petrotrin's Taxes

(Details of)

- 27. Sen. Wade Mark** asked the hon. Minister of Energy and Energy Industries:
- (a) Does Petrotrin owe the Board of Inland Revenue any taxes related to the production and monetisation of crude oil and condensate?
 - (b) If the answer to (a) is in the affirmative, can the Minister state the amount owed and for what period was the liability incurred?

The Minister of Finance and Acting Minister of Energy and Energy Industries

(Hon. Colm Imbert): I am sorry, Madam President. I have mixed up Questions No. 27 and 26, but they are very similar. And let me just go back to Question No. 26. Petrotrin owes the state royalty in the sum of \$1,210,868,765 and the answer that I just gave was for Question No. 27—I will give it again. Petrotrin owes the

Board of Inland Revenue \$1,780,506,782.

Sen. Mark: Again, Madam President, I would like to ask the hon. Minister, given the fact that the economy is in dire straits and the Government is pressed or strapped for cash, could the hon. Minister indicate to this Senate, what efforts are being made to encourage Petrotrin to meet its obligations to the Board of Inland Revenue?

11.00 a.m.

Hon. C. Imbert: Thank you, Madam President. Bearing in mind the fact that the Government of Trinidad and Tobago, this PNM Government, only just discovered that the UNC Government was hiding losses at Petrotrin for five years, amounting to \$4.2 billion, that we now have to bring to book and deal with that very adverse consequence, I am unable to answer how we are going to deal with this financial gift given to us by the other side at this time. I will answer it if he poses the question.

Carnival Events at the Hasely Crawford Stadium

(Details of)

46. Sen. H.R. Ian Roach asked the hon. Minister of Sport and Youth Affairs:

With respect to the hosting of Carnival events at the Hasely Crawford Stadium for the years 2013-2016:

- (a) What has been the average annual cost incurred to remedy damage done to the Stadium after the hosting of such events;
- (b) What was the total annual income received for the years 2013-2016 for hosting these events at the Stadium;
- (c) What is the total amount received for each year by way of caution money deposits?

The Minister of Sport and Youth Affairs (Hon. Darryl Smith): Thank you,

Madam President. With regard to (a), information coming to me from the Sports Company of Trinidad and Tobago, no cost has been incurred to remedy damage to the Hasely Crawford Stadium after hosting Carnival events. Part (b), again information from the Sports Company of Trinidad and Tobago has indicated that the total annual income received for the period of 2013 to 2016 for hosting Carnival events at the Hasely Crawford Stadium is \$4,249,083.34 and it is broken down in rental fees by year in the following way: 2013, \$977,500; 2014, \$1,037,666.67; 2015, \$1,140,749.67 and 2016, \$1,093,167.

The Sports Company of Trinidad and Tobago has indicated the total amount received each year with regard to caution money or deposit: 2013, \$447,025; 2014, \$662,016; 2015, \$692,250 and 2016, \$509,458.

Thank you, Madam President.

Sen. Roach: Madam President, could you tell me, of the caution money, how much of it was kept or refunded?

Hon. D. Smith: I am told all was refunded by the Sports Company.

Sen. Roach: Okay, thank you.

Mr. Malcolm Nance (MSNBC)

(Response to Comments)

54. Sen. Paul Richards asked the hon. Minister of Foreign and Caricom Affairs:

Has the Ministry officially responded to comments made by Mr. Malcolm Nance on MSNBC?

The Minister of Foreign and Caricom Affairs (Sen. The Hon. Dennis Moses):

Thank you very much, Madam President. Dr. the Hon. Keith Christopher Rowley, Prime Minister of the Republic of Trinidad and Tobago issued an official response on the 30th of January this year on the matter of the unfounded and inaccurate

statement reportedly made by Mr. Malcolm Nance. A specific or further response by the Minister of Foreign and Caricom Affairs is therefore not necessary or indeed appropriate.

Madam President: Sen. Mark, question number 55, do you have the authority to pose it, or shall we defer it?

Sen. Mark: I think I will pose it, Madam President, with your leave, of course.

Carnival Season

(Safety Measures Provided)

55. Sen. Wade Mark on behalf of Sen. Khadijah Ameen asked the hon. Minister of National Security:

With the increasing number of concerns expressed by the members of the public regarding their safety for the upcoming Carnival season, what measures have been put in place to provide tourists and citizens with increased security over the period?

The Minister of National Security (Hon. Maj. Gen. Edmund Dillon): Thank you, Madam President. Madam President, Members are advised that the security forces under the ambit of the Ministry of National Security combined efforts to ensure that Carnival 2017 was a relatively safe one for citizens and visitors alike. In this regard, a number of initiatives were implemented which were as follows: The Trinidad and Tobago Police Service amplified its operations for 2017 Carnival ensuring an increased presence and visibility of officers on the streets during Carnival period which contributed to safer festivities and minimized criminal activity.

In addition, a Carnival operation plan was developed and executed under the command of Assistant Commissioner of Police, Deodath Doolarchan. Several measures were implemented based on this plan. All police officers on leave were

called out for duty for the two days of Carnival. Extra police officers were deployed in main areas of Carnival celebrations, such as Port of Spain, Chaguanas, San Fernando, Tobago, Arima, Point Fortin.

The Trinidad and Tobago Police Service nationwide closed-circuit camera televisions, coverage at all main Carnival venues were, in fact, 90 per cent coverage. A Trinidad and Tobago press briefing that focused on Carnival safety was held on the 21st of February, 2017, during which, in addition to safety tips, assurances were given to the public with respect to high police visibility and traffic control co-ordinations. Carnival safety brochures were developed and distributed across the country. Additionally, Carnival safety tips were also disseminated via print, electronic and social media.

Mas bandleaders were engaged to ensure that records of band members were properly kept and were encouraged to use high quality bands for the easy identification of band members. Lighting was enhanced throughout the deployment of the Trinidad and Tobago Police Service; lighting towers in key locations during Carnival activities.

With respect to the Defence Force, all available members of the Defence Force, including the reserves, were deployed for the Carnival period. The reserves were, in fact, assigned mostly to guard duties which freed up the regular soldiers to be out on the streets in support of the police on duties throughout the main centres of Carnival. Additionally, Trinidad and Tobago Defence Force soldiers who were on leave were called out for duty during the Carnival period. Soldiers operated on a 24-hour shift from Friday, February 24th throughout Ash Wednesday, the 1st of March, 2017.

Moreover, during the Carnival period, the Trinidad and Tobago coast guard increased its number of patrols within the territorial waters of Trinidad and

Tobago. The coast guard conducted patrols along the main beaches, such as Maracas, Blanchicheuse, Cedros, Icacos and those rural areas. While Carnival festivities were ongoing, the Trinidad and Tobago Air Guard, together with the National Operations Centre, provided aerial surveillance support to crime deterrent efforts throughout Trinidad and Tobago.

Madam President, based on all these activities, heightened vigilance and collaboration among the security forces, citizens and visitors were made to feel a sense of comfort during the Carnival period.

Madam President: Sen. Mark.

Sen. Mark: Madam President, could I ask the hon. Minister, since he has said that Carnival 2017 was a relatively safe one, whether he can share with this honourable Senate whether there were any serious crimes committed during the period Carnival 2017 in Trinidad and Tobago?

Madam President: Minister of National Security.

Hon. Maj. Gen. E. Dillon: Madam President, there were serious crimes committed during the Carnival period between the 24th of February to the 1st of March, as in previous Carnivals.

Sen. Mark: Would the hon. Minister be kind enough to share with us what were these crimes that were committed—serious crimes—during the period that it is a normal thing during Carnival?

Madam President: Minister of National Security.

Hon. Maj. Gen. E. Dillon: Serious crimes, Madam President, were committed during the period.

Sen. Mark: Madam President, I am asking the hon. Minister if he could disaggregate for the Parliament and for the public, what was the breakdown of the serious crimes that you have outlined in your statement a short while ago.

Hon. Maj. Gen. E. Dillon: Madam President, I can break down what serious crimes are, but I would not be able to give the figures in terms of the serious crimes. Serious crimes refer to murders, wounding with firearms and other weapons and shooting with firearms, rapes, incest, other sexual offences, serious indecency, kidnapping, kidnapping for ransom. Those are the categories for serious crimes. I would not be able to provide any figures. However—

Mr. Al-Rawi: And not all of those were committed.

Hon. Maj. Gen. E. Dillon: And not all of those were committed. But that is the category of serious crimes.

Sen. Mark: Like the Attorney General is answering for you.

Madam President: Sen. Mark.

Mr. Al-Rawi: You have a problem with that?

Sen. Mark: Madam President, is the Minister aware that there were some seven murders in this country during the said period that you have identified?

Madam President: Minister of National Security.

Hon. Maj. Gen. E. Dillon: Madam President, every murder is unacceptable in Trinidad and Tobago. Every murder concerns me, as National Security, and the Government of Trinidad and Tobago.

Sen. Mark: Is the Minister aware, Madam President, that during the period identified by him a short while ago, there were some seven murders or homicides committed in the Republic of Trinidad and Tobago?

Madam President: Sen. Mark, no need to repeat. You asked that question already. Sen. Ramkissoon, you have a supplemental?

Sen. Ramkissoon: Thank you, Madam President. Through you to the Minister of National Security, in your introduction answer you advised on the camera closed circuits. Would you like to elaborate on that, if that would be used as a measure to

continue to fight crime in our country? Because this is not part of our laws. Thank you.

Hon. Maj. Gen. E. Dillon: Thank you, Madam President. The closed-circuit television cameras are throughout Trinidad and Tobago and they are, in fact, used to support the fight against crime. They have been there for quite some time and it is part of the laws that we can—

Sen. Mark: [*Inaudible*] hoodwink the population.

Madam President: Sen. Mark, please.

Hon. Maj. Gen. E. Dillon: Have some respect. “You too old for that, man.”

Sen. Mark: I think he is misleading us.

Hon. Maj. Gen. E. Dillon: You are too old for that. Have some respect.

Sen. Mark: You are misleading the country.

Madam President: Sen. Mark, are you in a position to ask Question Number 56?

Sen. Mark: Of course, Madam President, I am in a position. Do I ask it of the Minister of Education, because he is not here?

Madam President: Yes.

Sen. Mark: So you are in a position?

Sen. Rambharat: I am.

Sen. Mark: So you are in a position to answer the earlier one, too?

Sen. Rambharat: Yes.

Madam President: Sen. Mark, let us deal with 56, please.

Sen. Mark: Yes, Madam President. Be patient. [*Interruption*]

Hon. Senator: How you could speak to Madam President like that?

Sen. Mark: I withdraw that. I withdraw it. You know, we tend to be a little—

Madam President: Sen. Mark, either ask the question or we will move on.

Sen. Mark: No, please.

Madam President: Please pose the question.

Sen. Mark: Please allow me to pose the question.

Primary School Principals

(Sanctions Imposed)

56. Sen. Wade Mark on behalf of Sen. Khadijah Ameen asked the hon. Minister of Education:

Can the Minister inform the Senate of what sanctions will be imposed on Primary School Principals who refuse to follow the new registration guidelines issued by the Ministry?

Madam President: Acting Leader of Government Business.

The Minister of Agriculture, Land and Fisheries (Sen. The Hon. Clarence Rambharat): Madam President, it had come to the attention of the Ministry of Education that some principals were engaging in practices that place parents seeking to enrol their children in public primary schools under unnecessary stress and hardship. For example, in some instances a limited number of application forms were given out on one day, resulting in parents lining up from 4.00 a.m. on that day to collect forms.

Children were being required to attend an interview or sit an examination as a criteria for admission. In addition, enrolment was sometimes dependent on the employment status of the parent or guardian. Accordingly, the Ministry of Education issued circular memorandum No. 2 of 2017, dated January 18th, 2017 which sought to put an end to these practices and to remind principals of the provisions of the Education Act which states categorically that:

“No person shall be refused admission to any public schools on account of the religious persuasion, race, social status or language of such person or his parent.”

The education Teaching Service Regulations indicate that a teacher, or in this case a principal, who wilfully disobeys or disregards any lawful order made or given by any person having authority to make or give such order, commits an act of misconduct. In these circumstances, the procedure outlined by the DPA is the use of progressive discipline involving counselling, oral and written warnings and, as a last resort, submission of the matter to the Teaching Service Commission for appropriate action.

I hasten to add, however, Madam President, that the Ministry does not envisage that such disciplinary action would need to be taken. The Ministry, through the School Supervisors and the office of the Chief Education Officer, will work closely with the Principals to provide a reasonable solution to the challenges which the Ministry understands that principals face, while at the same time ensuring that no child is denied his or her right to an education. Thank you.

Sen. Mark: Madam President, I would like to ask the hon. Minister whether he is aware that long lines continue to appear outside primary schools and parents are gathered from 4.00 in the morning seeking to get first place, or to be very early in line to meet whatever requirements would be needed to get their children into schools, in spite of the guidelines issued by the Ministry of Education. Is the Minister aware of that?

Sen. The Hon. C. Rambharat: Madam President, as the answer sets out, the Ministry is aware. The Ministry has, through the circular, provided the advice to the Principals and the Ministry, as the answer sets out, intends to monitor through the School Supervisors, the situation at the primary schools. Thank you.

Sen. Ramdeen: Having regard to the difficulties that the Acting Leader of Government Business would have in answering these questions posed to the Minister of Education, can the Minister indicate what steps have been taken by the

Ministry to deal with those persons who would have been subject, or those children and parents who would have been subject to this type of action having been taken? I understand the Minister indicated what the sanctions were, but those persons who have been affected, what steps have the—if you can answer, Minister.

Sen. The Hon. C. Rambharat: Madam President, it is not information that I can provide now, but I am sure the information could be provided to Sen. Ramdeen in writing. Thank you.

Madam President: Sen. Mark.

PAHO's Report

(Measures Adopted for Reversal)

57. Sen. Wade Mark on behalf of Sen. Khadijah Ameen asked the hon. Minister of Health:

In light of PAHO's report that Trinidad and Tobago is among three (3) countries with the highest cancer mortality rate, what measures does the Ministry intend to adopt to reverse this trend?

The Minister of Health (Hon. Terrence Deyalsingh): Thank you, Madam President. The Ministry of Health, using the whole of Government and whole of society approach, has developed an NCD—Non-Communicable Diseases—strategic plan and policy framework. In particular, there are four key strategic objectives for the NCD plan, including, one: multi-sectoral policies and partnerships for NCD prevention and control; two, NCD risk factors and protective factors; three, health system response to NCDs and risk factors, and fourthly, NCD surveillance and research.

Further to the above, the Ministry of Health is using a multi-tiered approach for cancer management by focusing on, one, surveillance, upgrade of the national cancer registry for effective data management and policy decisions. Two,

prevention: HPV vaccination, patient and population education programmes and self-care management, and thirdly, early diagnosis and screening.

Early diagnosis is associated with better outcomes as patient response rates tend to be higher with diseases that are less advanced. Ideally, where there is high suspicion of malignancy, patients should be referred to the respective speciality area for review and potential biopsy. Key areas of focus include prostate cancer, colorectal cancer, breast cancer, cervical cancer and lung cancer. I thank you, Madam President.

Sen. Mark: Madam President, if I may ask the hon. Minister, is the Minister aware that in the area of prostate cancer among the male population, that is on the rise and there does not appear in Trinidad and Tobago at this time to be some common standard as it relates to diagnosing persons who may be experiencing challenges with that particular disease? And if he is aware, what measures is the Ministry pursuing in order to address this growing crisis among the male population in this country?

Madam President: Sen. Mark, before I call on the Minister to answer, you realize those are two questions you have asked: is he aware and what are the measures. Okay? So two questions. Minister of Health.

Hon. T. Deyalsingh: Thank you, Madam Speaker. I will be very flexible because these are issues of national importance. What we are doing at the Ministry is to, under the NCD plan, starting to—I do not want to use the word, “impose”—educate the public as far as prostate cancer is concerned, that all men over 40 should have a digital rectal exam and an annual prostate-specific antigen test which is a blood test. So between the physical prostate exam and the annual PSA exam, we should get a better handle on the prevalence of prostate cancer in our men over 40. We are targeting the age group over 40 to begin with. I myself had my annual

PSA and annual test done last week.

Sen. Mark: Madam President, again, I would like to ask my hon. colleague, given the target that you are setting, given what obtains now in terms of the annual number of, let us say, patients who die as a result of prostate cancer diseases, would you indicate to us what is the current number that you have, or you may be aware of? And given the measures that you have outlined, what period of time you are anticipating a reduction of those numbers, you know, given the prevalence of this particular disease?

Hon. T. Deyalsingh: Just for clarity, Sen. Mark, could you tell me what number you are speaking about—numbers of what?

Sen. Mark: No, I was asking you whether you are aware of the number of males who die on an annual basis as a result of prostate cancer.

Madam President: Minister of Health.

Hon. T. Deyalsingh: Thank you. Madam President, the data which I have is for the period 2005/2009. What the PAHO report spoke to, Sen. Mark, was a 2008 report, which tells you we have not been collecting data from 2008 to now, and that is why part of the focus is strengthening the cancer registry. Because as a manager, you cannot manage what you cannot measure. So we had to strengthen the data registry.

The data I have from 2005 to 2009 is that prostate cancer, according to that data, is the number one cause of death for cancers accounting to 20.5 per cent of all deaths due to cancer. So we are starting this programme now. To give you a time frame, I cannot give you a time frame, but we are aggressively pursuing the early screening and early detection and building the database.

Madam President: Sen. Ramdeen.

Sen. Ramdeen: Through you, Madam President, to the hon. Minister. Minister of

Health, what specific steps are being taken by the Ministry of Health to educate those in our rural communities about the issue of cancer and cancer awareness?

Hon. T. Deyalsingh: Thank you very much for that question, Sen. Ramdeen. Part of the NCD plan, which we have signed on a loan for the IDB of US \$51.5 million, a significant part of that has to do with behaviour change modification, not only in rural areas but in all areas, but especially in rural areas, because all the literature will tell you, the social determinants of health, people in rural areas with poor economic backgrounds, poor educational backgrounds, suffer disproportionately.

One of the steps we are doing to change behaviour is the stopping of the sale of soft drinks in schools from the new school term, because in obesity—obesity is engaged in one out of five deaths due to cancer. Obesity is linked with breast cancer, colon cancer and rectal cancer. We want to educate young girls about modifying their sexual behaviour, especially before the age of 18 because sexual promiscuity before the age of 18 and unprotected sex and multiple partners, tend to lead to an increase in cervical cancer.

We want to advise people to stop cigarette smoking. Cigarettes are indicated in lung, esophagus, larynx, mouth, throat, bladder, kidney, liver, pancreas, stomach, cervical, colon and rectal cancers. And one of the measures we took in the last budget was to increase the price of cigarettes as a deterrent. And I will tell you, Sen. Ramdeen, Australia recently passed a whole Act of Parliament—Australia—I am not saying we are thinking about it but I am showing you how the world is thinking—to increase the price of cigarettes—a pack of cigarettes, to £23 by 2020, so grave is the issue. And your question is quite right about public education. I thank you. [*Desk thumping*]

Sen. Mark: Madam President, may I ask my hon. colleague again, in light of the need for centralized agencies—[*Interruption*]

Madam President: He said something. I am not even sure what it was.

Sen. Mark: I did not hear that. In light of the need for a centralized agency to address this issue so that efficiency could be improved and what you have also outlined could be realized, could you share with us, hon. Minister, what is the state of play as it relates to the construction and completion of the Oncology Centre?

Hon. T. Deyalsingh: Sure. What we are doing right now, we are committed to putting a new linear accelerator at the St.James facility. So we are committed to that to step up our radiation treatment. We are committed to reinvigorating the brachytherapy unit at St. James. So we are doing that. I will be taking a position to Cabinet within the next quarter on the National Oncology Centre and Cabinet will deliberate on the matter.

Madam President: Sen. Mark, I think the Government is in a position to answer Question Number 19.

Sen. Mark: Thank you, Madam President.

Victims of Domestic Violence

(Accommodation)

19. Sen. Wade Mark asked the hon. Prime Minister:

What steps are being taken by Government to provide accommodation for victims of domestic violence?

Madam President: Acting Leader of Government Business.

The Minister of Agriculture, Land and Fisheries (Sen. The Hon. Clarence Rambharat): Thank you, Madam President. Madam President, the steps taken by the Government: the Government will commission five shelters for victims of domestic violence shortly. Three will be used to house women and two for men. The location of these shelters cannot be disclosed because they are considered to be places of safety. Persons wanting to access the shelters must either liaise with

the police or through the Domestic Violence Hotline in order to access the services.

In addition, Madam President, the Government recently acquired two other buildings which are to be refurbished. One will be used as an additional domestic violence shelter while the other would be used as a shelter to house female victims of trafficking. Thank you.

Sen. Mark: Madam President, I would like to ask the hon. Minister whether he has with him any information concerning the time frame for the design and ultimate construction and occupation of these centres and whether any sums have been estimated in terms of moneys that it will cost for the construction of these five shelters that you have mentioned.

Sen. The Hon. C. Rambharat: Madam President, I am unable to give the details, but I can say that the works on the five shelters are ongoing. They form part of the PSIP for this fiscal year. The moneys have been allocated and the process of refurbishment is under way and it is expected that the work should be completed in 2017.

Sen. Ramdeen: Madam President, through you. If the hon. Minister could indicate, apart from the five shelters that are being constructed or going to be constructed that the Minister has indicated to the Senate, are there any steps to provide any type of assistance to those shelters that are presently in existence for persons who are the subject of domestic violence?

Sen. The Hon. C. Rambharat: Madam President, I am not in a position to answer that question but I will provide the answer to Sen. Ramdeen. Thank you.

Madam President: Sen. Ramkissoon.

Sen. Ramkissoon: Thank you, Madam President. Are you in a position to share with us how many victims would be housed in these locations?

Sen. The Hon. C. Rambharat: Madam President, I would have to provide that in writing at a subsequent occasion.

**MISCELLANEOUS PROVISIONS (TRIAL BY JUDGE ALONE) BILL,
2017**

Bill to amend the Offences Against the Person Act, Chap. 11:08 and the Criminal Procedure Act, Chap. 12:02 and for related matters [*The Attorney General*]; read the first time.

**TAX INFORMATION EXCHANGE AGREEMENTS (UNITED
STATES OF AMERICA) BILL, 2016**

Order for second reading read.

The Minister of Finance and Acting Minister of Energy and Energy Industries (Hon. Colm Imbert): Thank you, Madam President. I beg to move:

That a Bill to repeal the Tax Information Exchange Agreements Act and replace it with a Tax Information Exchange Agreements (United States of America) Act which would make provision for the implementation of agreements between Trinidad and Tobago and the United States of America, providing for the exchange of information for the purposes of taxation, the validation of the sharing of personal information held by the Board of Inland Revenue or financial institutions and for related purposes, be now read a second time.

Madam President, this matter has already been dealt with in the other place where the Report of the Joint Select Committee was laid and debated and passed—approved with some amendments. Before I begin, I want to thank—I am not sure I want to thank all, but I will I say so anyway. I want to thank all Members of the Senate who participated in the Joint Select Committee, but I especially want to single out Sen. Roach and Sen. Shrikissoon. Sen. Roach, for his assertiveness when

things got to the point of ridiculousness, and Sen. Shrikissoon for his cooperation.

11.30 a.m.

Sen. Ramdeen was there too, but he was responsible for the many meetings that we had and the long sessions that we had. [*Desk thumping*]

Sen. Sturge: Yeah, we thank him for that.

Hon. Senator: We will thank him on your behalf.

Hon. C. Imbert: Madam President, the matter of the Foreign Account Tax Compliance Act, also known as FATCA, and the Bill before you this morning, the Tax Information Exchange Agreements (United States of America) Bill to support FATCA, has been one of the most widely debated matters that our country has had in recent times. A lot has been said by individuals, interest groups and institutions on the implications and importance of the legislation. I feel in the circumstances that it is necessary to outline the history and set the context of this Bill for the benefit of Members of the Senate as well as indicate why Trinidad and Tobago had reason to treat with this Bill urgently.

The Bill before the Senate has its genesis in what is called exchange of information for the purpose of tax administration. The effective exchange of information between tax authorities is one of the most important aspects of international taxation. The obtaining of financial information and other information on the economic activities of individuals and corporations overseas is necessary to enforce resident-based taxation on a country's own residents. In this regard, tax treaties have historically been central to tax cooperation between capital exporting States. The ability to obtain information has been essential to the extraction of revenues that contribute to the economic development of any State and obviously

would include the economic development of Trinidad and Tobago.

In the current era, tax administrators extend their reach beyond the boundaries of their own nation State. They cooperate actively with administrators from other countries and work to build transnational institutions and networks that give them the capacity to enforce national tax laws in respect of multinational and mobile capital and labour. These networks have become grounded in formal legal agreements with their own institutions and practices. The increase in the demand for tax information by competent authorities all over the world is as a result of an increase in the number of taxpayers, the tax types, the levels of taxation and the capacity to administer increasingly complex taxation systems.

International cooperation plays an increasingly key role in the coordination of national taxes on international business in particular. In this age of globalization, many countries are of the view they can no longer rely exclusively on their own sources of information to ensure compliance with their domestic tax laws, hence the Foreign Account Tax Compliance Act of 2010. It is a United States federal law requiring among other things that all non-US foreign financial institutions search their records for United States persons, and I want to stress that this is intended and this legislation is targeting United States persons, for the purpose of reporting on their assets and identities to the US Treasury. FATCA imposes a 30 per cent withholding tax on payments of US source income that are made by noncompliant FFIs.

When the US Government was initially attempting to implement FATCA worldwide a number of issues were raised, including that financial institutions might not be able to comply with disclosure requirements under FATCA. In some respects, the requirements were not permitted under domestic legislation. It was

determined by countries worldwide that an intergovernmental approach to FATCA would address these legal impediments and reduce burdens for financial institutions such as those in Trinidad and Tobago. The United States subsequently created various model Inter-Governmental Agreements for countries around the world to execute, to comply with FATCA. It was for each country, Trinidad and Tobago among them, to fit itself into any of the models created by the United States. The models allow for disclosure of information through the competent authorities—such as the Board of Inland Revenue in our case—to direct disclosure of such information by local financial institutions to the US IRS on the other end.

In 2013, the former Government made a decision that Trinidad and Tobago would enter into the Model 1 IGA. So as I have said, there were a number of models that the US created and Trinidad and Tobago, under the former Government, decided in 2013 to enter into the Model 1 IGA. The document was initialled by my predecessor Mr. Howai and sent to the US Treasury and, as a result of that action, the US Treasury deemed Trinidad and Tobago to be compliant with FATCA at that time, but that was only the beginning. Having initialled it and thereby indicated agreement with its contents and its provisions, it was necessary subsequently for the country to sign the agreement—the actual agreement itself—and then incorporate it into domestic law. The Inter-Governmental Agreement that was first initialled by the former Minister of Finance and signed by myself in August 2016 is attached to the Bill at Schedule 2.

The Annexes in Schedule 2—Schedule 2 comprises the Inter-Governmental Agreement and Annexes I and II. Annex I deals with due diligence obligations for identifying and reporting on US Reportable Accounts and on payments to certain nonparticipating financial institutions. The Annex is similar to a handbook for the

local financial institutions to apply due diligence procedures to identify relevant accounts and institutions. Annex II treats certain institutions as exempt to beneficial owners or deemed compliant foreign financial institutions, and certain accounts were excluded from the definition of financial accounts and not reportable. In this regard the IGA excludes institutions like the Central Bank of Trinidad and Tobago.

The IGA also includes financial institutions with a local client base which meet certain requirements. These requirements include that the financial institution is licensed and regulated under the laws of Trinidad and Tobago. In addition, at least 98 per cent of the financial accounts by value maintained by the financial institution must be held by residents of Trinidad and Tobago. This is a very important point. The 98 per cent local-based threshold is testimony to the fact that FATCA is not for Trinidad and Tobago citizens. At least not initially for Trinidad and Tobago citizens. There would be citizens of Trinidad and Tobago who because of their relationship with entities in the United States would fall within the category of reportable persons, but your average person is not a reportable person, or 98 per cent of Trinidad and Tobago citizens are not reportable persons for the purposes of FATCA.

Senators should note that Trinidad and Tobago has 15 bilateral taxation agreements, as well as one multilateral agreement which covers 10 Caricom jurisdictions, and one tax information exchange agreement with the United States, all of which provide for exchange of information for tax purposes. The Board of Inland Revenue being the Competent Authority at this time has broad information gathering powers under the Income Tax Act for use in responding to a request made under a declared agreement such as the Tax Information Exchange

Agreement with the United States, notwithstanding the absence of an assessment or objection pertaining to the raising of a tax. However, the Board of Inland Revenue's information gathering powers are limited to the enforcement of Trinidad and Tobago's tax laws at this time.

When this Bill is passed, which I expect it will be, the Board of Inland Revenue will have additional responsibilities in terms of providing information to the US Treasury on US persons. The Bill when passed will repeal the Tax Information Exchange Agreements Act of 1989 and replace it with a new Tax Information Exchange Agreements (United States of America) Act. The new Act would provide for the exchange of information for the purpose of taxation between Trinidad and Tobago and United States. By way of history, the first TIEA was enacted in 1989 for the implementation of agreements between Trinidad and Tobago and other States providing for the exchange of information for taxation purposes. Trinidad and Tobago entered into the single Tax Information Exchange Agreement with United States in January 1989 on the basis of which an Order was made by the President declaring that agreement to be a declared agreement.

The 1989 TIEA provides for the sharing of personal information of identifiable individuals without first obtaining their consent for such sharing. It appears, Madam President, the 1989 TIEA was passed in both Houses with a simple majority and did not expressly state that it was inconsistent with sections 4 and 5 of the Constitution. Given that the purpose of that legislation was to share information with the US Treasury without the consent of the person to whom the information relates, it is therefore necessary to validate the actions of the Board of Inland Revenue and to repeal the 1989 TIEA. This is what will be done under this 2016 TIEA. The 2016 legislation will also provide for the sharing of personal

information of identifiable individuals without their consent.

Madam President, you will know that such sharing amounts to a breach of that person's right to his family and private life as guaranteed by section 4 of our Constitution. In addition, section 5 of our Constitution provides that no law may abrogate, abridge or infringe, or authorize the abrogation, abridgment or infringement of any of the rights contained in section 4 of the Constitution. Section 13 of the Constitution, however, allows that an Act which seeks to abrogate, abridge or infringe, et cetera, to have effect even though inconsistent with the Constitution. This Bill in its preamble expressly states it is inconsistent with sections 4 and 5 of the Constitution and is thus required to be passed by a vote of not less than three-fifths of all Members of Parliament in both Houses. The Bill has already received the unanimous approval of all Members of the House of Representatives who were present when the vote was taken. The actual numbers were 39 to zero, but I would just like to spend a little time now on what happened in the other place.

The original Bill was introduced in the House of Representatives on the 9th of September, 2016. It contained four Parts and 30 clauses. It was debated on two other occasions, 14th September, 2016 and 23rd September, 2016. In September 2016, the Opposition published in the daily newspapers an advertisement outlining the Opposition's concerns with the Bill in its original form. In that advertisement, the Opposition indicated it had concerns with clauses 5, 6, 7, 8, 21 and 25 of the original Bill. In an effort to address these concerns, amendments to the Bill were prepared by the Chief Parliamentary Counsel's Department and were circulated to Members of the other place. The debate then continued on the 9th of December and the 12th of December, 2016, and on the 12th of December, 2016 a number of

amendments were proposed to the Bill at the committee stage.

Following these amendments proposed at the committee stage, the Government published a full-page advertisement on the 5th of January, 2017, detailing all of the amendments proposed at the committee stage and the reasons for those amendments, and in particular what the Government had done to address the concerns of the Opposition with respect to the amendments that they had, or the issues—it is not amendments—the issues that they had raised in their advertisement.

Debate resumed on the 6th of January, 2017, at which time the Bill was referred to a joint select committee. A deadline was set of the 3rd of February, 2017 to report back to the House of Representatives with recommendations. Between the 13th of January 2017 and the 1st of February, 2017, the Joint Select Committee met on five occasions and considered several amendments to the Bill, starting with the amendments made to the Bill at the committee stage on the 12th December, 2016, or the amendments proposed at the committee stage.

A report from the Joint Select Committee was laid on the 3rd of February, and debate on that report took place on the 13th of February, 2016. During the debate on that day, a Motion was moved to treat the report laid on the 3rd of February as an interim report and it was proposed that the Joint Select Committee continue its work and report to the House by Thursday, February 23rd, 2017. This Motion was accepted and the committee met again for a sixth time on the 17th of February, and the final report of the committee was laid on the 23rd of February 2017. The final report contains the minutes of all six committee meetings, the verbatim notes of all meetings, a comprehensive list of amendments to the Bill, as well as a consolidated Bill including the amendments recommended by the

committee.

During the committee's deliberations, the committee examined the Board of Inland Revenue, the Central Bank of Trinidad and Tobago, the bankers association, the Securities and Exchange Commission, the Co-operative Credit Union League and also invited and received comments in writing from stakeholders including Unit Trust, Law Association, Association of Trinidad and Tobago Insurance Companies and so on. Comments were also invited and received from the general public. The final report including a minority report signed by two members of the Joint Select Committee, namely Sen. Ramdeen, who is here with us, and Dr. Gopeesingh MP. That minority report proposed that the Bill include a new clause in the following terms:

1. that a reporting financial institution must notify each individual reportable person or individual specified US person that information relating to that person, which is required to be reported under this Act, and will be transferred to the Secretary of the Treasury of the United States of America; and
2. that the notification must be made by the 31st January in the calendar year following the first year in which the account held by the individual is a reportable account maintained by the reporting financial institution.

This amendment flowed from the words in the FATCA arrangements in the UK. They go by way of regulations and this amendment was taken out of the United Kingdom legislation with respect to FATCA.

The House accepted the request from the Opposition and an amendment was eventually worked out to deal with the issues dealing with some changes that had

to be made to treat with our particular situation but maintaining the substance of the recommendation coming from the Opposition, and the amendment was included among the amendments made to the Bill at the committee stage on the 23rd of February. The Bill as amended by the other place include several amendments recommended by the Joint Select Committee, as well as further amendments to clauses 17, 18, 29 and the insertion of new clauses 31 and 32. Thirty-two, there was a proposal by the Leader of the Opposition with respect to—I will come to that in a while, Madam President. It escapes me right now.

Hon. Al-Rawi: Regulations.

Hon. C. Imbert: Regulations, yes, yes. Thank you very much, Attorney General, Madam President, through you. There was a request from the Leader of the Opposition that the Minister be given the power to make regulations. It was agreed that we will put this in subject to negative resolution. And then, of course, we made the amendment with respect to the notice which would take place in January after the information had been sent by the end of September. So it will take place four months after the information has been sent to the US Treasury.

Madam President, I could go through all 32 clauses—[*Interruption*] I am hearing some noise on my left—but I think it is important, for the record, to indicate the work that we did. As I said the committee met on six occasions and we dealt with a lot of issues. We dealt with the whole concept of this theory that the Minister of Finance could somehow get at people's personal information for himself. Although this was not so and could not be so, what we decided to do for clarity and for peace sake is just delete the Minister entirely from the legislation with the exception of the making of regulations which was actually a proposal from the Opposition and also the approval of the guidelines to be prepared by the

Central Bank of Trinidad and Tobago. But we made it crystal clear that the Competent Authority in the legislation would be the Board of Inland Revenue. We did not leave it up to the Minister to decide or choose who would be the Competent Authority because that is how the original legislation was drafted, flowing from the actual agreement itself, the words flowed from the agreement. But because of the concerns raised, we decided to make it crystal clear that the Competent Authority would be the Board of Inland Revenue. So we took away that power from the Minister to designate any other agency as the Competent Authority.

We also made it crystal clear that this legislation would apply only to the United States Inter-Governmental Agreement, the agreement between United States and Trinidad and Tobago. In other words, we took away the ability of the Executive to enter into similar agreements with other countries with respect to the sharing of tax information simply by Order, which again was a feature of what had been proposed earlier. So essentially what we did is that we confined this legislation only to the arrangement with the United States of America. The Government does not have the power now to simply by Order amend or—not amend, sorry—simply by Order enter into another agreement with another country without parliamentary oversight. The Minister’s intervention in this Bill is almost zero and the Board of Inland Revenue is the Competent Authority.

I just want at this stage, Madam President, to deal with a certain issue that was published in the media and needed clarification. There was a view expressed that all of this could have been done back in September 2016 and that the parties involved, both sides, just dragged out this process. Madam President, I want to debunk that and I want to read into the record a chronology of events associated with this Bill. As I have indicated earlier, the Bill was introduced on the 9th of

September, 2016 in the other place. At that sitting, the Opposition demanded the establishment of a joint select committee. However, as you would know, Madam President, the Constitution requires the prorogation of Parliament on an annual basis, 12 months after the first sitting. This is no secret, this is no mystery.

This has been happening in our Parliament for donkey's years. So that every 12 months, everything that is before the Parliament lapses and cannot be carried over unless it restarts itself, and I discovered this with this very Bill because we had had a Standing Orders Committee in the last Parliament where we put in a provision that you could carry over a Bill from one session to another, but the way the Standing Order is worded you have to reboot. You have to start from scratch. So you simply carry over the Bill, but you have to resume, reintroduce and re-debate the legislation which is what happened with FATCA.

With respect to a committee, the life of committees comes to an end when the Parliament is prorogued. So the prorogation of Parliament was due on the 22nd of September, 2016. So when the Bill was introduced on the 9th of September and the view was expressed—well not the view, a demand was made by the Opposition that they would only agree to consider the legislation if a JSC was established, we made the point that did not make any sense because there were only 14 days left between the 9th of September—not 14. Actually 13—and the 22nd of September. In order to establish a joint select committee you must move a Motion in the House where the matter is raised; you must approve that Motion; the people must be named; then that Motion must be taken to the other place which in this case would be the Senate; again a Motion must be moved; persons must be named; the Senate must approve it; then it comes back to the first place that it came from.

So that process in itself could take between a week to two weeks, Madam

President, to get the committee established. Then you have to have the first meeting of the committee to appoint a chairman and then you have the committee deliberations; then you have to report back to the House, debate the Report of the Joint Select Committee in both Houses—well debate the outcome of the committee's deliberations in both Houses and then the Bill is passed. So we made the point that it was physically and scientifically impossible to establish a Joint Select Committee, hold meetings of the committees, invite members of the public to appear before the committee, examine them, solicit views from the public and finish all of that by the 22nd of September in a 14-day period. It was impossible. So we made the point to the Opposition that it just could not be done.

The Opposition at the time did not agree and said that somehow we could turn night into day and do all of these things in 14 days. As it was, Madam President, in the committee that we had, that took a month and that took a month of very intense work with the committee meeting virtually every single week, and even when we did that, when we came to do the final report, Members complained bitterly that they were rushed—Members of the Opposition—and complained bitterly that members of the public were not given enough time to comment on the legislation. So it would not have been possible to establish a JSC in both Houses, meet, interview people, examine the Bill, take evidence, receive public comments and come back to the House, debate it in the House, and then debate it in the Senate by the 22nd of September. That would have been impossible.

However, we introduced it on the 9th, then we came back on the 14th, the Opposition once again insisted on a JSC. This time there were eight days left before the prorogation of the Parliament and budget day was announced as the 30th of September. So that it was known to the Opposition that the Government was in

the process of completing the paper work and the Estimates of Expenditure, and everything that goes with the preparation of a national budget which is due to be delivered eight days later. But again, they insisted on the establishment of a joint select committee now with an eight-day time frame and the national budget looming in just two weeks from then. So again it was not possible. Parliament was then prorogued in accordance with the Constitution and the proceedings on the Bill ceased. The Bill was subsequently carried over to the second session. As I indicated, you have to reboot and restart and debate restarted on September 23rd, 2016.

The Opposition again insisted on a JSC although the budget was now due to be delivered seven days later. Again it would be impossible to complete the work of a JSC before of commencement of the budget debate, and during the budget debate the budget takes precedence over everything. So recognizing that the Opposition was insisting on a joint select committee and was not in agreement with the Government's perspective that it was physically and scientifically impossible to do all of this in seven days, or eight days, or 14 days as the case may be, and that the budget was coming, the Government communicated with the US Treasury to seek an extension to the deadline of the 30th of September, the same day as budget day. That was the original deadline for compliance with FATCA.

So the Government wrote to the US Treasury for an extension of time. At that time, in that communication with the US Treasury, being fully aware of the fact that the Opposition was demanding a JSC, the Government indicated to the Treasury that it was more than likely that a JSC would be required to complete the work of the Parliament on the Bill, and as a result a tentative deadline of February was set to complete the work of the JSC to report to the Parliament, debate the

matter in the House of Representatives and debate the matter in the Senate.

12.00 p.m.

When the budget debate was concluded, debate on the Bill resumed in December 2016. The Opposition, again, requested a JSC. But on that same day, the Leader of the Opposition got into an argument with the Speaker over the denial of a request that the Parliament be adjourned to debate an urgent matter. After that argument, the Leader of the Opposition was ejected from the Parliament and the rest of the Opposition walked out. So before we could put the question of putting this Bill to a JSC and get the names from the Opposition, and vote on the establishment of a JSC, the Opposition absented itself, they just left so we could not establish a JSC on that day.

Came back, again, on the 12th of December. Again, we could not establish a joint select committee because the Opposition decided not to attend and in fact, I believe they watched the debate on television upstairs. I see Sen. Ramdeen is well aware of this. [*Laughter*] So that again, it was not possible to establish a JSC because you have to put a Motion, get the names of the other side and the House has to vote on it. So, we came back, again, on the 6th of January, 2017, at which time the Opposition showed up, the names were given, we put the Motion, we established the JSC and we are here today.

Now, I said all of this because it is necessary to correct the record. It was impossible to establish a JSC between September the 9th and the end of October. It was impossible because between September 30th and the end of October, the Parliament was engaged in the national budget debate and the examination of the estimates and prior to that, you had the untimely prorogation of Parliament on the 22nd of September, 2016, thereby making it impossible to establish a JSC at that

time. I have put these things on the record because I am aware that there are other points of view about this but I wanted to clear up the Government's position on this matter.

Having said all of that, we have established our Joint Select Committee and we have examined stakeholders. We have solicited views from members of the public and other interest groups. We have made amendments to the Bill and I am very, very happy that we were able, in the other place, to reach agreement on all of the matters that had been raised by the Opposition and to secure the unanimous support of the Opposition and I would like to thank Sen. Ramdeen for that. I beg to move. [*Desk thumping*]

Question proposed.

Sen. Wade Mark: Madam President, I rise to speak on a very important, significant and interesting matter: a Bill before us that, as the hon. Minister has said, took six months to be completed in terms of agreement and we are still debating it as we speak because, agreement having been reached in the other place—given the bicameral nature of our Parliament—we have to continue the work in our Senate.

Madam President, it is said that the price of freedom is eternal vigilance. Some say the price of freedom is eternal struggle and we, in the United National Congress, I want to make it very clear from the outset, were always committed to the passage of good law in this country. [*Desk thumping*] Not bad law, not flawed law or legislation but good law and hence our insistence and stance—almost militant stance at ensuring that a joint select committee was established to carry out the necessary work to bring us to the point where we are today. [*Desk thumping*]

Madam President, everyone knows—including the mover of the Bill—of the value

of a joint select committee because like him, I have been here for a number of years and we have sat on one or two joint select committees, and the mover of the Bill knows the significance, the richness of a joint select committee. And therefore, it was surprising to not only ourselves here but I guess the country, why the Government—some Members of the Government, at any rate, were literally opposed, militantly opposed to the establishment of a joint select committee and some of the frivolous arguments that were submitted in defence of their weak and deficient arguments as to why a joint select committee was not necessary. I would not even spend time going through those particular submissions.

Even external agencies got into the dance. B-A-T-T, BATT, they should be playing cricket. [*Laughter*] But they get into the business of us in the Parliament by telling us there is no need for a joint select committee. Who is the Bankers' Association of Trinidad and Tobago to tell parliamentarians there is no need for a joint select committee? [*Desk thumping*] They are totally out of place. Who is AMCHAM to come and tell us that we do not need a joint select committee and the Chamber of Industry and Commerce? We could tell them, when they want to “gouch” out the eyes of people and they increase prices, that they should not do it? “We tell them that but they doh listen.” You think we could go and tell BATT, the cr—“I go say criminal buh yuh might say is ah wrong word”. But the almost unpardonable increases, indefensible increases in bank fees and charges in this country, we could go and tell the Bankers' Association that they should pull back those bank fees and charges? But they are coming into our business and telling us that we should not establish a joint select committee. They are totally out of line, out of place.

Madam President, this thing became so serious that they were harassing,

they were bullying, they were intimidating, they were threatening almost, at times, the country and the Opposition that all hell will break loose if we do not support this Bill in the form that was then proposed by the Government. We stood firm and I want to say that the hon. Leader of the Opposition, Kamla Persad-Bissessar, militantly opposed any move to proceed to deal with this matter on the floor of the House and insisted that we must have a joint select committee. [*Desk thumping*] And, Madam President, at the end of the day, good sense prevailed and the Government was able to come, kicking and screaming, at the level of the Joint Select Committee, so we could do the people's work and the people's business.

I hope that the Government would have learnt the appropriate lessons from that and do not bring legislation here without the constitutional majority in order to undermine the human rights and fundamental freedoms of the people. Bring legislation that is going to violate the Constitution and the rights of the people, attach the certificate, meet with the Opposition; let us go a joint select committee. Bring good legislation at the end of the day as we have brought collectively.

So I, therefore, like him, the hon. Minister of Finance, would like to thank our colleagues—Sen. Ramdeen. [*Desk thumping*] I want to thank the hon. colleagues in the other House, Dr. Bhoë Tewarie, Member for Caroni Central, Dr. Tim Gopeesingh, Member for Caroni East [*Desk thumping*] and all of the other colleagues who participated in this particular exercise. But without the Opposition, we would not have been here today; without our insistence, we would not have had the legislation that we have before us today. So I am very happy that we were able to stand firm and I want the Government to know do not bring flawed legislation to this Parliament and expect this Opposition, representing close to 400,000 people in this country. Do not disrespect us, do not show contempt towards us and when it is

necessary to do what is in the interest of the people, let good sense prevail and let us do what is right. Establish joint select committees.

And the bogus arguments that we have been reading in the newspapers issued by the Ministry of Finance and repeated here today, we know, Madam President, they do not even—you know, the Government in Trinidad and Tobago, they knew that they were wrong and because it backfired, they had to find some way of trying to save face and engage in damage control. [*Desk thumping*] “So they put out ah statement.” No author. The Ministry of Finance puts out a statement, not even the Permanent Secretary’s signature, on Carnival Monday when—[*Interruption*—well, the Minister of Finance is—National Security has left. But it was issued on Carnival Monday and not even the signature of the Minister, not even the signature of the Permanent Secretary, was appended to that statement because they knew that that statement was very weak and deficient in many respects.

But, Madam President, I want to indicate that you know—the hon. Minister of Finance did, in fact, indicate that a letter was written to the US Department of Treasury, some Ms. Elena Virgadamo. She is the lady that they wrote to and the lady who wrote to Elena Virgadamo was the Treasury Solicitor Carla Carter. And Madam President, the Minister of Finance correctly indicated that the debate started on the 9th of September. It went on to the 14th of September and we insisted, throughout that period, a joint select committee be established. At the first meeting on the 9th, we insisted and the Government said, you know what, let us adjourn the debate; let us have a meeting of the minds, and we had a meeting of the minds.

So, the Government met with a team of the Opposition and we met at the

Parliament and we came out in agreement and the hon. Minister of Finance is on public record as saying we are going to establish a joint select committee. He said that they have agreed on a joint select committee, and I do not know what happened in the Cabinet subsequent to that decision, but after that decision was taken on the 12th of September, there was an about-face. There was an almost—the Minister of Finance who led the team, on behalf of the Government, simply reneged on a decision and an agreement that was taken on the 12th of September, and there is where all hell broke loose, because after that, it was a downhill struggle. Why would the Minister of Finance indicate to us that he is in agreement with the establishment of a joint select committee and then renege on that?

And what is even worse. We came to the Parliament on the 14th expecting the Government to have a joint select committee established and the Government was as militant as you can find them. They refused even though they had agreed to establish this Joint Select Committee. And what happened at the end of the day? Whilst we were discussing matters or my colleagues, I should say, were deliberating in the other Chamber, the Government of Trinidad and Tobago, on September the 14th, the same day the House was deliberating on this matter, the Government wrote the Treasury—the US Department of the Treasury, dated September the 14th and signed by the Treasury Solicitor.

And in that correspondence going to the Treasury—the Department of the Treasury in the United States, the Government put in writing and I quote on page 2 of this letter, the establishment of a joint select committee of the Parliament by mid-November 2016. They went on further to say that the JSC will need at least two months to complete its work and provide a report and they anticipated the report could be laid in Parliament by 2017, a debate would ensue and subsequent

passage will take place in February.

So, Madam President, the hon. Minister of Finance was well aware that the Government of Trinidad and Tobago had committed itself to the establishment of a joint select committee and they wrote to the United States Treasury Department indicating so. But you know what this Government did? The disrespect, the contempt—the Government, it appears to me, had an agenda. [*Desk thumping*] The agenda was to mislead the population, the agenda was to paint the Opposition as demons, that we do not want to support this matter, and that the skies would cave in and everything would—you would lose your credit card, the economy will crash and they went about the place and they got the Bankers' Association and all of these so-called organizations that have no business, properly speaking, in telling us how to deal with our matters in the way that they did, they were able to also support the gloom and doom predictions being made by the Government.

Madam President, I want to spend a few moments to debunk this argument that the Government of Trinidad and Tobago could not have established a joint select committee during the period that we spoke about. Even if you give in to the Minister's argument that the 22nd of September was prorogation and therefore, it was not possible to have a joint select committee established during the 9th and the 22nd. After budget was completed on the 31st of October, what happened in the whole month of November? Why could not the Minister of Finance come and establish that Joint Select Committee in the month of November? [*Desk thumping*] They did not do it. They did not establish it in November. What they wanted to do was to carry us to the wire and then what they did was a rush job and then brought an incomplete report and you know what? We had to force the Government to go back to the Joint Select Committee in order to deal with this matter.

The Government recognized that we were serious, “yuh know”, we were not blinking. We were prepared to vote against this Bill. We were prepared to vote against this Bill and the Government knew that. We wrote a letter to the Prime Minister indicating our position on this matter. We wrote to the Prime Minister on the 3rd of January, 2017 indicating to him. He can do whatever he wants but if you do not look at the proposals and the reasonable suggestions that we are making, pass the Bill by yourself. You can pass the Bill by yourself, you do not need our support.

But you see, the Government understands, for the first time, seriousness and we told the Government you have to compromise. We are not forcing anything on the Government. We want good law. We never said we were not going to support this particular piece of legislation. We always said we wanted good legislation, good law and that is what we got at the end of the day. Now, we did not get all that we wanted but at least there was—you know, that is what negotiations are about. You give and take and at the end of the day, you find a solution and we were able to arrive and we built consensus accordingly.

So, Madam President, I believe that if you follow very carefully what has happened, you will see in the big document before us, the Bill itself, the initial Bill, as the hon. Minister said, they wanted to establish the Minister of Finance as the Competent Authority. We did not fall for that and the Minister, after good sense prevailed, agreed that he will eliminate himself from that process and put the Board of Inland Revenue, and that was a reasonable proposal but that came on our insistence. If we did not insist on that particular provision, the Minister of Finance would have been the Competent Authority and that is why, for instance, I am saying that the Joint Select Committee did a lot of good work in this regard.

Madam President, if you go to clause 18(2) of this Bill, you will see where the Parliament—imagine the first Bill that came to us, the original Bill, they had no role for the Parliament. The Parliament was a rubber stamp. They disrespected the Parliament. The Parliament had no role. We were just here to say aye, the ayes have it. In this legislation, after it being amended, if you go to clause 18 where they had a memorandum of understanding, that was changed to an agreement and that agreement between the Secretary of the United States Treasury and the Board of Inland Revenue, whenever they sign that agreement, must come to the Parliament. It must be laid in the Parliament so the people here, [*Desk thumping*] the Members of Parliament, can see what this agreement is about. Before that provision, we had no role whatsoever in this matter.

Similarly, you would see where even the fines, we propose that both the amount of money as well as the term of imprisonment should be increased, and we also got agreement with the Government on this particular matter of the fine. I think it was 100,000 or two years and we said, look, it must go up to about 250,000 and five years as the case may be, so we did that.

Madam President, in clause 17, notification, they send your information to the United States of America through the banks and then via the Board of Inland Revenue and you as the person affected had no knowledge of it. You do not know what is happening. We have now been able to get the Government to incorporate into the legislation, notification and they must inform you, four months after they submit this information, September 30th, to the United States Secretary to the Treasury. So the persons who are affected will be notified and that came as a result of the Joint Select Committee and our insistence. [*Desk thumping*]

And just like the Integrity Commission, when they submit reports to us on

the activities of the Integrity Commission, within reason, when the Government submits its report through the Board of Inland Revenue, submits its report automatically to the United States Treasury, within three months thereafter—we were saying one month but compromised, three months—within three months, a report will be tabled in the Parliament on that particular report. That was not there before. It was on our insistence that those changes were brought. So we are committed to accountability, transparency and open government and good governance.

Madam President, if you go to the amendments dealing with guidelines that would be issued by the Central Bank as it relates to the financial institutions, guidelines to be issued by the Securities and Exchange Commission, guidelines to be issued by the Central Bank as it relates to the insurance companies. All of those guidelines were going to be issued by the Central Bank and we would have no oversight, we would have no view of what they did. Now, those guidelines that are being issued by the Central Bank as it relates to the financial institutions and insurance companies and the Securities and Exchange Commission, those guidelines must be tabled in the Parliament. The parliamentarians must have an oversight. That is the role of the Parliament. The Parliament is not in the back pocket of the PNM or the Executive. The Parliament is independent of the PNM and the Executive, and that is our oversight role in this matter.

Hon. Senator: No governance in secret.

Sen. W. Mark: No governance in secret, Madam President, as my colleague said.

Madam President, you go to clause 25 and you will see where we talk about the guidelines and declared agreements coming down involving the Central Bank where the Central Bank is saying that, as you move on, the Central Bank and the

Board of Inland Revenue, they have to coordinate and collaborate, and it takes you right into page 29 where it talks about guidelines subject to the approval of the Minister and laid in the Parliament at the earliest opportunity and as I said, both for the insurance companies.

My information is the banks in Trinidad and Tobago, there are some, I think, from my information, 62 financial institutions. We have 28 banks and 34 insurance companies that are going to be covered under the Financial Institutions Act, and the Central Bank will have a supervisory role over those institutions to ensure that the declared argument is, in fact, effected in accordance with the law that we are debating here today.

12.30p.m.

Madam President, do you know what is even more serious? Twenty-two, as of December 2016, we do not know what is the current situation. Maybe the Minister will tell us when he is winding up. Twenty-two of the 28 banking institutions and financial holdings and 28 of the 34 insurance companies have been registered with the United States Treasury Department. So they have taken in front, Madam President, and that is why when people go to the banks, ordinary people go to the bank, they are asking you to fill out a lot of paper. A lot of forms you are being compelled to fill out.

As I am on this question of the Central Bank, the role of the Central Bank in this legislation is very critical. They are not only going to be issuing the guidelines, but they are going to be enforcing the guidelines. But there is an officer or there is an office holder within the Central Bank that is responsible for issuing the guidelines and enforcing the guidelines, and that person or that office holder is the Inspector of Banks. The Inspector of Banks plays a very critical role in this whole

piece of legislation dealing with guidelines for financial institutions and other financial holdings in this country.

Madam President, I would like the Minister of Finance to tell this country why it is—I did a little research and I saw a story involving someone who happens to be the person at the moment, I should say is the temporary Inspector of Banks, and am I wondering, Madam President, a lady called Michelle Chong Tai-Bell, the Inspector of Banks. She is an actuary. You know, Madam President, this lady, a very bright lady, has been acting since the 1st of January 2016? Madam President, since 2016, and today is March the 7th. Why would you want to have somebody act as an inspector when you have such critical responsibilities for a Central Bank, particularly in tightening supervisory functions and overseeing these financial institutions in our country? Why has the Government failed, to date, to appoint a substantive holder to the post of Inspector of Banks in this country? Why has the Government not done that? [*Desk thumping*]

Today, I am calling on the Government of Trinidad and Tobago. How it is done, the President issues an Instrument to the Inspector of Banks. Having come from a recommendation from the Governor, it goes to the Cabinet. The Cabinet approves it. It goes to the President of the Republic and the President issues an Instrument of Appointment to the Inspector of Banks.

In Trinidad and Tobago, after the Clico fiasco, Madam President, after the Clico debacle that occurred on the 30th of January. In fact, this year we are celebrating the eighth anniversary of the collapse of Clico. Madam President, this collapse involves some US \$3 billion and you will tell me after that experience we have a Governor of the Central Bank and a Minister of Finance and a Government that will allow a bank as important as the Central Bank, Madam President, with

these matters coming before us today, where they have to issue guidelines to enforce these agreements that we have arrived at in the legislation, and you have an acting and/or temporary Inspector of Banks? Madam President, I call on the Government of Trinidad and Tobago and the Minister of Finance to take immediate steps to have the office holder be substantively appointed to the position of Inspector of Banks. It is not, Madam President, a good thing to have a very important office as that one jumping up in the air or jumping up all over the place.

Madam President, there are some small points I would like to raise, because I know my time is flying. I want to indicate, Madam President, the whole question of the state of readiness of these institutions, Madam President. We would like to know on this side and we would like the Minister of Finance to tell us the state of readiness of the Board of Inland Revenue; the state of readiness of the Central Bank, and I have just given you an idea of what is going on at the Central Bank; the state of readiness of the Securities and Exchange Commission; and the state of readiness of the Ministry of Finance. Many organizations and institutions in this country that are going to be affected, they need to understand. They need to be educated. I do not think the Government has rolled out a proper educational strategy to raise the consciousness and awareness of the citizenry in those institutions.

Madam President, we would like to know the administrative cost of implementing this legislation. What is the administrative cost to the State, through the Board of Inland Revenue, for example? What will be the cost, both the operational and administrative cost, to the banks, to the insurance companies, and Madam President, to the credit unions? The question here: Who will be carrying and paying those costs? Would it be, Madam President, the banks? Would it be the

insurance companies, or would it be the ordinary customers who do banking with those institutions?

Madam President: Sen. Mark, you have five more minutes.

Sen. W. Mark: So, Madam President, we would like the Government to indicate to us how is this administrative and operational cost going to borne? Who is going to bear it? We are saying if this thing is targeting US citizens, then the US citizens and the banks should bear that cost. The citizens should not bear any burden on this matter, Madam President. [*Desk thumping*] So this is an area we would like to have clarified, Madam President.

And then the other area I would like to raise, in closing, this piece of legislation called FATCA in the United States, that we are now referring to as the Tax Information Exchange Agreements (USA) Bill, 2016 is targeting tax evaders, tax dodgers and tax avoiders. Those countries like ours have become the fiscal policemen for the United States of America. We are the fiscal policemen for the United States.

But you know what, Madam President? What I am asking, what lessons are we drawing from this? What is the Minister of Finance doing about our own tax evaders and tax avoiders in Trinidad and Tobago? [*Desk thumping*] Because we have, Madam President, a lot of tax avoiders and a lot of tax evaders in this country costing us billions of dollars every year. And I hope that the Minister of Finance will take a page out of FATCA and do what is right, as it relates to, let us say, garnering and developing the kind of income and revenue that is necessary.

Madam President, every year you go through the Auditor General's report it tells you, those reports tell us, that there is a weakness in the revenue collection stream in this country. And here it is we have an opportunity to embark on a

journey that would tighten this particular area that is so critical to us at this time.

So, Madam President, we do not want the ordinary people to bear the burdens of new increases in fees and charges that are going to be effected and, therefore, passed on to the ordinary people. We do not want that. And the Government must give us the assurance that there is a system in place to ensure that that burden is not placed on the shoulders of the ordinary people.

Madam President, we know that people are under stress and a lot of pressure and instead of taxing the people, as the Government is doing, taxing, taxing and taxing, go after the tax avoiders, the tax dodgers and those people who engage in transfer pricing and allow the revenues to come on stream and ease the burden of the ordinary people.

I read somewhere, Madam President, and I hope that in wrapping up here the Minister could tell us what is the state of play at the port. We understand there is a crisis there and I am hoping that we will be able to get some answers from the hon. Minister, as we deal with this, because finance is very important to the Government and the Port Authority is a very important stream of revenue for Trinidad and Tobago. We understand there is a crisis there. The board has been fired. The chairman has resigned, and we want to know when the new board is going to be appointed and whether the same chairman that has resigned is going to be put back as the chairman. I understand my good friend, Ferdie Ferreira—

Madam President: Sen. Mark—

Sen. W. Mark: Madam President.

Madam President: Relevance.

Sen. W. Mark: Yes, I know. I know. I am wrapping up. [*Interruption*] No, I not looking at you. I am looking at the Chair. Madam President, I would say, in

wrapping, in closing, I have a few seconds. I want to tell you, Madam President, that this matter is an example and a manifestation of what, if the Government and the Opposition and the Independent work together conjointly, we can have harmony. We can have unity and we can bring good legislation to the table on behalf of the citizenry of Trinidad and Tobago. Stop the arrogance. Do not show contempt towards the Opposition. Show the Opposition respect and, Madam President, we will do what we have to do to give the support necessary. Thank you, very much, Madam President. [*Desk thumping*]

Sen. H. R. Ian Roach: Madam President, I thank you for giving me the opportunity to join this debate again. I was about to endorse in toto or most of what my fellow Senator Mark was saying in the end of the corroboration that can be had from being in a joint select committee, but he added in some other things and I do not want to participate in that.

But, this FATCA Bill, which is tabled before us called the Tax Information and Exchange Agreements (USA) Bill, 2016 has been debated ad nauseam and I shall be even more brief and to the point. There were some points made by Sen. Mark again that I would have liked to have raised again, but again I said that this has been debated so much, there is very little left for any person to add.

I have been a member of the Joint Select Committee. It was a privilege being on that committee in this instance and I participated in an exercise that I consider to be very fastidious in examining the Bill. There is not much to be added, as I said, because, I mean, it was so engaged. But I must commend my fellow Senators. Both Sen. Mark and the hon. Minister identified and listed some people but I, in toto, agree with them. Sen. Ramdeen, at times, you know, you may not want to agree with some of what he said but I think his contribution and his robustness and his

insistence in participation in this exercise were also quite well respected and incisive [*Desk thumping*] and I commend him for that at the end of the day.

The Chairman, of course, I think the hon. Minister, he did a very good job. So it is unfortunate that the viewing public is not privileged to see what transpires in a joint select committee in camera, because the level of the type of proceedings, it was done in a very respectful way. It was very open. It was accommodating, even though it went over six sessions before it was again tabled before the other place to be debated and passed unanimously. I believe that having the Bill committed to the Joint Select Committee was very valuable and in fact it facilitated the concerns of all sides.

Dr. Bhoë Tewarie said in his contribution in the other place that the Government may have spent too much time on the banking issues—I hope I am quoting him right from the *Hansard*—and the financial issues, and too little time looking at the privacy issues, the protection of the individual issues and those things that have to do with the constitutional protection; so that the Opposition had to focus solely on the privacy issues. That was quite evident from the type of discussions that were taking place and the issues that were being raised during the Joint Select Committee proceedings.

Be that as it may, Madam President, the fact is that there were finally mature and sober compromise that fashioned a Bill or a piece of legislation that would make good law, notwithstanding the invasive provisions on the rights of privacy to the individuals to be affected. If anything at all, Madam President, the FATCA Bill highlights what little clout Trinidad and Tobago has as a small nation in geopolitics. He who controls the purse controls the say. You either comply or you will suffer dire consequences.

Madam President, now that the FATCA Bill is on its way to be enacted in law, the financial institutions can breathe a sigh of relief, in particular, the banks. It is, perhaps, an opportune time for us to focus our attention on the banks who any ordinary citizen considers the institutions to be institutional bandits, financial extortionists and conscienceless as they unilaterally impose any and all types of bank charges [*Desk thumping*] in addition to the already outrageous lending interest rates.

The Government can and should once and for all deal with this systemic cancer of interest rates and bank charges by introducing a Bill to either fortify the Minister of Finance's power under the Central Bank Act or intervene in such a way so as to give the Minister of Finance such new powers that can effectively rein in these runaway ravenous horses that are the banks. I am confident that this will not be a contentious piece of legislation when tabled before us, but the Government must act with a sense of urgency, since too many people are complaining about the banks in Trinidad and Tobago.

FATCA has been attended to, to protect the banks' interest and the United States Government's interest. Now, Government must act *ex post facto* to attend to the public outcry about the banks.

Look how fast the Bankers' Association got together to proactively ensure that the Government, the Opposition and the Independent Senators and all other persons concerned acted in a way so as to ensure the passage of the FATCA Bill. I have no problem with that, Madam President. I have no problem with that whatsoever. But I also would like to see that the bank act with such heightened motivation and be introspective by the banks addressing the daily petition of the public against the exorbitant charges and rates that are unilaterally imposed.

The truth of the matter, Madam President, is that the banks can fix their financial problem, the punishment that has been inflicted on the public, without having to await Government's action or the passing of law to do so. The banks will have to set up specific compliance protocols in accordance with the FATCA requirements, which will come at some cost. Is that cost also to be passed on as Sen. Mark had raised? Is that cost to be passed on to the vulnerable and already distressed public? The banks take no risk, charge you on your deposits on your own money for your use and then lend it back to you at an exorbitant interest rate again. This has to be addressed and this has to be addressed quite urgently by the Government. I am in full support of the Bill as it was passed in the other House and as is placed before us at this point in time.

Madam President, I can go on, as I said, but the Bill has been so robustly and thoroughly debated, there is not much else to be added to this, and in that regard I would like to just again thank the committee, thank all those who participated in making this, what seems to be before us now to be the best that it could be in the circumstances. I thank you.

Madam President: Hon. Senators, we will suspend at this stage and we will come back at 2.00 p.m. So we are suspended until 2.00 p.m.

12.50 p.m.: *Sitting suspended.*

2.00p.m.: *Sitting resumed.*

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

Sen. W. Michael Coppin: Thank you, Mr. Vice-President, for the opportunity to contribute to this debate. Now, Mr. Vice-President, I say debate, but I think we would all agree at this late stage of proceedings—after a joint select committee, to debates in the House, numerous public consultations and commentary on this piece

of legislation—that the word “debate” is perhaps a misnomer. In fact, by now, I believe, we are having a discussion. It is a foregone conclusion, I hope, and I do not want to be presumptuous, that this piece of legislation, as critical as it is to the economic survival of our country, will be passed today with little drama.

So, Mr. Vice-President, I would like to take a page out of the book of Sen. Roach as he was very concise and to the point. But before I get there, I would like to raise a number of issues that were raised by Sen. Mark. Sen. Mark, unfortunately as he does, took the opportunity to politicize a debate that I think has well run its course. In fact Sen. Roach was very congratulatory of the work of the Joint Select Committee. He went so far as to compliment the good work of Sen. Ramdeen and for the time in my life, and I do not know if it might well be the last, I would like to congratulate the good work of Sen. Ramdeen. Because, during the Joint Select Committee Sen. Ramdeen did in fact make a number of important points, which the Government, a responsible Government at that, took the opportunity— knowing full well the consequences of non-compliance—they took the opportunity to address each one line by line, paragraph by paragraph, sentence by sentence.

And so it was in the other place with a degree of debate and compromise we have arrived at the position where we are today. But, Mr. Vice-President, I took slight umbrage to Sen. Mark chastising the Bankers’ Association of Trinidad and Tobago and saying that they ought not involve themselves in a debate of this nature. If he were a member and if he had the opportunity to participate in the Joint Select Committee, as I am sure his colleague Sen. Ramdeen would have told him, the Bankers’ Association in fact provided information that was critical to the deliberations of the committee, and had it not been for the contribution of the

Bankers' Association a lot of us would be none the wiser. I would like to just put on record that I am not apologetic for the Bankers' Association of Trinidad and Tobago but I recognize the important work, the expert opinion, the contribution that they gave in service of this country. I just want to applaud that.

Another point that was raised by Sen. Mark in his contribution is that he is saying that the other side is committed to good law. Mr. Vice-President, I think for the first time, I can say today that we all—Opposition, Government, Independent—are committed to good law and that is why we are all here. But the issues raised today, what he did not say Mr. Vice-President, he did not get to the real issues of this debate and it is slightly disappointing for a parliamentarian of his experience, and some of the issues that the committee was faced with, and Trinidad and Tobago was faced with in this debate and will be continuing, is the issue—and I want to list them out and, perhaps, just go through them one by one—is the issue of tax evasion and tax fraud, the issue of confidentiality, the issues of non-compliance and the consequences of non-compliance with this piece of legislation, the international trends and the principles that govern similar-type arrangements and the international fallout that potentially could have come as a result of not passing this piece of legislation.

Mr. Vice-President, tax evasion and tax fraud have been recognized as a serious problem internationally. For those of us who have an understanding and experience in the banking sector would know that from the year 2000, in particular, the OECD blacklisted a number of countries and they formed themselves into something called the Global Forum, which recognized the need for international solidarity for the purpose of identifying countries that are not compliant or somehow are not transparent. And it so happened that the reaction of a number of

Caribbean countries were named in the reports of the OECD as being not compliant and they were blacklisted. These countries took it upon themselves, knowing the potential fallout and how important it was, and their economies were based on the support of the OECD, formed themselves, got their act together, so much so that by the year 2008, many of these countries were no longer blacklisted.

In 2008, we had the financial crisis in which the G8 countries, including the United States, realized that they were losing a lot of money through tax evasion and tax fraud and it is there the genesis of FATCA, which was passed in the United States subsequently, began.

In 2009, Mr. Vice-President, the OECD got together again, reformed itself and we had the launch and the rebirth of the Global Forum. Now, Trinidad and Tobago is a partner or a member of the Global Forum. It means that we are committed to transparency and the exchange of information.

Now, Mr. Vice-President, the Minister of Finance would have spoken about our other commitments. He did not go into the Global Forum but he would have spoken and he would have informed this House that in fact Trinidad and Tobago has been a signatory to a lot of double taxation conventions with a number of countries, and I have a list here. I do not want to go through it, but when I was doing some research I realized that this is nothing new to Trinidad and Tobago—exchanging information.

In fact, Anguilla and Trinidad and Tobago; Antigua and Trinidad and Tobago, since 1994; Barbados, 1994; Belize and Trinidad and Tobago 1994; and the list goes on; the US in 1989. In fact, it is contained in this legislation in Part II. In fact, we have had mutual agreements with the United States for the exchange of tax information for a very, very long time so it is nothing new to us. And that is

why I say this debate really is not a debate. But if we understand the international paradigm, if we understand our history we would realize that there really is no debate at all.

It is interesting, Mr. Vice-President, that this piece of legislation speaks about the automatic exchange of information. So we have gone past the old regime where we request information, or information is requested of us, and the world has gone to the new regime where it says that this information should be automatically exchanged.

2.10 p.m.

Trinidad and Tobago, most interestingly, has agreed with the Global Forum that by the year 2018, we will be automatically exchanging information with countries in the OECD. There are 113 countries and signatories to the Global Forum.

Hon. Al-Rawi: 139.

Sen. W. M. Coppin: 139. One hundred and thirteen with FATCA with the United States. Thank you, Attorney General, through you, Mr. Vice-President, for that correction.

So once we understand the international trends of where we are going, where the international community is going as it relates, then this Bill ought not to have taken the amount of time and effort that has taken place and has aroused the type of emotions that it has. That is the first issue I would have liked to deal with.

The second issue which Sen. Mark, and I suspect, perhaps Sen. Ramdeen or Sen. Sturge will perhaps elucidate, is the issue of confidentiality. That issue finds itself and has been breathed new life in the form of the Data Protection Act. A number of provisions in this Act, the Data Protection Act, appear to be inconsistent

with the provisions of this new Bill. This Act goes on to clearly—it recognizes the potential for such a conflict and it attempts to resolve it by dealing with it frontally, and saying that notwithstanding, these provisions may be inconsistent with the Data Protection Act, we will allow the United States and Trinidad and Tobago to exchange information automatically.

So I would have liked, perhaps, Sen. Mark to have dealt with those types of issues, but Sen. Mark is Sen. Mark and he will always use the opportunity, I suspect, to embarrass this Government—[*Crosstalk*—attempt to embarrass this Government, but to no avail. The people of Trinidad and Tobago are wiser, they are smarter, they are educated, Mr. Vice-President, [*Desk thumping*] and they know how to differentiate fact from fiction [*Crosstalk*] or fact from FATCA. [*Laughter*] Thank you.

So, Mr. Vice-President, having dealt with the tax evasion, confidentiality and the data protection issues, I would like to say what this debate is not about. I do not want the good work that we have done to be reduced to ramblings and esoteric speak about issues which have no real bearing on this, which are not in contention. One of those issues is the issue of reciprocity, Mr. Vice-President.

Mr. Vice-President, the issue of reciprocity, I think, there is no one in Trinidad and Tobago who would agree or who would not agree that reciprocity is a good thing for Trinidad and Tobago. Reciprocity simply means that the United States, at some point in time, or periodically, will release certain information on residents, our residents, who have banking and financial dealings in the United States. What Sen. Mark did not say—he was clear or he made sure that he stayed away from mentioning reciprocity in his argument, when we all know that reciprocity had been at the heart of the United National Congress' opposition to

this Bill.

Luckily, in the Joint Select Committee, when that issue was raised, the Minister of Finance, in his wisdom, he immediately put it on the table that this piece of legislation is not about reciprocity. It is not about reciprocity. The IGA, the Inter-Governmental Agreement that we have signed is or has but 1A, it is constructed upon the concept of reciprocal exchange of information, and that again is trite. There is no debate that that is a good thing. If we look at most of the 113 countries that have signed on to the IGAs, I do not see—maybe two or three of them have chosen to have Model 2. There are two forms of Model 1: some reciprocal, some not reciprocal, but the vast majority have agreed for the reciprocal exchange of information with Trinidad and Tobago.

And why is that a good thing? Because, Mr. Vice-President, we know that Trinidad and Tobago has been struggling for the last six years with issues of deficits. Sen. Mahabir, I am sure when he rises to speak, if he in fact rises, will speak about the deficit problem that we have had in Trinidad and Tobago and the consequential problems it can have for exchange rates and unemployment or whatever. But if we are serious about clamping down on the deficits—the United States recognized this problem in 2008.

In fact, one report arising out of the Treasury Department, spoke to \$70 billion being lost every single year through OFC that is Offshore Financial Centres, through tax evasion. Now, if we extrapolate or if we reverse the argument, and we look at our own country, we would recognize that a lot of our hard-earned cash, perhaps, is being stored somewhere else in some other jurisdiction, and reciprocity becomes fundamental to our fight to trying to find where these accounts and taxpayers may be hiding their assets and their revenues. So reciprocity is a good

thing.

So I was quite surprised. I was perturbed. In fact, I had sleepless nights, Mr. Vice-President, when in the Joint Select Committee the first objection was to reciprocity. In fact, it was like a word that just sent some Members crazy. They were so happy when we took it out of the recitals. The work of the committee, in my estimation—and I could be wrong—really began to progress when some Members realized that the United States of America has to implement in their own jurisdiction laws to govern and to execute reciprocal agreements with Trinidad and Tobago. [*Crosstalk*] Well that is when they began, yes. All of a sudden, the work began to move like clockwork. It was like oil in a machine, Mr. Vice-President. I would like to thank the hon. Minister of Finance for clearing up that misconception, for clearing up that—[*Crosstalk*]—alleviating the fears of Members opposite. But, Mr. Vice-President, Sen. Mark was not there, so obviously he is not privy.

Hon. Imbert: That is why we finished.

Sen. W. M. Coppin: Yes, that is why we finished. He is not privy to what happened in the Joint Select Committee. Mr. Vice-President, I want to deal with the issue of sovereignty, because that is another issue that was raised in the previous debate, and somehow that Trinidad and Tobago is going to lose its sovereignty by entering into agreement or not coming to debate in this Senate about the workings of the IGA. But Sen. Roach said it right and Dr. Rowley, in fact, said it best. Sen. Roach recognized that we are a small island, developing country. Dr. Rowley has said it in the House that we are a country that has to do business with the United States, and if we do not enter into these types of agreements, the United States will simply say well do not participate, do not trade

with us.

As someone who is involved in the private sector myself, Mr. Vice-President, every week we have to import from the United States. We use correspondent banking. If we had continued to play politics with this issue, Mr. Vice-President, what would have happened is that the \$2.4 billion in imports in goods—yes, it is \$2.4 billion every year that is imported from the United States in goods. We are not speaking about remittances and import of services. We are not speaking about this. But could you imagine applying 30 per cent or withholding tax to those transactions? A number of institutions, trading partners with the United States, they apply a 35 per cent mark-up. It averaged from 35 to 30 per cent.

In fact, what that would have done—the imposition of 30 per cent withholding tax would have done—was to reduce the margin to next to nothing. In fact, some companies would have gone out of business. If these companies would have gone out of business, what could have happened? The cycle would have continued. Unemployment would have been on the rise; we would have had budget deficits increasing; murder and mayhem. All the social ills would have been occasioned by such the imposition of a withholding tax.

So, Mr. Vice-President, the implications of FATCA and non-compliance is serious. I am so glad, I am relieved that we have arrived at this position where there is consensus between the Opposition and the Government. I hope that the Independents, I am confident in their love for this country and their wisdom, impartiality and objectivity. I know that they will unite for what is right and that they will assist us in passing this legislation without further delay.

Mr. Vice-President, before I take my seat, I want to deal with one more issue. I know the Minister of Finance, he will address it as well when he rises to

give his wrapping-up, but the issue of the Minister and the powers of the Minister, a lot has been made of that. The CPC has been very helpful in our deliberations in the Joint Select Committee, and the CPC has provided comparisons with similar jurisdictions, Caribbean jurisdictions, and how they have dealt with or implemented their IGAs. It is important to realize that there has been really no hullabaloo in other Caribbean jurisdictions about the role of the Minister.

So, for instance, Mr. Vice-President, in Jamaica, who is the Competent Authority? The Minister with responsibility for finance, as it is in Barbados. If we look at the IGA, who is the Competent Authority? Is the Secretary for the Treasury? So there is some obfuscation of the issues. It is almost like they have treated these institutions and personalized them. Somehow, maybe they are afraid of the Minister of Finance that he is somehow going to get on his high horse and start abusing his powers under the IGA. The IGA, Mr. Vice-President, if one looks and reads the agreement, it speaks directly to secrecy and institutions being put in place for the protection of the confidential information of citizens. It guards against abuse and it is very cognizant of the possibility of abuse by persons in other jurisdictions.

So to say somehow that the BIR needed to be there, it is a concession that the Government has made in the name of peace and the name of getting this legislation passed, but there is really nothing untoward. There is nothing invidious. There is nothing strange about the Minister of Finance being the Competent Authority. So I just wanted to put that on record, Mr. Vice-President, that there is nothing invidious about the Minister being the Competent Authority and there is a lot of precedent in such action.

So, Mr. Vice-President, I think I have traversed these issues. I know the

Minister of Foreign and Caricom Affairs, maybe when he rises to speak, will speak about the political potential fallout that such a stalemate could have had for the relationships between Trinidad and Tobago. In fact, we rely on the United States for a lot of things. Recently there was a big drug bust, the largest this country has ever seen, and we depended on the mutual cooperation of the United States. So why are we risking our relationships with the United States as my father would say, all for the want of a horseshoe nail? No, Mr Vice-President. We have to be a responsible Government and we need to do what is right. [*Desk thumping*]

So, Mr. Vice-President, in wrapping up, I want to say that we all want the same thing. We all want the elimination of corruption. We all want the elimination of tax fraud. We want to reduce our own deficits, so we want the cooperation of the United States Government in providing information so that we can weed out those who have taken the patrimony of Trinidad and Tobago and have utilized our resources and, perhaps, have hidden it far and wide, we want that. It is trite, we all want it.

We are committed to the reduction of deficits. We all hold the confidential information and sensitive information dear to our hearts. This Bill, although there is some touching on data, private sensitive information, it deals with those issues in a proportionate way, and there are legitimate aims to be had and to be addressed in this Bill.

I want to congratulate the Minister of Finance, the hon. Attorney General, the staff of the Parliament, the Bankers' Association who were vilified by Sen. Mark—very unwarranted attack on them—AMCHAM, the Central Bank, the credit unions, the Parliament staff, the SEC, the CPC who has provided a number of opinions—[*Interruption*]

Sen. Ramdeen: The credit unions.

Sen. W. M. Coppin: The credit unions. Yes, Sen. Ramdeen, you are on fire today—and, most of all, Mr. Vice-President, the citizens of Trinidad and Tobago. We do everything here for the benefit of the people of Trinidad and Tobago. We act really only in their self-interest.

And so, Mr. Vice-President, I wanted before I sit down to say Happy International Women's Day to all the women. Being an avid lover of the female form and the female person myself and respect—I have ultimate respect for the women of Trinidad and Tobago—from my mother to my grandmother to my sister. In fact, I was raised in a house with three women, so I have no choice but to venerate them. So, in closing, Mr. Vice-President, let us all just unite for what is right for the benefit of Trinidad and Tobago. I thank you. [*Desk thumping*]

URGENT QUESTION

Mr. Vice-President: Hon. Senators, as indicated earlier, Madam President would have indicated that we would come back to Item 8 on the Order Paper and, as such, I crave your indulgence to return to that item now. Sen. Richards.

Ste. Madeline Secondary School

(Details of Protest)

Sen. Paul Richards: Thank you, Mr. Vice-President, and through you to the hon. Minister of Education: Has the Ministry confirmed whether or not teachers were involved in yesterday's protest at the Ste. Madeleine Secondary School and if such teachers were attacked by students?

The Minister of Education (Hon. Anthony Garcia): Thank you very much, Mr. Vice-President, and thank you very much for your question, Sen. Richards. As you would know by now, a team of senior officers of the Ministry of Education visited

the Ste. Madeline Secondary School—as a matter of fact, I have just returned from that school—and we engaged in a preliminary investigation, which revealed that yes there were approximately 10 teachers who are attached to the school who took part in the protest action.

In terms of whether missiles were hurled against those teachers, we have been having conflicting reports. A police officer who was present yesterday and who was on site today indicated to us that she saw no missile being thrown to anybody. However, the School Supervisor has it on her phone where two soft drink bottles were thrown at the fence. It was not directed to the teachers. This is what we were shown. But in meeting with the teachers, some teachers indicated that, in fact, they were pelted with missiles.

We will be conducting a thorough investigation. In fact, the investigation started today, and we will make sure that we have all the relevant information before any action is taken. Thank you.

Sen. Richards: Thank you. Minister, can you indicate as to whether it is within the education Ministry's policy for teachers to participate in such kinds of protest action?

Hon. A. Garcia: And, again, this is a very timely question, because as far as we are aware action like that that has been undertaken by teachers can be calculated to bring the school system into disrepute. We have asked our legal officers to look into that matter and report to us, and I am expecting a report when I return to the office this evening.

Sen. Richards: Thank you again, Minister. Also to the Minister, through you, Mr. Vice-President, in light of the recent protest at the Ste. Madeline Secondary School, you indicated an investigation is on the way. Is it that a disciplinary tribunal will be established to investigate the allegations against the principal?

Hon. A. Garcia: Mr. Vice-President, there is a process that we must follow and that process involves, first of all, ascertaining the facts of the matter. At present, we are in the business of ascertaining whether those allegations that have been made against the principal are true. If we find that there is merit in these allegations then we will set up our own investigating team and report to the Teaching Service Commission. The Teaching Service Commission, again, if they find that there is merit in that report, will then set up a tribunal, but a tribunal, I must say, is not set up just like that. A process has to be followed and we are following that process.

Sen. Richards: Through you, Mr. Vice-President, again, can the Minister indicate to this Senate the status of the principal while this tribunal is being set up and this investigation continue? The status of the principal in terms of whether the principal is on active duty or has been suspended. Is that the protocol?

Hon. A. Garcia: At this moment, the principal is still on active duty. It is only when the Teaching Service Commission has decided that there is a case against the principal, then the Teaching Service Commission can either decide, one, to suspend the principal or to remove the principal temporarily or to dismiss the principal.

Sen. Richards: And, finally, through you, once again, Mr. Vice-President, with that said and with the admission that teachers were involved: what has the Ministry put in place to ensure that this sort of activity does not reoccur because it is obviously a disruption in the education of the children and also puts the entire teaching profession and education system at some sort of a disadvantage, particularly those students who would need to get their education at that institution?

Hon. A. Garcia: Thank you very much, Mr. Vice-President. As I indicated a while

ago, during a visit today we had discussions with the entire staff, and during those discussions there were a number of teachers who indicated that they took part in the protest action. We indicated to those teachers that that was not the type of action that we will condone. We told them that if there is any recurrence to that action then there will be severe penalties.

In the meanwhile, as I told those teachers, and as I just said just now, we have informed our legal department to give us some information and some advice as to how to proceed whether those teachers by their action have been in breach of the Education Act and of the regulations and whether they have brought the school system into disrepute.

Sen. Richards: Was TTUTA involved in any way in these discussions?

Mr. Vice-President: Sen. Richards.

Sen. Richards: Sorry.

Mr. Vice-President: That is enough for supplemental questions. You have exceeded the number.

Sen. Richards: I am obliged, Mr. Vice-President.

Mr. Vice-President: Thank you. Sen. Ramdeen. [*Desk thumping*]

TAX INFORMATION EXCHANGE AGREEMENTS

(USA) BILL, 2016

Sen. Gerald Ramdeen: Mr. Vice-President, as I rise to contribute to this very important debate—[*Interruption*]

Mr. Vice-President: Sen. Ramdeen, one second. Let me just indicate for members of the public and hon. Senators that the debate that was in progress prior to the interruption for the Urgent Question will now resume. So continue.

Sen. G. Ramdeen: Thank you, Mr. Vice-President. Mr. Vice-President, as I rise to contribute to this very important debate, I want to begin my contribution by firstly

paying tribute to the parliamentary staff that were assigned to the Joint Select Committee [*Desk thumping*] in this matter. The Joint Select Committee of which I was a member, Mr. Vice-President, would not have been able to complete the work that it did in the time that it did without the dedication and commitment of the parliamentary staff. [*Desk thumping*]

I want to single out Miss Keiba Jacobs [*Desk thumping*] who was the Secretary to the JSC [*Desk thumping*] and to indicate that we as a Parliament are lucky to have persons with that kind of dedication and commitment. [*Desk thumping*] There were times during that JSC, Mr. Vice-President, that we would receive emails at 11 and 12 o'clock at night, at six in the morning, and that represents a form of dedication. If it could transcend throughout the public service, we will all as a country be well better off. [*Desk thumping*] So I want to indicate that at the outset. [*Desk thumping*]

I would also like, Mr. Vice-President, to join with Sen. Mark and to indicate my gratitude to the other Members of the Opposition team that were a part of the Joint Select Committee: MP Tewarie and MP Gopeesingh. I would like to pay particular tribute to the position taken by the Leader of the Opposition with respect to this matter. [*Desk thumping*]

The position taken by the Leader of the Opposition, Mr. Vice-President, was one that demonstrated true leadership in times when the Government thought that the Opposition would cave in in this particular piece of legislation. [*Desk thumping*] At the very outset on the very first day on the 9th of September when this debate began in the other place, the position of the Opposition was made very clear by the Leader of the Opposition that this was a piece of legislation that ought properly to be before a Joint Select Committee. What time has shown is that that

position that was taken by the Opposition has borne the fruit of this piece of legislation. I can stand here and say that this country is better off today, and we as a Parliament passing this piece of legislation are all better off today because of the work of the Joint Select Committee. [*Desk thumping*]

I was happy, Mr. Vice-President, when I opened the email that presented the documents for debate today, and all of the amendments that were made to this Bill in its original form were set out in bold. I wish the general public could have seen the extent to which this Bill has been amended. It is virtually a new Bill that we are presented with today from what was presented to the House on the 9th of September, and it is virtually a new Bill because of the work of the Joint Select Committee.

2.40p.m.

I am not going to discount it. I am not going to discount the work of the Opposition in this matter, because you can take the 500-page joint select committee report—and the Minister of Finance in his reply to wind up this debate can contradict me if he wishes—but this is the product of the work of the Opposition in this country. [*Desk thumping*] Five hundred pages—500 pages. Go through it, Mr. Vice-President, and you would see not a single—not a single suggestion for an amendment by the Government—not one.

I was very disturbed when I listened to the debate in the other place. On February 13, 2017, this country was told that a decision would be made on the next date with respect to this Bill. The hon. Prime Minister in contributing to this debate in the other place told the country, in his short contribution, that in one week's time, next Thursday, the country would see and the people would see whether the Opposition would support this Bill or not, and they would judge the Opposition by

that. I want to indicate to the Government that this Opposition will not be bullied into passing any legislation in this Parliament at all, and we will not support any legislation that is brought by this Government that does not pass the constitutional threshold, whether it be section 4, section 5 or section 13. We will not support it.

I want to indicate that any piece of legislation that this Government seeks to bring to this Parliament, whether it be in the other place or here, that we consider does not pass that constitutional threshold, whether it be a three-fifths majority, whether it be you want to withdraw the certificate, whether it be you want to boast that you will bring legislation and you do not need a special majority, I and this Opposition will ensure that every piece of legislation that this Government passes that infringes the rights of the citizens of this country is challenged in the courts all the way to the Privy Council.

And you can cry Suratt as much as you want, there are two strong dissenting judgments by two of the most distinguished public lawyers this country has seen, Chief Justice Archie and Justice of Appeal Jamadar, in that Barry Francis judgment. I will stand here today because I understand how the law changes over time, and that same Suratt judgment that is being plastered up and down about legitimacy and proportionality, we will see the day will come very soon when the Privy Council will revisit Suratt, and you will see what will happen to those judgments in Barry Francis as the dissenting opinion. Do you know why? We as a Parliament have a responsibility to pass laws that are in accordance with the Constitution. That is why we demanded a JSC in this matter. That is why the Leader of the Opposition did not flinch to the last minute, and we were not going to give in at any point in time to the Government.

When you look at the piece of legislation that was brought to this Parliament

by the Minister of Finance, being advised by the Attorney General on September 9th, God help the people of this country if we had passed that piece of legislation in the form that it was at that point in time. It was atrocious. I will go through clause by clause—clause by clause.

But I want to start off by saying, do you know where this journey started, Mr. Vice-President? This journey with this piece of legislation started on September 2nd last year, when the Leader of the Opposition asked for a meeting with the Prime Minister about crime. That is when it started, because in that meeting this issue about this particular piece of legislation was raised. I stand here and asked to be corrected by any Member of the Government who was in that meeting, that the hon. Prime Minister gave an undertaking to the Opposition at that meeting that the Opposition would be provided with this legislation before it was brought to Parliament, so that the Opposition and the Government could meet, discuss a way forward, so we could work together.

Right after that meeting was completed, the hon. Prime Minister had a press conference, before the Opposition could even talk. You know what he said? Time will tell as to whether the Opposition will hold true to their word. But you know what time really told us? That it was the Government would could not hold true to their word. [*Desk thumping*] So the undertaking that was given to the Opposition by the Government, and by none other than the Prime Minister, was broken before this legislation was even brought to Parliament. When this legislation was brought to Parliament on the 9th, on the 12th, as Sen. Mark indicated, there was a meeting between the Government and the Opposition. We came out of that meeting with the Minister of Finance going on record by saying there will be a joint select committee to deal with this piece of legislation.

The Minister of Finance today set out the chronology from September 9th to January 6th to today's date, and I would like to be allowed to correct that chronology, because the Minister of Finance was very selective as to what took place. The Minister of Finance carefully told the Parliament and the people of this country about what steps were taken by the Government, and like the Attorney General, when the Leader of the Opposition was ejected and when the Opposition did not come. But, Mr. Vice-President, what the Minister of Finance did not tell the people was what was contained in those two letters that were written, one by the Treasury Solicitor and one by the Minister of Finance himself.

The debate started on September 9. The meeting with the Government was on September 12. All of the excuses that have been given by the Minister of Finance about why a joint select committee could not be established before, are simply excuses, because after September 12, 2016, on September 21 the Minister of Finance himself wrote to:

“His Excellency John L Estrada
United States Ambassador to the Republic of Trinidad and Tobago
United States Embassy
15 Queen's Park West
Port of Spain.
Dear Sir,”

I want to read it into the *Hansard* records to show you the attitude that the Government had to passing this piece of legislation. In the other place the hon. Prime Minister said over and over that this Opposition never intended to pass this legislation—never intended to pass it.

When you agreed to have a joint select committee with the Opposition on

September 12th, the Minister of Finance wrote to the Ambassador to the United States on the 21st, before Parliament was prorogued—on the 21st—and this is what he said:

“The Opposition requested and the Government agreed to place the Bill before a Joint Select Committee (JSC) of the Parliament in order to have the widest possible consultation on the implications for individuals who would be caught by the provisions of the new Act. Given the intention to constitute a JSC to deliberate on the Bill, Trinidad and Tobago will not have a key internal procedure in place in time for September 30, 2016 to allow for the entry into force of the Agreement.”

This is what I want to read into the *Hansard* to answer the Minister of Finance:

“I wish to draw to your attention however, to one correction. In the request dated September 14, 2016 mention was made of the requirement to relay and debate the Bill since it would have lapsed on the proroguing of the Parliament.”

And this is what the Minister of Finance is telling the US Ambassador:

“It should be noted that there will no longer be a requirement for this step in the plan outlined. The Government and the Opposition approved a motion to carry over the Bill in the next session of the House upon the resumption of the Parliament. The effect of this move is that the proceedings on the Bill will be resumed in the new session of Parliament due to commence on September 23, 2016.”

When you hear the Minister of Finance come to this Parliament and come to this Senate and tell you, and tell the people of this country, that the Joint Select Committee could not have been set up before, because you had the budget debate

and because you did not have time, and because you had the proroguing of Parliament, all of that is simply not true. Because the facts are that when you wrote to Ms. Elena Virgadamo of the US Treasury you did not tell her that. And when you wrote to the US Ambassador you were telling him that you were going to set up a joint select committee. So what the Minister of Finance should tell the people of this country is after you wrote to the US Treasury on September 14th, two days after you had the meeting, and on September 21, 2016, why did you not set up the Joint Select Committee between that date and the 6th?

Let me tell you all the opportunities they had: the 23rd of September, the 9th of September, the 9th of December, the 12th of December. All during that time, Mr. Vice-President, is it that the Government was saying they were not mature enough that the Leader of Government Business or the Chief Whip could not tell the Chief Whip of the Opposition that you had told the United States you were going to set up a joint select committee? Mr. Vice-President, on December 12th, the Chief Whip in the other place criticized the Opposition and asked the question: what is it that the Opposition was afraid of? What is it that they want to do behind closed doors that they did not want to do on the floor of the House? On December 12th, and since the 14th of September you were telling the US Treasury you were going to set up a joint select committee.

Mr. Vice-President, this debate started on September 9th. We are presented here in the Senate today on March 07, 2017, with a piece of legislation, and asked to pass it some six months after it was presented in the other place—six months after; after it goes through the Lower House, after it was the subject of a joint select committee. We are presented with a Bill, an Act to repeal the Tax Information Exchange Agreements Act and replace it with a Tax Information

Exchange Agreements (United States of America) Act. I do not feel very good that when you turn to the interpretation section of this piece of legislation, you would see that after a JSC, after four times you tried to amend the Act, you come here today, and what are we asked to repeal? Look at what the former Act is defined as under this piece of legislation:

“‘former Act’ means the Tax Information Exchange Agreement Act;”

Well, there is no Tax Information Exchange Agreement Act. So when you pass this, after six months you still get it wrong, because I pointed out in the Joint Select Committee—the verbatim notes are here—there is no Tax Information Exchange Agreement Act. It is the Tax Information Exchange Agreements Act. So when I pointed it out, you still have it here, passed in the Lower House, come to the Senate and you still get it wrong. So the Minister of Finance in his wrapping up will tell you that he needs to amend this now, after five months plus, because you just did not get it right, and we still have not gotten it right.

You see, it is very ironic that we were told by the Chief Whip in the other place telling the Opposition: What is it that you want to do behind closed doors that you do not want the public to see? I wish that the public had really seen what had gone on in that JSC, because if the public had seen what had gone on in that JSC, you would really be wondering why they are sitting there and why we are sitting here. [*Desk thumping*] We had a piece of legislation that is piloted by the Minister of Finance, a piece of legislation that deals with the exchange of tax information between Trinidad and Tobago and the United States of America. Let me tell the people of this country what went on in the Joint Select Committee that brought us here to pass this today, which is still wrong.

The Attorney General in the Joint Select Committee started off by giving us

a dissertation about double taxation—double taxation. That the reason why we had to go this route was because Trinidad and Tobago and the United States of America did not have a double taxation treaty. It is in the notes; anyone can go and check it. Can you imagine that the Government—under the Constitution, the legal advisor to the Government is the Attorney General. The legal advisor to the Cabinet is the Attorney General—that you go up and down Trinidad and Tobago and tell them about Tax Information Exchange Agreement; you hold all consultations you talk about, that we realized after you never held at all, and you come and tell us—the legal advisor to the Government—comes and tells us that Trinidad and Tobago does not have a double taxation treaty with the United States of America and that is why we must go this route.

I would expect, I do not need advice if you are the Attorney General. I would expect—and I would not expect you are depending on the CPC, and the LRC and the Treasury Solicitor to tell you that if you are passing a piece of legislation—go and find out. It is your responsibility to do it to the Government and to the Cabinet and to the people, whether you have a double taxation treaty. In the fifth meeting of the JSC, the CPC is telling us, Mr. Attorney General we have a double taxation treaty—we have a double taxation treaty. Five meetings down in the JSC, you know—1971—we have a double taxation treaty. You wanted to pass legislation. You wanted the Opposition to support you on September 9th, on the 23rd, on December 2nd and you as Attorney General do not know if you have a double taxation treaty with the country, you want to pass this legislation to exchange information? You really serious about the law-making process?

In the fifth meeting the Attorney General would tell us, “I was advised. I was advised”. Well you know what I want to know, Mr. Coppin was giving thanks

to the CPC—Sen. Coppin, I apologize, was telling us, “I want to thank the CPC”, and he wanted to thank the LRC and he wanted to thank everybody. The Minutes, the verbatim notes of the second meeting of the JSC—let me tell you why it is worrying to sit there and experience this. Because the Attorney General, as I said, said that the core concept of a double taxation treaty is to get relief. So the relief is, “Look, I am already paying tax in Trinidad, so give me relief over here so that I do not have to pay twice.”

The US is the opposite. What we have with the US is only a TIEA. We do not have a double taxation with them. I will give you a list. We prepared a list of all jurisdictions that have either double taxation or TIEA.

Hear how bad this really is: you prepared a list. “You tell us in the JSC you prepare a list of all the countries with double taxation treaties, but the one that we doing de Act to exchange information with, you doh realize it have no double taxation treaty.” You know what? “It get worse than that.”

The list that was prepared—you know what we were told? Let me tell you what we were told by the Attorney General.

“Since TrinidadandTobago already had legislation governing the sharing of tax information with the United States which gave effect to an agreement concluded in 1989 and the IGA Agreement signed between TrinidadandTobago and the United States speaks to the existence of that Agreement...”—listen to this—“the approach by TrinidadandTobago was to amend the TIEA Act of 1989 to include the IGA 2016.”

This is the Attorney General telling you that this that we are asked to pass is to amend the TIEA Act of 1989. The Attorney General of TrinidadandTobago did not understand the difference between what it is to amend and what it is to repeal; that

is how bad it is.

So when the Attorney General tells you in the debate in the other place—and I do not want for one minute to misquote what the Attorney General has said in the debate in the other place—that all of the amendments—look it here. The *Hansard* of January 23, 2017, this is what the Attorney General was pouring scorn on the Opposition:

None of the serious amendments or reflections in the Bill originate from the Opposition—none.

That is what the Attorney General is telling you in the other place. He says:

If one were to categorize the four amendments brought by Sen. Ramdeen on February 16th you could perhaps fairly add one more amendment, and that one amendment is the removal of the Minister and the replacement instead with the Competent Authority being the Board of Inland Revenue.

So pour scorn on the Opposition. The Opposition not responsible for anything. “De Bill pass just like that and it reach in this form just like that.”

Mr. Vice-President, the Minister of Finance did not do it, and I said I would do it, so let us go, and let me take the Parliament through what the advisor to the Cabinet and the Government said the Opposition was not responsible for. To start off with, the title of the Bill was wrong—the title was wrong. The preamble was wrong—the preamble. “If you cyar get de preamble right, what you would get right?” We had to correct that too. Can you imagine? This is worse than a first-year law student. Can you imagine that you are passing legislation, you are the advisor to the Cabinet and to the Government, and you are passing legislation? The most fundamental, simple clause that you have to pass and say is that Act is inconsistent with sections 4 and 5. You know they could not do that as well.

Anybody who understands legal drafting will tell you that what you are supposed to have is: This Act shall have effect even though it is inconsistent with sections 4 and 5. Do you know that what was presented to the House to be passed was: This Act is inconsistent with 4 and 5? That is what was presented to the House; not that “it shall have effect even though inconsistent”. And you wanted us to go on the floor of the House and pass that. That is what you wanted to give to the people of Trinidad and Tobago.

Mr. Vice-President, when you look at section 8, what it does is allow the Competent Authority—which Sen. Mark has already dealt with, which is now the BIR, because of the position taken by the Opposition—allows the BIR to exchange information, notwithstanding the data protection provisions and the other secrecy provisions in legislation that we currently have in our jurisdiction. When they presented this in its original form, nobody in the Government, nobody in the AG Office, nobody in the CPC, nobody in the LRC, realized that there was a secrecy provision in section 55 of the Financial Institutions Act. So that was totally out. Nobody picked up on that, so the Opposition had to put that in. The Attorney General says, “Dat eh no big ting. Dat is nothing substantial. We going again.”

So what they decided to do was to split the Act into two parts, one dealing with the 1989 TIEA and one part dealing with the 2016 IGA. When you look at section 8, in order to exchange information under the IGA and in order to exchange information under the TIEA, you had to have section 8 in both parts of the legislation. You had to have it in relation to the 1989 TIEA and you had to have it in relation to the 2016 IGA, because you had to be able to give the Competent Authority the security that if they exchange information in breach of these provisions they will not contravene the law.

Lo and behold, on the advice of the Attorney General advising the Cabinet and advising the Government, section 4 of the Income Tax Act totally out of the 2016 IGA, section 55 of the Financial Institutions Act, totally out of the 2016 IGA. Any other law that restricts the sharing of personal information, totally out of the IGA. What is it we were really asked to pass? Where would we have been if the Opposition did not redraft this for the Government? We would have been in a position where the legislation is passed and the Competent Authority, every time they exchange information they would be in breach of the laws of Trinidad and Tobago.

The Minister of Finance, the Attorney General, the CPC, the Treasury Solicitor, the LRC, nobody “ain’t” pick it up, and the Attorney General is telling the country, “Doh worry about dat, because that eh no big ting.” “De Opposition not responsible for dat.” When the Attorney General contributes to this debate, he will tell you who was responsible for it, if it was not the Opposition, and point in the verbatim notes and point in the Minutes and show where all of the changes—all, not some, all of the changes—that were made to this legislation were not made by the Opposition.

Section 22—you are taking people’s personal information and giving an authority the power to take that information and transfer it to another authority, in another jurisdiction—people’s personal information. You know what was the penalty that was put in this legislation in its original form? Mr. Vice-President, a \$30,000 fine; \$30,000 fine and a summary offence. Because of the work of the Opposition—and let me put it on the record of the *Hansard*—in spite of the opposition of the Attorney General, the Minister of Finance agreed to put in a clause that increases the penalty for disclosing information on summary

conviction, from \$30,000 to \$100,000 and three years' imprisonment, [*Desk thumping*] and because of the insistence of the Opposition, on indictment, to a fine of \$250,000 and imprisonment to five years. So that there is now some teeth in the law to actually deter people who want to even consider taking people's personal information and unlawfully transferring it to someone else. The law finally has something to actually deter people. Why? Because of the work of the Opposition. [*Desk thumping*]

There was a clause that was in this original Bill that would have allowed any financial institution to bring judicial review proceedings against the Inspector of Banks, as was raised by Sen. Mark. It is because of the insistence of the Opposition that we saw the wisdom in taking that out because we understood what could have happened in that case.

But one of the most disturbing things that I heard in this debate, in the other place, was when the hon. Prime Minister dealt with the proposed amendment to give people notice that their information was going to be transferred.

3.10 p.m.

The Opposition proposed in the minority report that one of the safeguards that we wanted to put in the legislation was that persons would be given notice that their information would be transferred after it has been transferred. We initially asked for them to be given notice before, because, as explained to the Minister of Finance in our discussions, the information and the basis upon which someone can be subject to the law is as a result of information that has been provided to a financial institution. There is no mechanism for that information to be updated, so that because of a change in circumstance someone may automatically not be subject to the law, but as a result of that information not being passed to the

financial institution, the financial institution may continue to transmit that information automatically on the 30th of September.

We made that proposal knowing fully well that what that sought to do is to protect the rights of the people whose information is going to be exchanged. The chairman of the JSC, the Minister of Finance, indicated that he would get advice on the matter from the Treasury Solicitor as to whether that was a provision that the Government would agree to.

Mr. Vice-President, lo and behold, because the Opposition proposed to give people notice that their own personal information was going to be transferred without their consent, pour scorn on the Opposition. You know what the Opposition was told, Mr. Vice-President? The Opposition was told that they put that clause in there to fatten the pockets of lawyers. A clause that was going to protect the rights of citizens, the Opposition was told—

Mr. Vice-President: Senator, you have five more minutes.

Sen. G. Ramdeen: Mr. Vice-President, I took great umbrage to that, and I took great umbrage to—and I wonder what they were talking about that it was so expensive, and lawyers' pockets were going to be fattened, because somebody got a right to know whether their information was being transferred. So, I did a little bit of digging to find out how expensive it is when you go to enforce your rights to know, and I came up with a very interesting order of the High Court in CV 2007, 00185. And in that order, it is an order dated the 3rd of February 2010, before the hon. Madam Justice Rajnauth-Lee, where it was ordered that the defendant shall pay to the claimant costs assessed in the sum of \$900,000 plus VAT; \$900,000 plus VAT in 2010 was \$1,035,000. That was the cost that the taxpayers had to pay when Dr. Keith Christopher Rowley sued the Integrity Commission, and the

Integrity Commission and the taxpayers had to fork out \$1,035,000 because he wanted to know. He did not have a right to hear, so he wanted to know. So, when you, the taxpayers pay \$1,035,000, because the hon. Prime Minister, as he then was, wanted to know and wanted to enforce his right to know, why are you criticizing people who want to know whether their information has been exchanged? [*Desk thumping*]

And before I take my seat there is one more thing that I cannot stand here and not talk about, which is that the University of the West Indies, and, more particularly, the Dean of the Faculty of Law, Prof. Rosemarie Bell-Antoine, somebody who I had the privilege to sit in my LLB and be taught by, was criticized by the Government for making comments on this law. Why? Because she made comments on the wrong version. Why did she make comments on the wrong version? Because it had about five different versions that the Government presented, so you did not know which was the right one, which was the first, the second, the third, the fourth, the fifth, and none other than the hon. Prime Minister would say that they are embarrassed, because he has three degrees from UWI, and he is embarrassed because his alma mater is the University of the West Indies. I am proud to be a product of the University of the West Indies. I will stand and defend Prof. Rosemarie Bell-Antoine and her good name, because it was in the interest [*Continuous desk thumping*] of helping, assisting, and ensuring that a good piece of legislation is passed in the Parliament, that she took the time to make comments on this piece of legislation.

[MADAM PRESIDENT *in the Chair*]

Madam President, we are better off today because of the work of the Opposition in this matter. We are better off today because the Opposition is led by

a woman of strength, who did not give in to this Government, [*Desk thumping*] and we are better off today because what we are asked to pass today, though incomplete, as I have pointed out, and hopefully it would be corrected so that we can actually pass a piece of legislation that will have effect when it is assented to. At the end of the day the people of Trinidad and Tobago cannot count on the Government to secure their rights, they will count on the Opposition, they can guarantee that this Opposition will support their right.

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

Sen. Taurel Shrikissoon: Thank you, Madam President, for acknowledging me and allowing me to enter into this debate at this time. Coming in after Sen. Ramdeen, you can actually feel the tenseness in the House, but I want to say that I do not intend to create or foster that type of ambience or environment in the House.

As I begin today I would like to thank my colleagues on the Independent Bench for allowing me the opportunity to serve as a member of the JSC that sat on this Bill, and actually it was my first JSC, and I found that the value or that the JSC on this Bill really was invaluable and it contributed significantly to the quality of the Bill before us today. And with respect to the JSC I would really like to commend the Minister of Finance who was elected chairperson or chairman of that committee, for his leadership style and the way in which he entertained the views of all, and at no point in time disregarded anybody's view, and he maintained structure and order during all JSCs, and also tried to manage it punctually and within the time frame, and I found that was very, very, very commendable by the Minister of Finance.

I also would like to commend the hon. Attorney General who is here with us today, for entertaining a request of the Independent Bench to meet with us, to share

on details of this Bill prior to the Bill being laid in any of the Houses. I remembered on the last occasion such an occurrence—we had such an occurrence, I disagreed with the approach because it was done during the debate, and I did voice my concern, and given the approach by the hon. Attorney General, I would really like to thank him for giving way at our request, and the manner in which he did it.

A lot has been said about Sen. Ramdeen's contribution to the JSC as well as the other Opposition Members, and I want to say for sure today that I was really impressed by the quality of work by the Opposition and the contributions of our colleague Sen. Ramdeen at the JSC. [*Desk thumping*] And as the hon. Minister of Finance did say as well earlier on today, Sen. Roach who is not here with us, my fellow colleague on that committee, he was always there to ask relevant questions, probing questions, and he was always trying to ensure that whatever was being done was being done towards achieving consensus and passage of the Bill. He was very, very, very strict on that, and he would always ask, would this lead to the Bill being passed? I really want to commend and acknowledge the efforts of Sen. Roach, as well as the parliamentary staff and all the other staff members of the CPC for their contribution.

Madam President, as I would begin today, I do not want to be too long, but I would like to actually get into the Bill a little, because that is the subject of the matter here today. So, I would like to begin by really speaking to the citizens of Trinidad and Tobago, because what I have realized, and via phone calls, messages, conversations, on the street, there has been a lot of concern among citizens of Trinidad and Tobago as to the impact of this piece of legislation on their lives, so everyone wants to know how it is going to impact on them. So, the question is,

what really is FATCA? And FATCA as was said earlier, is the Foreign Account Tax Compliance Act which originated in the US in 2010, and this is what FATCA sought to do at this time, and I am going to come back to this point a “lil” later. It sought to introduce a mechanism to detect non-US financial accounts of US taxpayers. So it was really targeting accounts of US individuals held outside of the US. The Act sought to force US persons, including those living outside of the US, to file yearly reports of their non-US financial accounts, and it was estimated at that time that as much as 8.7 million US citizens living outside of the US, who are subject to domestic taxation in the US were not doing so.

So this legislation originating out of FATCA which has its origin in the US is really about a tax revenue collection measure of the US for its citizens living outside of the US. So, it is really geared towards those individuals who have US connections. In the attempt of the US to collect that information they decided to go the route of an IGA, which will really be Inter-Governmental Agreements for information exchange, and that is how the term IGA came up and there are different models of the IGA for which Trinidad and Tobago signed on to Model 1A. And then there is the TIEA, which is the Tax Information Exchange Agreements Bill, which is brought before the House today.

So, there are three acronyms: FATCA, IGA and the TIEA; what is the link? FATCA originates in the US that is their law, the IGA is the Inter-Governmental Agreement between governments to share information, and the TIEA which is before us here today really speaks about the law to enact the ability of the State and to share information with the US. So, three areas. And it really talks about US persons, and a US person is defined as a citizen of the US, partnership or corporation organized in the US under the laws of the US, a trust if the court in the

US has administration rights over it, or a non-US entity with one or more controlling person that is a specified United States person. That is what it is.

So, the average citizen of Trinidad and Tobago with no affiliations to the US, whether in terms of citizenship, or through commerce, has nothing to worry about at this time, with respect to this law. So, the average citizen of Trinidad and Tobago will not be affected by this law in its current form. But then why is it that this piece of legislation before us is so important? And I would like to say the first reason why I think this piece of legislation is important is because the Government of Trinidad and Tobago, the last regime signed on to an IGA and gave a commitment, and therefore by signing on to this we are committed to an agreement, and that is the first reason, in my mind, because our name is out there, Trinidad and Tobago. We gave a commitment, and that is why I think it is the first reason why this piece of legislation is important.

The second reason why I think this is important is because there are two dire consequences to Trinidad and Tobago and various sectors for noncompliance, that one being local financial institutions being subjected to a 30 per cent withholding tax, if this law is not passed, if we are not compliant, and termination of correspondent banking. That is to say, all transactions leaving Trinidad and Tobago, which is an international transaction, must be cleared in the US. That ability would be lost. So those are the two reasons, in my mind, why this agreement, or why this law must be passed, because it has direct implications on the economy of Trinidad and Tobago.

With respect to the Bill before us, clauses 1 to 4 identify the title of the Bill, provides an interpretation of the Bill as well as highlight that this Bill is inconsistent with sections 4 and 5 of the Constitution. Clauses 5 to 8, Sen.

Ramdeen says, refer specifically to the TIEA agreement of 1989. Now, why this is important is that the TIEA agreement of 1989 facilitated the exchange of information between the US and Trinidad and Tobago. However, because it was disseminating confidential information a three-fifths majority was required when this Bill was passed in 1989. This did not occur. So, what was happening was the BIR who was actually the source in Trinidad and Tobago exchanging the information, was acting out of their remit, and so this piece of legislation before us, clauses 5 to 8 sought to correct that retroactively so as to validate the actions of the BIR.

So, with that in mind, clauses 5 to 8 given that it was geared towards correcting the actions of the BIR over that period, I would support it. The problem is, in my mind, how can a situation like this go unregulated, or unaccounted for, not being able to identify the shortcoming over 27 years? [*Desk thumping*] That is half the life of our independence. How is it that an arm of state can conduct its operations in a manner that is illegal, and share information about citizens, or US citizens in a way that does not conform to the law? And I am saying today, that is of concern to me as an Independent Senator, how can an arm of state function illegally, and permitted to do so over the period, and remain unregulated? [*Desk thumping*] That is of concern. That is of significant concern.

So, I would like the Government, because they are in power now, they are occupying the seat of authority, to ask each of their institutions and arms to do an evaluation of their functions and determine whether or not they are acting according to the laws which they are governed by? I distinctly remember the hon. Minister of Finance when he assumed the portfolio of Minister of Finance, he read every piece of legislation concerning the finance Ministry. And, so, today, it is an

important point, while it is affecting the BIR, we may actually need to look at all the arms of state, all the institutions of state to ensure that the laws which govern their operations are consistent with the actions with which they perform, and, if if not, we need to correct it now.

And this is very important for the advancement of a country. Can you imagine a country spending time on legislation today, to pass legislation today, to govern actions of 27 years ago? We are supposed to be heading in a forward direction, but the time spent now is to correct actions of the past. It cannot be a practice where we are passing legislation to correct actions that—passing legislation to affect times passed. It cannot be. We need to be forward-looking, and I would like to see Trinidad and Tobago preparing laws in advance of things to come, so people can be expecting and knowledgeable of what is to come rather than occurrences, and then we have to pass laws to say, well, okay, this has already occurred, we need to correct it now. I “doh” support that approach at all.

Hon. Senator: It is a reactive approach.

Sen. T. Shrikissoon: It is a reactive approach; thank you, Senator.

Clauses 10 to 22, in my mind, really speak to the heart of this legislation. Clause 10 of the Bill allows for the processing of sensitive personal information by financial institutions. Clause 11 of the Bill allows for the receipt of sensitive personal information by the Competent Authority from financial institutions. Clause 12 of the Bill allows for the Competent Authority to disclose sensitive personal information to the Secretary of the United States Treasury, and clause 13 of the Bill allows for sensitive personal information to be forwarded to the Competent Authority.

As Sen. Ramdeen says, and Sen. Coppin in his contribution said, the Data

Protection Act of Trinidad and Tobago specifically provides for the protection of personal privacy and information. And so what was required in law was a relaxation of the classes of the Data Protection Act so as to facilitate the information exchange of personal or sensitive personal information.

Section 4 of the Income Tax Act, and I am using this Act because it is the Act which governs the BIR, says:

“Every person having any official duty or being employed in the administration of this Act shall regard and deal with all documents, information, returns, assessment lists, and copies”—et cetera—“as secret and confidential...”

This is the BIR, and it goes on to say in clause 2, in 4(2), that, “Any person having possession of”—this information and disseminates it commits an offence. Section 8 of the Financial Institutions Act also says the same:

“No director, officer or employee of the Central Bank or person acting under the direction of the Central Bank shall disclose any information...”

But when we look at the Bill before us here today, section 7(4) of the Bill says:

Where the Competent Authority—being the BIR in this case—believes that information requested under this section is in the possession of a financial institution, it may require the financial institution to provide the information.

So, here in my mind when I am at the JSC and I am raising this issue, how can the BIR instruct a financial institution to provide information?

I was very concerned with that, because that are two unrelated entities sharing information, and so it was pointed out to me, and that was my real concern. I had a real problem with that, and the hon. Attorney General was very helpful in

alleviating my concern with this, and he said to me, okay, what is happening here is, yes, the BIR is the Competent Authority, but if they require the information from the financial institutions they need to go to the supervisory agent of the commercial banks, which would be the Central Bank, and the Central Bank would obtain the information from the commercial banks and then facilitate it to the BIR.

Therefore, clause 24 of the Bill amends the Income Tax Act by empowering and authorizing the board to request financial information. So, the board has the power now to do so, but for the specific purpose of the TIEA and nothing else. Section 25 of the Bill amends the Central Bank Act by including the function of the Central Bank to supervise financial institutions and insurance companies.

And clause 26 of the Bill amends the Financial Institutions Act to give the Central Bank power to disclose information to the BIR. So, the laws were amended so as to facilitate the information exchange, information specific to the TIEA. And very importantly which came up as a result of the JSC and the Central Bank being invited at the JSC, section 26(b), subsection (2), allows the Central Bank to enter into an MOU with the Board of Inland Revenue in the context of the TIEA.

So that information exchange between the Central Bank and the BIR is not one that is automatic, or is not one that where the BIR can instruct the Central Bank, but an MOU, and this law specifically created that, a Memorandum of Understanding between the BIR and the Central Bank, so that the Central Bank can collect the information from the financial institutions, and then share the information with the BIR, but the information remains specific to the TIEA. And I found that that was a particular strength of this legislation, and it really alleviated the concern that I had with respect to the sharing of information amongst state agencies. So, this piece of legislation was corrected and improved at the JSC with

the Central Bank having its input and specifically requesting this, and I am saying here that is just one example of the value of a JSC in this situation.

Clause 17 of the Bill, section 17 of the Bill, and Sen. Ramdeen alluded to it, speaks of notification of an account holder. This at the JSC was not approved in the form that it was presented, but I am happy to see here today that a person's information that is being shared is now informed, even after, but at least they become aware. The slight reservation I have with it is at clause 17, subclause (5) of the Bill specifies that a notification under subsection (3) shall be in the form prescribed by the Minister, and I am just asking, and I stand to be corrected here. Clause 18 of the Bill says:

“The Competent Authority shall enter into”—an agreement—“with the Secretary of the United States Treasury—”

That is the BIR and the US Treasury. The Minister was removed as the Competent Authority from the legislation, and now we are seeing, we are going to exchange information, we need to inform the person, but when we are doing it, the Minister is the one that has to provide the form for it to get done.

I am not too sure I am comfortable with that, because on all accounts before the Minister was removed. Why when we are informing the person of the reportable account that the Minister has to get involved? In my mind it should have still been held within the Competent Authority, which is the BIR. So, I just ask for that to be considered at this point in time.

Sen. Ramdeen, as well, addressed fines briefly in his contribution. Clauses 8(2) and 23 of the Bill before us which specifically increase, or from the form of the Bill that we had before specifically increased the fines and the period of conviction, or the period of the sentence, for people, or for those who chose to

disclose the information. And I am saying, I am in full support of this, but at the JSC this was really spearheaded by the Opposition, and I really want to commend Member Tewarie at this point in time for really sticking to his position and saying, listen, forget everything, understand the damage that could be done to someone if their information is exposed, and he is saying understand the position that you are putting them in if this information is disclosed, because it is such highly sensitive information, and therefore the fines should actually be at a place where it is an absolute deterrent for anyone to do so, and support that piece of legislation and the increase in fines.

Sen. Ramdeen also touched on double taxation, the double taxation treaty that exists. At one point in time we were really informed that there was no double taxation treaty. I want us to remember this because I am coming back to this point, but it was corrected later on, and after there was an explanation given, and, in my humble view, I think it is correct that the double taxation treaty provides relief, whereas the TIEA Bill before us provides an information exchange. So, it is not one that has to replace the other, or is affected by it. But I want us to remember that there is a double taxation treaty between Trinidad and Tobago and the US.

So, with respect to the content of the Bill, I really want to say that as a result of the JSC, in my mind, the Bill has evolved into a substantive piece of law that I really think is a good piece of law. Now, I cannot judge the law because of my—it is not my area of expertise, but the level of improvement and amendments that was done to the Bill at the JSC, I really think it is a lot better in the form that it is now than when we started, the benefit of the JSC. However, Madam President, before I sit, there are two issues that I would like to raise with respect—[*Interruption*]

Madam President, I would really like to make two points again before I take

my seat, and this is with respect to the model of the IGA. Now, I am aware, and I need to say this, that the existing Government was not in power when the IGA was signed. I need to say that, because that is the point I would like to make. When the IGA was signed, Model 1 of the IGA—now, there are two models, Model 1 and Model 2—says:

The partner jurisdiction agrees to oblige its foreign financial institutions to identify US accounts and report specified information about them to local authorities in partner jurisdictions. The partner jurisdictions then delivers this information to the IRS.

So, it is saying at this point in time, the partner jurisdiction agrees to oblige its financial institutions. That means that the Government has to get involved to instruction the financial institutions to go ahead, to share this information that the Government would be responsible for passing the law to enable it.

Model 1 comes in a reciprocal version—Model 1A, where the information is exchanged on both sides, and there is the non-reciprocal version of Model 1B, of which we chose 1A. According to Model 2 of the IGA, the partner jurisdiction agrees to direct all foreign financial institutions. Listen to it, Model 2 of the IGA says that partner jurisdiction agrees to direct all FFI's, Foreign Financial Institutions, located in the jurisdiction to register with the IRS and report information concerning US accounts directly to the IRS.

So, there is a substantive difference between Model 1 and Model 2, where the Government passes legislation in Model 1 to allow the FFI's, Foreign Financial Institutions, to share information through a Competent Authority, which is the BIR, to the US. Whereas in Model 2, the financial institutions are encouraged to register directly with the IRS and share the information. Two distinct approaches.

Model 2A can be applied or can be selected with no tax information exchange agreement or no double taxation convention. Model 2B, for countries with pre-existing TIEA's or double tax convention.

So, we in Trinidad and Tobago had a double tax treaty, and there was a TIEA, probably not in the form that it is now, but there was a TIEA. So, when I asked the question, and I do not know if it could be answered, why was Model 1A selected? Could the compliance with the US for FATCA, could it have been achieved via another model? And so if it was so, especially with respect to the Model 2, where a financial institution would have shared the information directly, then would it not have put this country at ease and not have to dictate a legislative agenda, and divide the population and bring stakeholders, and time spent in terms of drafting a law? And I am very much concerned that there was such an opportunity for Trinidad and Tobago to be compliant with the US in a way that does not require all of this.

Hon. Senator: I agree with that. I agree with that. [*Desk thumping*]

Sen. T. Shrikissoon: And then why is it that the population had to be divided? Why it is that stakeholders had to be accused? Why it is we had to be pushing for the JSC? But, more importantly, why has this occupied the time of Parliament, which is the guardian of our democracy [*Desk thumping*] for a piece of information that the US requires from Trinidad which has no direct benefit to Trinidad?

Hon. Senator: Correct. [*Desk thumping*]

3.40p.m.

Sen. T. Shrikissoon: And I am very much perturbed, why, as those in governance of a country would select a model with this level of harshness, with respect of the consequences, which has direct implications on an economy and trade, when there

was an easier way out. I am really perturbed by that. And so when we could have been spending legislative time and Parliament time in terms of advancing our country, we are spending time to correct a piece of legislation that benefits the US. I really cannot understand why, if we would have met the requirements of Model 2, and I am just saying this because I know that people with expertise in the area of Model 2B, why is it that it was not selected? And I just wanted to find out whether or not Model 2 was selected anywhere else in the world, Austria, Bermuda, Chile, Hong Kong, Japan, Moldova and Switzerland. So it is not to say that it is a model that is existing or that is available that countries did not take. Why are we here? It could have been—there was an easier way.

So I am very much concerned that after 55 years of independence, 41 years of a Republic, if I am correct that a legislative agenda is being dictated by a policy of a foreign jurisdiction. I really do not appreciate that. I really do not appreciate that. And so I even ask the question today, when this law is passed, after all of this, what is the benefit to Trinidad and Tobago? Is it facilitating trade? That was existing before. So in my mind by signing on to this in the form that we did, was there anything that Trinidad and Tobago gained? And I am not—if someone could help me that would be fine, but I am not too sure that I can see the answer.

And the second point I want to raise is the one of the JSC and in no way my intention is to become political or involve myself in any of the political debates between parties. All I am going to say with respect to the JSC is that both Sen. Ramdeen and Sen. Mark read from a document dated September 14th by the Treasury Solicitor and one by the hon. Minister of Finance to His Excellency John L. Estrada. I do not need to read the document because it has been read before, but in both cases, in both letters an assurance was given for a JSC.

On September 14, 2016 an assurance was given by the Government of Trinidad and Tobago by saying, establishment of a joint select committee, a JSC of the Parliament, by mid-November 2016. And all I want to say with respect to this JSC is, as a country when we give a commitment and it is in writing, it represents the people of Trinidad and Tobago. [*Desk thumping*] And while the JSC was important and it did not occur, it did not occur according to the timeline prescribed in our own correspondence. And that in my mind does not speak well of Trinidad and Tobago. More so in an attempt to meet the deadlines imposed, the JSC had to meet quite quickly. I am sure all of us were willing to do so, but it could have been avoided.

So it brings me back to question or brings me back to the situation, it reminds me of the legislation or the errors that occurred with respect to the THA elections, where we rushed the timeline so tight that we actually had to meet here on a special occasion to validate an election writ. And so the same thing I am seeing here again, where we are at the end, well now in March, but we gave a commitment for an establishment of a JSC in November. It did not occur until the 17th of January, thereabout, and so the timelines became, the end of the timeline or the deadline became so close that we had to rush through the process for there to be an end result. And that process I disagree with as well.

So, Madam President, in closing, I would like to say that I really support this piece of legislation in its current form. I did not appreciate the fact that the legislation had to correct actions of the BIR between 1998 and now and I am asking that such an occurrence does not occur again. With respect to the models, the style of governance of Trinidad and Tobago, irrespective of who is in power, I am saying when we are making decisions that affect the lives of the people of Trinidad

and Tobago we need to be aware and we need to be cognizant of the implications and make decisions and choose models in this case that have the heartbeat of Trinidad and Tobago and the people of Trinidad and Tobago at the centre of the decisions and not other interests which complicate and perplex the entire situation and place us in a dilemma, such as this, which could have been avoided in my mind. Thank you, Madam President. [*Desk thumping*]

The Attorney General (Hon. F. Al-Rawi): Thank you, Madam President. Madam President, I am pleased to join in the Senate's debate today on the Bill before us which seeks to repeal and replace the Tax Information Exchange Agreements Act.

Madam President, I wish to compliment the hon. Minister of Finance for piloting this measure from the early days of September 09, 2016, come forward to today's date. We have had many debate days in the Senate and indeed today's debate focuses upon the work of a joint select committee. I was very pleased to participate in that Joint Select Committee and I am proposing to reply to a few of the observations made by learned Senators and, in particular, to offer a degree of caution in respect of matters which are yet to come and which are directly associated with this Bill.

Madam President, Sen. Shrikissoon asked some very pertinent questions. Perhaps I should go in terms of architecture with answering them, not necessarily in the order in which he presented them, but in the manner in which I think can tie into the entirety of my contribution.

The first thing that the hon. Senator asked is why Model 1A, the reciprocal version, and I must categorically state that that question is one to be answered by Mrs. Persad-Bissessar SC, as the leader of the then Government in 2013 when the Cabinet of Trinidad and Tobago under Prime Minister Persad-Bissessar sat

essentially on two occasions in Cabinet and two occasions by way of confirmation and specifically bound Trinidad and Tobago to adopting the reciprocal exchange model which we are debating today.

Our Government, sitting in saddle now as we do, had no participation in that process. We recognize the degree of pure common sense offered by Sen. Shrikissoon, because, as I have said on umpteen occasions, it was open to Trinidad and Tobago to have the issue of FATCA, the exchange of information from Trinidad and Tobago to the United States, and from the United States to Trinidad and Tobago dealt with entirely without government participation. It could have been done by way of financial institution self-regulation and it is, put in very simple terms, it was well open and still certainly a very valid question for Trinidad and Tobago's financial sector to say, listen, you my customers are now going to be invited to indicate whether you consent to your banking information which qualifies under what the United States FATCA law wants, whether you consent for that information to be given to the United States of America. If you do not consent, please close your account. That was plain common sense and logic. Regrettably, the last Government was not known for applying that form of logic and I can give no explanation for it.

Sen. Dr. Mahabir: AG, clarification. Thank you very much AG. Just a point of clarification. Was it at all possible for the Government of Trinidad and Tobago to renegotiate the IGA so that we would conform to the model recommended by Sen. Shrikissoon? Thank you.

Hon. F. Al-Rawi: Regrettably, the hard deadlines provided by the United States of America in 2014, in particular, saw an insistence that jurisdictions agree to be substantially bound by the position which they agreed to. Sen. Howai, then

Minister of Finance, initialled the IGA selected, the model which now finds itself into the law which we are debating today, and was taking Trinidad and Tobago into the view that they were deemed to be substantially in compliance with FATCA. The effect of renegotiating the IGA or, in fact, coming out of it entirely, if you wanted to just leave it to the financial sector itself, self-regulation was not available because they would have been the consequences of a red flag going up as a jurisdiction looking to be seen to backtrack from its process and that is never a good thing on the international circuit. The continuation of governance and one Government following another bound this Government to the trajectory and the launch which we have been put into by the last Government.

Now, forgive me for crossing because it is now convenient, from not only Sen. Shrikissoon's issues but some of the issues raised by Sen. Ramdeen and I will intersplice the issues because they flow logically this way. Sen. Ramdeen indicated that Trinidad and Tobago had an opportunity to have a debate engaged in the Parliament as it happened, but specifically he posited today that it was well open to the Government to have a joint select committee prior to the January session when the Joint Select Committee was put into place. Indeed, both Sen. Shrikissoon and Ramdeen referred to the letter from the hon. Minister of Finance which specifically told Ambassador Estrada of the United States of America that a joint select committee would be part of the Government's roll-out of the road towards achieving the FATCA.

But I want to put on the record that the Parliament is a wonderful place, because when one looks to the progress of Bills you will note that two Bills were before the Parliament in 2016. One was the Tax Information Exchange Agreements (United States of America) Bill, 2016 and also the Tax Information

Exchange Agreements, 2016. There were two Bills; they both were on the Order Paper on the 9th of September. On the 9th of September, the latter Bill that I referred to saw the contribution of Dr. Tewarie in that debate and then there was some interjection by the Leader of the Opposition and then there was a walkout from the Parliament.

The record in relation to the progress of the Bill, the first Bill I referred to, Tax Information Exchange Agreements (United States of America) Bill, 2016, shows that on the 9th of September there was a First Reading. The 23rd of September there was a reading, there was a debate, Second Reading. Minister Imbert contributed, the Minister of Finance; Ganga Singh, Faris Al-Rawi. It is a fact that there was a walkout on that date. On the 9th of December, only Government Members contributed. Why?—because the Opposition did not show up. On the 12th of December, there was again, a Second Reading and there was a committee stage where the Parliament went into committee stage.

The Minister of Finance put onto the record and I will repeat again, the ability to have a joint select committee requires the nomination of persons, by persons actually sitting on the Bench in the Parliament to say who their nominees are and therefore when Sen. Ramdeen makes this most incredible submission that the Government could unilaterally appoint a joint select committee without a single Member of the Opposition sitting, one has to wonder what version of logic portrays in the mind of the hon. Senator. Because it is not by Parliament process possible, as a matter of rule and procedure, let alone common sense, for a Government to be able to establish a joint select committee in absentia, in a House where there are only two sides.

It is ludicrous and beyond logic for a Senator to stand up and make the

submission that Sen. Ramdeen made, [*Desk thumping*] and I ask the Parliament to discount it immediately. It is nonsensical much akin to some of the other submissions made by Sen. Ramdeen which I will go through now. You see, Sen. Ramdeen stood up and referred to the verbatim notes. I compliment Sen. Ramdeen, he is a good debater and he is a good advocate and he carried his case well, but his case was entirely his own. His case when one puts it against the facts, I ask the honourable Senate to distinguish fact from fiction. Because the fact is that the Bill before the honourable Senate is one which involved, firstly, the submission of a Bill in the form which the LRC, the Legislative Review Committee, of the current Government brought to the Parliament. Why?

When we met with the Leader of the Opposition at the office of the Prime Minister I was present. I certainly recall that it was my intervention to the hon. Prime Minister that caused him to speak to the hon. Leader of the Opposition to tug the issue to say that, look, FATCA is something which we must deal with, we want to remind you, we are on the same track that you were on as the last Government and therefore we propose to bring the same Bill that you were working on to the Parliament. We brought that Bill in the same form that the LRC, under the UNC Government had, simply because we knew that if we changed anything in that Bill without the proper intervention or discourse on the Parliament floor, that we ran the risk of the Opposition telling us we do not agree to it.

So we said, much as we did in the gaming Bill, as we did in the Insurance Bill, as we did in the public procurement Bill, as we did in the bail amendment and the anti-gang positions, we brought exactly the same version of Bill which Sen. Ramdeen seeks to pour scorn on. And he is pouring scorn on the work product of the entire UNC Government's LRC on a Bill that we brought. And when we

looked to that, Sen. Ramdeen pointing out that you cannot get the Preamble right, you cannot get the long title right, you cannot get the reference to sections 4 and 5 right. It stands as an inconsistency with the truth to make those observations, because the long title had to be amended because we changed the architecture of the Bill, the short title had to be amended for similar reasons, the language reference to sections 4 and 5. We brought the same language that the UNC LRC had in reference to sections 4 and 5. So Sen. Ramdeen's submission that the Bill was so ludicrous, perhaps he is right, but he is pouring scorn on himself as a Member of the UNC Government that brought that Bill into being. [*Desk thumping*] You see, one must be very careful how one pours scorn on facts if you were not a participant in the equation.

Now, Sen. Ramdeen raised as well the position, hallelujah, praise God and I am paraphrasing in my own words the sentiment that I appreciated from him. Thank God for the 500 pages of the Opposition coming forward. This Bill, it is in bold. Look at it, the Opposition did great work. We moved every amendment. Let me just put it on the record. The Opposition made a contribution for the amendment of its own Bill brought to the Parliament, as we brought the version that we had from them by way of a press release appearing in the *Express* newspaper that took concern and made observation with respect to five clauses. That press release was paid for by the Opposition office; in other words, the Parliament tax-paying dollars paid for it.

The Opposition then made certain submissions to the Bankers' Association. They did not turn up in Parliament to give us the observations on the five clauses appearing in the press release. They did not turn up in Parliament to give us any of the submissions that they made to the Bankers' Association. The only submissions

that came from the Opposition came in two forms. One came by way of what appears at Appendix 11 of the final report to be found at page 10 of the letter coming from Sen. Ramdeen in relation to what is referred to as a minority report and that letter specifically provides in black and white under (iii), the following proposed amendments be included for consideration by the Bill. Clause 29 be amended, a new clause 17 (3)(b) amended, a new clause 35 be amended. That was the first way in which we got observations from the Opposition for the first time in black and white.

The second way that we got contribution from the hon. Members was at the committee stage where they were presented with the version that the Government amended in committee stage in the Parliament of Trinidad and Tobago as we sat on the 12th of December, 2016. It is to be found in the verbatim notes, second meeting, Tuesday, January 17, 2017, where Sen. Ramdeen in discussion, both with the chairman, that is the Minister of Finance, Minister Young, and myself asked specifically in response to the discussion by Minister Young. Minister Young had said that it would be prudent that we work with the final marked-up version. The chairman went on to make the observation that we had to work with the version, the original Bill as referred. Dr. Gopeesingh said that the Opposition had not seen the final version. Mr. Ramdeen, specifically Sen. Ramdeen, contributed saying at page 197:

“Thank you, Mr. Chairman. I would like to agree with Minister Young to the extent that I do not think—we have a limited period of time to do this...I do not think it would be an efficient use of time, speaking for myself, that I understand procedurally...the original Bill is what we have to look at. I have not looked at the version which is the version just before the version that you

are going to distribute.”

Sen. Ramdeen is referring, when one turns the page over and continues across, to the fact that the Opposition was getting, for the first time, the very bold amended version of the Bill which the Government produced on the 12th of December, 2016. So I find it incredible that Sen. Ramdeen could stand up here and say that the bold amended versions that appear in this final report are the work of the Opposition.

Now, I really did not want to condescend to who did what, but it was put out in chapter and verse by Sen. Ramdeen and it stands as such an untruth that I must address it. Sen. Ramdeen also went into a criticism. Imagine the legal advisor to the Government, the Attorney General, got it wrong that there is a double taxation relief. I wish to put on to the record as is found at Appendix 7 where a comparative brief submitted by the Chief Parliamentary Counsel appears that as a matter of fact on page 426, Trinidad and Tobago is stated by virtue of the documentation which I as Attorney General took ownership of, that Trinidad and Tobago had no double taxation relief treaty.

I make no apology for relying upon the advice that I was given by the CPC's department, but the dates will also show, the verbatim record will also show that because the CPC's department falls under the Attorney General's office. It is proper for me to take what I get and hold responsibility for it. So there is no mistake or fact, but Sen. Shrikissoon got it absolutely right. The discussion which is found at page 199 of the verbatim minutes will show that in describing where this law came from, Trinidad and Tobago was told that we are bound not only to the process of following through with what the last Government did, but we are bound to seek to amend the Tax Information Exchange Agreements Act, and let

me stop for a moment.

The amendment under law, there are many ways in which one can amend. You can amend by deletion; you can amend by deletion and replacement and you can amend by repeal. They are all amendments. Whether one calls it a repeal or not the fact is the Bill before us now, when you look to the substance of the position, the Bill before us now is really a revision of the architecture of the 1989 law. And that 1989 law, Sen. Shrikissoon, that you referred to, where you found it quite correctly so, *infra dig* that we were being invited to validate Acts of the Inland Revenue. I want to put on record that that 1989 law was a law of the NAR in which many Members of the UNC Government sat and still sit. Dr. Tewarie was there. Kamla Persad-Bissessar was there. That law in 1989 which now requires validation by this Parliament is a UNC product repeated.

Sen. Dookie: UNC reload.

Hon. F. Al-Rawi: It is UNC reloaded. So I agree with you, it is *infra dig* to be invited to do that. Yes, I agree with you, Sen. Shrikissoon, it is *infra dig* to find that we were committed to a course of Model 1A, reciprocity IGA, which could have been avoided. But you got to ask the UNC what on earth was possessing them in 1989 and in 2013 when those Members who appeared in '89 and again in 2013 essentially did the same thing. What can I say? I agree with you, Sen. Shrikissoon, where we get to the position of the amendment of this law and the architecture of this law. It is important to put on record, the submissions made by Sen. Ramdeen as is to be found at Appendix 11 relative to how we were then being invited to amend certain clauses.

Sen. Mark was boasting a while ago that the matters are going to be laid in Parliament. You are going to have sight of the report. You are going to have sight

of the agreement. Sen Mark did not really go on to tell you and nothing can happen you know, because there is no negative resolution and there is no affirmative resolution when you lay a document. So, we were very happy to do it because we just simply could not go with either affirmative or negative as all Members of the JSC know and so it is laid in Parliament and so what?

Sen. Mark: But it was in advance.

Hon. F. Al-Rawi: What Sen. Ramdeen proposed and spoke to by way of specific amendment was to clause 17. And it is very important to put on record what Sen. Ramdeen was speaking about in the Joint Select Committee. Because I too wish that people were there so that they could pick sense from nonsense today, after having heard what Sen. Ramdeen said.

Sen. Ramdeen specifically proposed in writing to be found at Appendix 11, that the notice provided to persons whose information would be exchanged would be notified before the exchange happens. There is a massive difference between before the exchange happens and after the exchange happens. And the English law which we were referred to and which I thank Sen. Ramdeen for, has a very curious bit of language which can be implied to mean, in one version of interpretation, that you are giving information before. The Government said that it could not and would not agree to notice being given before because it would allow for judicial review, it would allow for a step to happen before and it would defeat the very intention of FATCA and that view was supported by the Law Association submission which is also contained in the final report of this committee and which I invite all Members to have a look at.

So what was proposed by the Opposition was indeed extremely dangerous, could not be agreed to and when the hon. Prime Minister in the other place referred

to the fact that it would be there to fatten lawyers' pockets, he was right. And Sen. Ramdeen should know that. Having passed through a Government that spent close to \$1.4 billion in legal fees across a very few number of lawyers, Sen. Ramdeen would know that very well.

Sen. Sturge: Point of order, 46(6).

Madam President: Continue, hon. Attorney General.

Hon. F. Al-Rawi: I could not understand why that would be offensive but anyway, because we have spoken about this nationally, that \$1.4 billion was spent and only a few lawyers, very chosen few lawyers, managed to receive close to \$40 million in legal fees. So there is no way that they would not be extremely happy to take judicial review proceedings and move ahead, because there is a certain degree of comfort that one must have if one receives close to \$40 million in legal fees in a five-year period. It would allow people to smile, to rock back on their chairs, to look vibrant and to produce statements that are rather curious at times whomever those people may be. But anyway, I digress.

I was dealing with the point that the notice that the hon. Prime Minister saw offence in to fatten the pockets of certain lawyers, the hon. Prime Minister was correct that we should not only not defeat the purpose of the IGA as it finds itself in expressed terms in law, but that we should also avoid throwing the baby out with the bathwater.

4.10 p.m.

I want to deal with something which flows squarely from this Bill, and I want to tell you why we should not be grateful to the Opposition. I want to tell you why, in very real terms that in my humble view, we have taken a step backwards, and I will tell you why. The Tax Information Exchange Agreements Act, Chap.

76:51 specifically was designed so that Trinidad and Tobago would engage in exchange of tax information with multiple jurisdictions, not only the United States of America. The United States of America was included in the original law by way of an order scheduled which the UNC had no problem with from 1989 when they were then in the NAR, straight up until 2015. They had no problem with a declaration fitting into the order, because Minister Howai would have done this. The draft of the Bill at LRC under the UNC time proposed the original law. All of a sudden, we have a huge problem that the Opposition has to jump in with threats today about “who going to court, and what, and Seurat and this and that”.

There is a separation of powers in this country for a reason, you know. The courts are there to challenge and nobody could have exception to that. But the fact is, [*Interruption*] the Tax Information Exchange Agreements—

Madam President: Hon. Attorney General, just a minute. Listen. Members are starting to get a little restless. You can take that restlessness out of the Chamber because we want to listen to what the Attorney General has to say.

Hon. F. Al-Rawi: Thank you, Madam President. Madam President, the original architecture of this Bill was so important for what Trinidad and Tobago had to do, was committed to do and still has to do. And let me be specific now. The United National Congress Government, indeed, committed this country in 2013 to the IGA of the United States of America. They, indeed, committed us to using the architecture of the original Bill, which came here as the original Bill that the Opposition now finds scornful. But what they are not telling us, in 2011, Trinidad and Tobago saw Minister Larry Howai, under authorization of the Cabinet of Trinidad and Tobago, by Cabinet Minute No. 255 of September 22, 2011, saw Trinidad and Tobago be authorized to become a member of the Global Forum on

transparency and exchange of information for tax purposes.

And I want to thank Sen. Coppin for an excellent contribution today [*Desk thumping*] on the origin of where FATCA comes from and the impact of the Global Forum. The Global Forum, which in 2011 the United National Congress knew we were being committed to, saw Minister Howai travel to Berlin, travel to conferences, send representatives all over the world—happy to spend money—to commit Trinidad and Tobago to engaging in 13 other versions of what FATCA looks like.

The Global Forum, indeed, is comprised of 139 members, 19 Caricom States, 15 observer entities, and Trinidad and Tobago was committed to a march to accept 13 other versions of FATCA. And, Madam President, you know when the deadline for compliance is? Madam President, you know when the deadline for compliance is? The deadline for compliance for backlisting of Trinidad and Tobago is in July 2017.

Sen. Mark: That is a new date. [*Laughter*]

Hon. F. Al-Rawi: In July 2017. Do you want to know what the United National Congress did between 2011 and 2015, September? Absolutely nothing [*Desk thumping*] as it comes to the IGA. Not one agreement was considered. Not one Cabinet Note has come forward. The Global Forum put their concerns in writing. They said that Trinidad and Tobago will suffer blacklisting by the OECD, the organization of—I forget the acronym now. What is the correct—Organization for—

Hon. Senator: Economic Cooperation and Development.

Hon. F. Al-Rawi:—and Development. Thank you.

Specifically, the Global Forum, specifically the condemnation, which is to

come into this regard of the blacklisting by the OECD and of the G20, means that we will be subjected to the odium of the international community, an odium which can find itself in loss of corresponding banking, in de-risking.

Sen. Mark: You come back with that?

Hon. F. Al-Rawi: I am hearing literally the scorn and contempt of the UNC through Sen. Mark, saying “Yuh come back wit dat?” Yes, “ah come back wit dat”.

Sen. Mark: “Bring de Bill, nuh.”

Hon. F. Al-Rawi: Because Trinidad and Tobago cannot have brought a Bill, Madam President—

Madam President: Attorney General. Sen. Mark, you were not here just now and I am not going to warn Members again. Okay?

Sen. Mark: Well, we could finish early.

Madam President: Sen. Mark, if you want to finish early I can have you finish early. Continue, Attorney General.

Hon. F. Al-Rawi: Thank you, Madam President. I am astounded by Sen. Mark, but not surprised.

Madam President, the fact is, the legislation to be brought requires that we have entered into the treaties first. The UNC, having done none of the 13 treaties, having left government well attended to, plump and satiated, allows Trinidad and Tobago now to be called upon by the Global Forum. And the Global Forum called us to Paris in February this year to say, “Listen, you, Trinidad and Tobago, are in massive trouble because you did not do what you are supposed to do between 2011 to 2015. You are going to have to now go into a multilateral convention arrangement for competent authorities and you are going to have to pass law to

deal with it.”

But, Madam President, the reason for the original architecture—and which is why I said that we were taking a retrograde step in defining the TIEA as only the United States of America—the reason for the retrograde statement on my part was that where were we going to park the other laws? How are we going to park the laws that should be put into existence? The UNC committed us to using the approach of the TIEA, not only for the US IGA, 2016 and the 1989 version, but it was intended to take the 13 other agreements. And coming out of the conference, which I believe ended on the 24th of February in France this year, Trinidad and Tobago only now has a prescription for what exactly we need to do.

You see, it was not only that the Minister of Finance had to go and ask the United States of America government for assistance to basically ease us up from FATCA to allow us the process and time, but we have to do, and did the same thing as it relates to the Global Forum. And I understand now that nobody on the Opposition’s end seems to be paying attention to the multiple targets which have to be hit on a consistent basis because they just do not care, it seems. Because if there was care and consideration for the obligations of the Global Forum, we would have found a way to leave the original law, the Tax Information Exchange Agreements Act, so that we could park the multiple treaties inside of there. But the Opposition has insisted that it is to not be anything other than a ring-fenced arrangement for the United States of America.

So I am putting the country upon notice, I am putting the Opposition upon notice, that between now and July, laws have to be passed, and with those laws having to be passed, the Opposition will be invited to consider its position in relation to the three-fifths majority, because the Bill will have exceptions to the

Data Protection Act, the Income Tax Act, and therefore the Constitution is also going to be looked at in terms of the right to private and family life.

Now, Madam President, these are very serious matters. All the song and dance said, it is a fact, the original Bill, being barely 30 clauses long—I cannot even remember the number; it has been so long now—those amendments could have been dealt with on the floor of the Parliament. There was no rocket science inside of this arrangement.

Madam President: Attorney General, you have five more minutes.

Hon. F. Al-Rawi: Thank you, Madam President. There was no rocket science inside of this. The vast majority of amendments that came to the fore were brought on and we produced a schedule of them, you know, Madam President. Thank God, the Minister of Finance had the foresight to publish the schedule in the newspapers in a pull-out version, because the schedule published in the newspapers will demonstrate where the amendments came from in this law. It will demonstrate that it was the submissions of the Central Bank, the SEC, the FIA concerns that were considered as well. Those are where the amendments came from.

Sen. Ramdeen's little three amendments that came by way of his submission in the Appendix 11, yes, they came from him. And by the way, Madam President, we did not have a debate over the offence for disclosure, you know. We had a debate on the nature of how one would be charged, whether it was going to be summary or indictable, and Sen. Ramdeen came and insisted that we have a bifurcated approach, that you have both summary and indictable, and I pointed out to Sen. Ramdeen—and it is in the verbatim record—that the Government's position was that we wished for the application of a summary route for the criminal offence in keeping with the prescriptions of the last Government, as we elected to

include them in the laws to deal with insurance and securities.

They would not bend, so we agreed. And I want to point this out. Personally, for me, it matters not what the pecuniary sum is, whether \$30,000 or \$250,000, and I will tell you why. What is the track record in Trinidad and Tobago for convictions? What is the track record in our country for convictions, Madam President? You see, the fact is, our country does not have a very good track record, and when one looks to the track record what you really want to make sure is that your criminal justice system actually operates to put somebody under a charge which makes sense.

Let me give a live example. We are talking about preliminary enquiries as a nation right now. The Opposition has rolled out with a startling argument. But the point in relation to that, when we look at the major case for fraud in this country, now 17 years old at the preliminary enquiry stage, you have to understand that the country really is more concerned with conviction rather than the quantum of fine. I thank Dr. Tewarie for making the recommendation that the fines be increased. We readily agreed to the increase in fines. It is neither here nor there. That could have been done on the floor of the Parliament.

But, Madam President, there is a lot of work ahead of us. As a Government, we are obliged and committed to continue along the track that the last Government put us on, the entry into the Global Forum in 2011, the statements by Minister Howai as they appeared in the *Newsday* and in the *Express* in 2014, where Sen. Howai says that Trinidad and Tobago—in Sen. Howai addressing the conference in Berlin he assured of this country's commitment to a timeline of 2017 for the first exchanges of information. That 2017 required the law to be put in place by 2015. That is for the Global Forum. It is in black and white; it is in newspaper reports.

And then we have an Opposition turn up today, twisting and turning the truth, cannot even be relied upon to get the submissions right, but at the end of the day, having not done anything about any of the obligations that they put the country in.

So, Madam President, I thank you for the opportunity to correct the record. I do not associate myself with any of the observations made by Sen. Ramdeen. He is wont to continue on that track. Let him. Let the Opposition continue to do what it wants to do. This Government will not be deterred about the course of action that we have to take and they could whine, bawl, complain, cry as much as they want, at the end of the day what has to be done will be done.

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

Sen. Mark: “Dah is Saddam. Dah is Saddam Hussein.”

Madam President: Sen. Sturge.

Hon. F. Al-Rawi: “Dah meh uncle.”

Sen. Wayne Sturge: I am wondering if I should start my contribution by saying “Heil Saddam”.

Hon. Senator: Oh Lord.

Sen. W. Sturge: But I will start my contribution by thanking the Leader of the Opposition for showing what I can only term remarkable leadership, grace and courage under fire. [*Desk thumping*] Because if we look at what was reported in the media from September to now, we would see that not only the Opposition, but the Opposition Leader, in particular, came under fire from not only this Government but several other quarters in this society, and all sorts of scurrilous, baseless and remarks which could have no justification, we were subjected to.

And I dare say, as much experience I have in the criminal courts and so on, I do not think, left up to me, I would have said, let the country “bun dong, we go jam

still”. Because I find it difficult that not only the Government, but persons and entities who should know better, would seek to castigate the Opposition for doing its job. [*Desk thumping*] And our job, Madam President, is not to represent the interest of 340,000 persons who voted for us, it is to represent the interest of every single person in this country. [*Desk thumping*]

So for the past six months we had to endure so many attacks. It started out in a public meeting in Mt. D’Or where the Prime Minister suggested, “Is jail dey fraid. Dey tief out de money and hide it in de US and now dey fraid dey get ketch and dey go go to jail.” But I have never heard anything so stupid in my entire life. [*Desk thumping*]

Madam President: Sen. Sturge, please, your language is unparliamentary—

Sen. W. Sturge: Stupid?

Hon. Senator: Yes.

Madam President: Your language is unparliamentary. Please desist. Continue.

Sen. W. Sturge: I am sorry. I apologize for saying “stupid”.

Madam President: Sen. Sturge, that kind of flippancy, please.

Sen. W. Sturge: No, it is—

Madam President: Please. Continue.

Sen. W. Sturge: Yes. So we were told—well, the public was given the impression that they “tief out all the money and is jail dey fraid”. Then we heard from both the Attorney General and the Minister of Finance that we were ruling as tyrants; we did not have the best interest of the country at heart; we did not care if the economy crashed and the Prime Minister himself said, they are hoping that FATCA is not passed so that when the economy is crashed we could blame the Government.

They went on to say that if we do not pass FATCA, then we would have limited access to credit card facilities; that we would not be able to access wire transfers; that we would not be able to buy US to send to our children studying abroad, and so on. So they painted a picture of doom and gloom, that the sky would fall and that we wanted the sky to fall and put the blame on the Government.

So let us look at what they said we hoped for. They said we would not get US to buy. Can we get US to buy right now? FATCA “eh pass yet an yuh cah get US tuh buy”. [*Laughter and desk thumping*]. “De economy go crash.” The economy crash already. [*Desk thumping*] And there would be a limit to the amount we could use in credit card transactions. Royal Bank has already stated that there is a limit. When you go abroad or you are shopping online there is a limit to how much you could use. So all that they have said we were hoping to achieve by not passing FATCA, they have achieved it without FATCA. [*Desk thumping*].

Madam President: Sen. Sturge. Hon. Senators, at this stage we will suspend and come back at 5.00 p.m. So the sitting is suspended until 5.00 p.m.

4.30 p. m: *Sitting suspended.*

5.00p.m.: *Sitting resumed.*

Madam President: Sen. Sturge. [*Desk thumping*]

Sen. W. Sturge: Before we broke for tea, Madam President, I was making the point that the consequences the Government indicated would happen if FATCA was not passed, they are already in effect—have happened. [*Desk thumping*] And let me roll back to where I was going before I went into that direction, because I was making the point earlier that we were being demonized and called tyrants and referred to as being unpatriotic, because what we were seeking to do, in reality, was to protect the interest of the citizens of Trinidad and Tobago. [*Desk thumping*]

Now, permit me, Madam President, just to read into the record, a letter I wrote on 28 February, 2017 to the Law Association of Trinidad and Tobago, and let me say why this is relevant. You see, quite apart from the Opposition as a check and balance on Government power in the Parliament, there are certain institutions which exist to protect the rights of citizen of this country. And on 28 February, 2017, this being one of the deadest Carnivals ever, I decided to stay home and pen a letter to the Law Association, and I penned this letter because I had listened to two contributions, in particular, from the Minister of Finance: one, the proceedings that took place, I believe it was on the 13th of February in the House and the next one, which took place on the next occasion following, which I believe would be the 23rd of February. And on the 23rd of February the Minister of Finance referred to correspondence received from the Law Association as one of the stakeholders who contributed to the Joint Select Committee, and whose advice he sought to use to formulate an opinion on various amendments.

Now, before that day, the very Minister of Finance stood up in the Parliament Chamber and spoke about who contributed to the Joint Select Committee, who appeared before, who sent submissions, and what I found startling was the revelation by the Minister of Finance that he had invited submissions from the Law Association of Trinidad and Tobago and received none. And his exact words were, “Well, what you want me to do? Beg them?” And I found that, Madam President, most disturbing, because the Law Association is mandated under section 5(c) of the Legal Profession Act to act in the interest of the citizens of this country if there is a danger, in particular, if a law is going to be proposed and that law may violate certain fundamental rights and freedoms as enshrined in the Constitution. [*Desk thumping*] So let me start by reading:

Tax Information Exchange Agreements
(USA) Bill, 2016 (cont'd)
Sen. Sturge

2017.03.07

28 February, 2017

The Secretary

Council of the Law Association of Trinidad and Tobago.

Advice given on Tax Information Exchange Act, 2017.

Dear Madam.

I am a financial member of the Law Association and an Opposition Senator representing the interest of the citizens of this country. By virtue of section 5(c) of the Legal Profession Act, the Council of the Law Association is mandated to give advice to the citizenry of the impact of proposed legislation on fundamental rights as enshrined in sections 4 and 5 of the Republican Constitution.

On February 13, instant, during the presentation of the hon. Minister of Finance, Colm Imbert, on the captioned Bill, it was stated by Mr. Imbert that the Law Association had been invited to send submissions on the proposed Bill to the Joint Select Committee set up for that purpose, but up to the time of speaking no such advice or submission was forthcoming.

It is quite clear that up to the time when the Minister of Finance was addressing the House of Representatives, that the Law Association had failed in its mandate and had not acted in the interest of the citizens of this country.

After much discussion, debate on the captioned Bill was adjourned for one week to allow for a further meeting of the Joint Select Committee of Parliament. When debate resumed on the captioned Bill on February 23rd instant, it emerged that one Raphael Adjodha had provided a written opinion on behalf of the Law Association, apparently in haste, following the

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embarrassing disclosure by the Minister of Finance that the Association had failed its membership and the citizens miserably. Thankfully, the opinion of Mr. Adjodha was ultimately rejected by the Minister of Finance.

I am required to debate matters connected with the captioned Bill when it comes to the Senate in the coming days. As such, I write seeking disclosure of the following:

1. The date when the Association received the invitation for submissions for the aforementioned Joint Select Committee;
2. The date when Raphael Adjodha was appointed to provide his opinion;
3. The date when Mr. Adjodha's opinion was received by the Law Association;
4. The name of the persons who made the decision to appoint Mr. Adjodha;
5. the criteria used for selecting Mr. Adjodha;
6. A list of constitutional cases argued by Mr. Adjodha; and.
7. Reasons why eminent senior counsel or prominent junior counsel were not appointed.

I would be grateful for a response within three days of your receipt of this letter so that I may carefully examine my options in a timely manner in the event of a decision by the Association not to provide the requested information. Please be guided accordingly.

Signed.

Madam President, the letter highlights the responsibility of the Law Association under section 5(c), and I wrote that letter and I was embarrassed that I had to write

that letter, embarrassed because the Law Association has a responsibility to the citizens of this country and the Law Association failed miserably.

So I make that point because all those persons who are seeking to castigate and berate and demonize the Opposition for doing its job, the Opposition actually did the job of the Law Association. [*Desk thumping*] And that is cause for concern. And it is not the first time that the Law Association has failed the citizens of this country and I am sure it would not be the last time.

But be that as it may, Madam President, in seeking to ensure that the rights of citizens of this country were guarded and that the Parliament had the best advice, we asked for a joint select committee. Now, I am not going to rehash all that was said about a joint select committee, because the records reveal that it was promised in the first instance. Two letters were written which suggest that they intended to carry out their promise to have a joint select committee. We do not know what happened after. All we can say, between that time when the letters were written and the promise was given, and the setting up of the Joint Select Committee, there was an election afoot in Trinidad and Tobago, the local government election.

So I really do not know what was the reason and I take with, not just a pinch of salt, but the entire container of salt, the reasons advanced by the Minister of Finance. [*Desk thumping*] Because, with great respect, when one looks at the history, the reasons proffered by the Minister of Finance amount to arrant nonsense—nonsense. But what they felt was that the Opposition would have buckled under public pressure because we were subjected to a lot of pressure, not just on FATCA, but on other things: the Marriage Bill and so on, and so on, and they felt that we would have buckled.

5.10 p.m.

When you listen to the rhetoric of the Prime Minister and others who said we “tief” with no evidence of supporting it, they never have evidence to support it. They just like to say it because in this country once you say it, it is the truth. They say “we tief, we hide it, we ha cocoa in the sun” and a whole set of stuff, and when you examine it against the independent thinkers who pronounced on this issue, you realize that that must have been codswallop. That politicking about who “tief” and who want the economy to crash made no sense in the context of the actual facts. When you read the Bill, when you understand the factual matrix, then you would see that all of that was simply scare tactics.

Now I could understand, Madam President, a government playing politics and one-upmanship against an opposition. That is one thing. It is an entirely different thing when you play that game and play it in such a way that you create panic and hysteria among the citizens. [*Desk thumping*] When you give the citizens false information that they would not be able to do this, that, and the other—which I have already mentioned—and that the economy would crash and so on, and so on, knowing fully well that that is not the reality, one must ask oneself: why would a government make such irresponsible comments knowing it to be totally untrue?

When you look at the modus operandi of this Government, they say that we have a responsibility to ensure that the economy is not crashed, and to ensure the integrity of the financial sector and the banking sector and so on, but when you examine their modus operandi, who are the ones who made damaging statements against financial institutions and top-level financial people in this country? [*Desk thumping*] Who are the ones who removed a Central Bank governor? Who are the ones who attacked First Citizens Bank for doing what it had to do in relation to a

certain disclosure? [*Desk thumping*] Then we see yesterday—or day before, was it? that the same people with this modus operandi are now attacking Digicel. [*Desk thumping*] That is not how you run a country, by scaring people. It is not. But I am much more perturbed when you look at the persons who were backing up the Government with these falsehoods.

Imagine I had to turn on my TV and hear an Archbishop of a major religion in this country castigate the Opposition for doing its job. I thought being a Roman Catholic Archbishop one would stay out of politics. I thought one would respect the role of the Opposition. No, I woke up one morning just about to go on—is it 102 on Abercromby Street?—and just before I got on air, a pastor is praying and asking the nation to pray that the Opposition would see the light and pass FATCA. It is a good thing he was not in studio because I would have had a “calpet” for him.

I could not believe that that is where we had reached, that everybody was in a state of panic over this FATCA, and the Prime Minister is giving the—and not only the Prime Minister, the Attorney General is giving the impression that it can affect local citizens, particularly Members of the Opposition who have something to hide, and when “de mark buss” it had nothing to do with citizens of Trinidad and Tobago. In fact, the Minister of Finance, I was grateful that he made it very clear today that FATCA and all that was said before about the hon. Prime Minister, by the hon. Prime Minister, sorry, was contradicted by the Minister of Finance, that this Bill has nothing to do with the citizens of Trinidad and Tobago. [*Desk thumping*]

Now the other group of people I want to take aim at is the bankers association.

Madam President: Sen. Sturge, speakers before you have spoken a lot about the

process that was embarked upon to arrive at the Bill before us today, and I am asking now that before you go into the realm of tedious repetition that you deal with the Bill that is before us because a lot has been said about the process.

Sen. W. Sturge: Thank you, Madam President. In order to deal with the Bill, Madam President, I am simply seeking, as a background, to refer to a meeting we had with the Bankers Association of Trinidad and Tobago because the Bill—I know I cannot hold it up—basically was discussed, and aspects of the Bill discussed, and that is why I rise to say I am disappointed in the bankers for also giving the impression that the economy will crash and the sky would fall. In October last year, I decided that I would download—where is it? I went on the Republic Bank website and I said to myself let me see what this FATCA thing is about and I decided I will download it. Do you know what I found, Madam President? When I downloaded it in October, Republic Bank on the website:

“THE TIME IS HERE.

FOREIGN ACCOUNT TAX COMPLIANCE ACT (FATCA) TOOK
EFFECT FROM JULY 1, 2014”

And when you read what is stated on their website, it is quite clear that Republic Bank was FATCA compliant since July 1st, 2014. [*Desk thumping*] Royal Bank, which is now called RBC Bank, which is Canadian-owned in essence, was compliant. CIBC, which is Canadian Imperial Bank of Commerce, compliant. Scotiabank, compliant.

In fact, there were over 60 financial institutions in this country who had already signed on and were compliant. So when you read that, what did that mean? It meant that being compliant the bank had to ask certain information of you and possibly, not possibly, but disclose certain information. Time permitting, I will go

to an article where the former Managing Director of Republic Bank, Mr. Dulal-Whiteway, was saying in essence the real complaint of the commercial banks in this country is that they are the ones bearing the cost, the manpower, the effort of helping Uncle Sam to go after what are deemed tax dodgers.

So when you read the website—and last night I pulled it up and when I pulled it up it said:

“THE TIME IS HERE.

FOREIGN ACCOUNT TAX COMPLIANCE ACT TOOK EFFECT
FROM...”

—and it is now 2017 which I found interesting. From 2014—it is a good thing I screenshotted it, 2014, or else they would say Sturge lied. So they are jumping from one foot to the next and joining in the chorus to give the country the impression that the sky would fall, but when you read the IGA, when you look at the agreements, when you look at the law, when you look at how this thing operates and when you understand how it operates, the banks in this country were never in danger of losing correspondent banking status. [*Desk thumping*]

So one wonders why would the heads of these commercial banks, why they would perpetrate such a falsehood on the citizens of this country, because when you look—and the Attorney General said it so I do not need to repeat it in any detail, but it is quite clear. The banks simply, on identifying someone who is a US person under the agreement, now billed, would call that person in, seek to get information from them, seek to exchange the information, and if that person is not willing to comply the bank had the option of closing that person's account. But the bank now is not telling you that.

The bank is telling you that if they “doh” pass FATCA they would lose

correspondent banking services, and when all is said and done that was untrue. But it emerged to me, and what is quite clear is that the banks in this country are selfish. It is not a situation where they would lose correspondent banking status. It was never that. They were never in danger because put common sense to it, put logic to it, if one single customer decides I am not giving you, Mr. Republic Bank, any information to send to the IRS, why would the IRS stop correspondent banking with your bank entirely because of one person. That make sense? Let me quote the lady. “Dat eh make no sense. Dat eh make no sense.”

And when we balance that against what Mr. Dulal-Whiteway said in 2012, it is quite clear that the banks were seeking—and I wonder if in the interim what they were doing is passing the cost of implementing their contract relations with the IRS and FATCA and so on. I wonder if what they were doing was simply passing on the fees to the citizens of this country because the whole purpose of this Bill—and the Attorney General is right. We do not need it. We do not need it. We never needed it. So if we never needed it why did the Government, and Joseph Harris, and everybody else, seek to frighten the country about something we never needed?

The banks basically put pressure on the Government to say, “Well hear what happen. You go and operationalize this thing in law. Make it into law so that the responsibility of sharing the information is now yours. The cost is now yours. It is no longer ours.” So they have passed the cost of implementing this agreement that they have signed to the Government, and therefore, the cost of FATCA is going to be borne by the taxpayers of Trinidad and Tobago and that has to be wrong. [*Desk thumping*]

Why would these banks who are making billions, this oligarchy of banks

who are making billions of dollars a year, and who I suspect were passing on in the interim the cost of FATCA to their clients, why would they now seek to foist this on the Government so that the citizens, the taxpayers must pay for it? And as Sen. Shrikissoon said, what benefit is it to us? This is an exercise of US imperialism. This has nothing to do with crashing nobody economy. That was never, never on the cards. I want to say that and I wish I had a bigger voice, a stentorian lodge voice, to say it so that it could pound the radio tomorrow morning so everybody would know that all that scare tactics was never going to happen. [*Desk thumping*]

Now we met with the bankers association and that is how I know all of this eh, because during the dialogue we realized we do not need to pass this. We did not need to pass it, so I asked one question. When they made their presentation I led off first. I do not know if Sen. Mark would remember. I asked the first question because they came to tell us, “doh bother with no JSC”. Now I got the impression from listening to the news that they came to see if we could collaborate and come to some position. It was never that. It was they coming to tell you, the Opposition, “doh bother with no JSC. Yuh doh need nutt’n. It good just so.” And when you examine their position, “it good just so” means “it good just so for them, not for the rest ah we”.

So I asked them one question. Question: what opposition do you have to the setting up of a joint select committee? Up to now—“gih meh one reason why you doh want a JSC set up? Up to now, Sen. Mark, they answer? No answer. They cyah answer that. When they “geh” up and they leave the room, now AMCHAM come in, one set ah big talk and at the end ah it I asked that same question”—
[*Interruption*]

Madam President: Sen. Sturge, I really have to ask you, you have dealt and you

are saying things that others have already talked about and I am asking you to now avoid the tedious repetition.

Sen. W. Sturge: Guided. Yes, I apologize. I did not get the impression anybody talked about AMCHAM, but I will move on. But the short point is up to now you ask for answers for certain things, you cannot get it.

Now, let me refer to things said by the Attorney General in his contribution before the Parliament because the Attorney General gave the impression that from 2013, when the IGA was initialled, to 2015 nothing was done, but in the next breath the Attorney General would say, “This is your Bill. This is your Bill.” So I want to ask the Attorney General, if we did nothing how could he stand up in the Parliament and say this is the Bill you drafted if we did nothing? Then if the Bill we drafted you have so much confidence in it—well, according to what he said today, it is bad. So if the Bill is bad, if we drafted it which is not true, because my information—and I challenge the Attorney General to correct me and to point me, with evidence, that I am wrong—my information is that the People’s Partnership drafted no legislation. [*Desk thumping*]

Sen. Solomon: Passing the buck.

Sen. W. Sturge: He is passing the buck. But let us go with what he said, the Bill bad. The Bill bad and you bring it to the Parliament as bad as it is, and you are happy with a bad Bill that would infringe the rights of the people of this country. [*Desk thumping*] Then you notice when you looked at the legislative agenda what is to come and what went before, you realize that most of the Bills brought here, outside of the finance Bills, are People’s Partnership Bills. You are bringing it wholesale. [*Desk thumping*] I do not know if “high-class laziness” is unparliamentary, but it shows—what work are you doing? So you bring a Bill that

according to you is thoroughly bad, you bring it with no amendments, you do not want to send it to a JSC, and then you say, to quote the Leader of Government Business in the House: What it is you want to discuss in private that you cannot discuss in public?

Now, Madam President, when one understands how it works, if there was no JSC we would have had nothing from the law association. [*Desk thumping*] Even though it is not worth the paper it is written on we would have had nothing, because the law association could not come in the Parliament and sit down and take part in anything. If there was no JSC we could have had no amendments from the SEC and these other bodies. When we look at the Bill in its present form, to what obtained when they brought it to Parliament, it is something entirely different. It is something when you look at it, it is substantially different; something which has protections for the citizens of this country.

Madam President: Sen. Sturge, you have five more minutes.

Sen. W. Sturge: Guided. One of the protections if I can use my criminal law experience to assist understanding of the notice requirement, the same notice requirement, as my learned friend Sen. Ramdeen talked about, that the hon. Prime Minister benefited from when he took the Integrity Commission to court, that is all we were asking. You see, in Trinidad and Tobago, you have certain rights and if the bank is going to use your information, send it to the IRS with the risk that you could be charged abroad for tax evasion or whatever and extradited abroad, you have certain rights and there is a corresponding right, and if you look at the Judges' Rules you would see those rights are there.

In essence, if you are going to submit this information there is a reason why you have to tell the person. You have to tell the person to give the person the

option of, one, clearing up the issue. He might be able to clear it up and avoid a charge and extradition. He could say, “Well no. Listen, you think this is it, but what really happen”—because if you look at how you can end up over there, if you have a SIM card, if you have a US postal box, skybox, all “dem kind ah ting”. So you can say, “Listen, I am glad you have notified me. Let me tell what this really is about so that I do not get in trouble and you can investigate what I say. Check it out and if there is no need to take me, there is no need to take me” and everybody happy.

In Trinidad and Tobago that is known as a Rule 2 Caution under the Judges’ Rules and it is a right, because if you are sending information that can be used to trigger an investigation, reasonable suspicion, then the police in this country would tell you, or all prosecuting authorities would tell you, “Listen, caution, this is what we are doing. Do you have anything to say?—because at that point you could say something to help yourself. Before that amendment was drafted, which was the last amendment we proposed, the last of many, you would have had no such right. You would just one day wake up in your bed, the police come for you, you end up before the magistrate and you are ready to go on a plane to be extradited. So all this talk about judicial review to prevent it, how can you complain about judicial review proceedings when the Prime Minister himself was the beneficiary of judicial review proceedings to prevent a charge? [*Desk thumping*]

A citizen is entitled to access to the court. So that is what the notice was about. So you notify them so he can decide to assist in the investigation, or he can decide, well listen, I really have cocoa in the sun, I am not assisting. “All yuh do wha all yuh want.” It is not about notifying anybody to run because in this world you cannot run anymore. With all the extradition treaties there is no place to run.

So that made absolutely no sense, and I shudder to think that a government would have a problem with an amendment which seeks to ensure that a citizen has rights to notify him so that he will know how to conduct his affairs. I shudder to think that they would have gone forward without that amendment. Can I ask how much seconds or minutes I have left, Madam President?

Madam President: Just under two minutes.

Sen. W. Sturge: Oh dear. Yes. So, Madam President, I am thankful that the country has reached a place with an unnecessary piece of legislation, but nevertheless that we have reached a place where both sides working were able to reach some sort of compromise which protects the rights of the citizens of this country, and that we were not subjected to a situation where an imperialistic draconian legislation, piece of law, would be shoved down the throats of citizens of this country.

So this is an example of how the process works when the Opposition and others are allowed to act as a check and balance on the Government, and I hope that this resonates with certain persons in the future so that when legislation comes to Parliament, it comes with the necessary mechanisms to ensure that rights are protected. And in closing, I thank again—I cannot thank you enough—the hon. Leader of the Opposition for standing like a lion through all of this. I thank you.
[Desk thumping]

Sen. David Small: Thank you very much, Madam President, for giving me the opportunity to join in the debate on this Bill to deal with the tax information. Madam President, I want to state that very much at the beginning I only have one thing I want to comment on, on what was said before, and I want to put it on the table. I struggled—and I am going to take one minute—when I looked at the Bill

because the whole essence of this version of the IGA has to do with reciprocity, and I think the JSC is very fortunate I was not on the JSC because I would have had a dissenting opinion because there are other versions of IGA that do not require a reciprocity. So that I was actually disappointed that there is no reciprocity. That is my own view.

I think that in the way in which this whole process has evolved, if we are choosing to not have reciprocity then we chose the wrong version. I totally agreed with Sen. Shrikissoon on that and if I was on the JSC I was not going to move. I would have offered a dissenting opinion because I believe that we are allowing a government to have access to information about the citizens in our country, and we have given up our right to have similar access to our citizens in their country. I cannot see how that does anything for us.

So, Madam President, we are here to debate this Bill. I actually have no issue with the Bill because I believe that while it seems to give extended powers to the IRS and other parties in the US Government access to what is going on with their citizens in this country, I have no issue with that because we are already tied to active regulatory system in the USA, because it actually has many safeguards to protect the rights and interests of ordinary citizens. So that while it may seem that they are reaching very far to be able to keep tabs on what is going on with their citizens through this legislation, there is actually a lot of protections in their system for citizens.

We certainly in Trinidad and Tobago, Madam President, can boast of having the cleanest and most corruption-free stock exchange in the world.

Hon. Senator: FCB IPO.

Sen. D. Small: What is it I hear? FCB IPO? What is that about? Madam President,

what are the benefits of passing FATCA; what is the benefit to citizens of Trinidad and Tobago? That question has been asked before and there is no stated specific benefit other than the protection of the monetary system and protecting the economy, but really and truly it is benign because there is no new benefit. It is essentially maintenance of the status quo. I could only now be hopeful that the amount of parliamentary time consumed in bringing this legislation here to us shows that a new focus has emerged on ensuring that citizens are protected. Throughout all the various processes of getting this Bill before this House, the bankers association has been noticeably vociferous in articulating the absolute need for FATCA to be passed.

Madam President, a virtually salient point that has not made any headlines is that failure to pass this Bill would also have hit the bottom line of these same members of the bankers association, and that it would have hit their bottom line in a negative way. So that actually it is for them. There are benefits for them, but they would not say that. [*Desk thumping*] It is not stated anywhere and they would not acknowledge it. So once this Bill is successfully passed, the bank members would be smiling and be very happy whilst citizens of this Trinidad and Tobago continue to hold their heads and bawl at the pernicious charges and fees that are being pounded upon them by these banks. [*Desk thumping*]

Madam President, I lament our current situation where, after many exhortations by many and several persons, myself included, the Central Bank has taken no obvious action to protect the citizens of this country from the daily pillage [*Desk thumping*] of the accounts by local banks. To be clear, I very well understand that the Central Bank has no ability to intervene regarding fees and service charges. That is something that requires new legislation, however, the

matter of the contentious interest rate spread, they have clear authority and they have yet to deliver any meaningful result.

Madam President, the fervour of this whole issue around bank fees and charges, I want to quote—the head of the banking association made an interesting comment that competition is driving fees and charges and I want to quote from an article by Tony Deyal in the *Express* of March the 1st, 2017. Headline of the article is “Bat and Ball”, and he said it is the first time in his understanding that he heard that competition causes prices to rise and not to the drop. Madam President, I wish to state categorically that I have been an abject failure in getting my message across about the charges and fees banks have levied upon customers. I am a failure simply because I, probably even Mr. Deyal, a respected journalist, and I suppose many other citizens, have not got the point.

The very respected head of the bankers association is a very eloquent and business savvy lady, who I have had the pleasure of interacting with on many occasions, and I fully grasp and I accept what she has said about competition driving fees and charges upwards. I accept it. The point I continue to make, Madam President, that is slipping by everyone, is that the members of the bankers association are in competition amongst themselves to see who can make the most fees and make the most profit.

5.40 p.m.

And that is where, in their reality, in their conception, there is competition but the competition is about them getting better for themselves. It has nothing to do with protecting the citizens of Trinidad and Tobago.

So in that vein, as we come to the Bill, the IRS and the other elements of the system are there to make sure that the US Government is able to put a set of

structures around to manage and understand what their citizens are doing with their money, but they have protections. For instance, in the USA, there is something called the Community Reinvestment Act. It requires that banks have to reinvest in the communities that they serve. It is the Community Reinvestment Act of 1977. They cannot just come to a place, make money and then leave and take the money.

Further, there is something in the USA called the Truth in Savings Act, the Electronic Fund Transfer Act. The Truth in Savings Act, you establish uniformity in disclosing terms and conditions regarding interest rates and fees when giving out information to customers. And the most important part, the US Government has an organization called the Consumer Financial Protection Bureau. When you go to their website, it says:

We are on your side. We are here to hold banks accountable for illegal practices.

So I totally support and I understand the reach of the IRS and the other state agencies but it is measured because as a citizen of the US, you have protections. You have the State actually trying to make sure that you are protected from illegal or corrupt practices by banks and we do not have it. Before FATCA, no American law had attempted such an astounding reach. FATCA helps the IRS and the Justice Department to root out Americans holding foreign accounts. That has been well covered.

Madam President, there are a couple of things inside of the Bill that I want to go to now before I go to some other things that I have to talk about. I want to go to, I think it is clause 18(2) where it requires the publication within—and this is something that—two months of the date of signature for the agreements of the parties regarding the report, this is something that is very important. And what I

did not see inside of here, I am not sure what—it shall be laid in Parliament within two months but I am not sure. Is it just being laid in Parliament for noting, for recording, for debate? I am not sure. Is it just going to be laid, and it is just laid there and put in the library? I am not sure.

Under clause 25 where the Central Bank Act is being amended and where at (b)(iii), it says:

“By inserting...paragraph...”

The Central Bank will:

“supervise financial institutions...”

Madam President, the Central Bank is struggling right now to deal with all that it is on its plate. It cannot even implement section 44a of the existing Central Bank Act where it has authority to deal with issues and we are asking the Central Bank to deal with a whole set of new issues. Where are they going to get the institutional strength to do that? Where it is coming from? How are they going do it?

And my concern is with the institutional capacity to get this done. Is this going to take priority now over and above the issues that they have to deal with to protect citizens of Trinidad and Tobago? What is the priority? What is the pecking order? As of now, as of today, Central Bank has not been able to protect the citizens of Trinidad and Tobago properly from the actions of the banks and now that they have to deal with FATCA, is that going to trump everything else? No pun intended. Is that going to trump everything else and then our issues are going to fall further down the line? I have no idea.

Similarly, clause 27 where we are amending the securities Act and at b(7). Similarly, is the SEC to do this? The SEC will formulate, prepare, publish guidelines and make sure that there is compliance? We have the FCB IPO

investigation report, I do not know where it is. I looked on the SEC website, cannot find it. And I have said this before, I go to the United States SEC website and I can see all of the status of their on-going investigations and the status of reports. Here in Trinidad, “is ah big secret”, nobody knows. Where is it? Is it finished? Has it been sent to the—nobody knows. We have completed the investigation, we have passed it on, no information. But what we are asking in the Bill here is that the SEC will now have a whole new range of responsibilities but they have not been able to fulfil their current ones. My concern is with: can they do it?

Again, Madam President, I think that I have several other issues. The Central Bank has been required under—I think it is clause 27 going down to (d) where it has to issue guidelines, it has to ensure that they perform some acts. They have to ensure that all these organizations perform these various acts. I look forward to seeing these guidelines that the Central Bank is going to be—I want to see them because I suppose that these guidelines will be a good practice to the Central Bank to be able to create some guidelines for it to give effect to its power under section 44A because they seem to not know what to do, how to implement section 44A.

So that in proposing these guidelines, I hope they will get some good practice so that they will come with some guidelines on how they can implement section 44A and bring some sense to the banking situation in Trinidad and Tobago. Because we are counting on them to be able to do this and my struggle is, the things that they are able to do now, that they have full authority to do, they do not seem to be able to do it so my confidence is low.

Madam President, I want to move now. This legislation is not targeted at citizens of Trinidad and Tobago. I accept that. But I think there needs to be an information sharing or understanding of how people who live in Trinidad and

Tobago could be affected. And I think that is part of the issue because I think, if people take away “I live in Trinidad and Tobago and that is fine”, but under the wonderful rubric of how they define citizenship. You know, being a citizen of the USA is an interesting thing because inside of the document here, it says that identification of the holder as a US citizen. That is great.

But being a US citizen, if you go to the wonderful US citizenship website, to be a US citizen, the ways in which you could become a US citizen are quite interesting. Obviously by birth and obviously by—I am reading from the website of United States Citizenship and Immigration Services. You could be a child born of a single—an example. Somebody comes to Trinidad, has a nice relation here and nine months later, a child is born here. The mother stays here, that child is a US citizen and has to report before the IRS unless they renounce their citizenship. When they get to 18 and they start to work, as far as the IRS is concerned, they are supposed to report. They are supposed to and just for information, renouncing your citizenship is not a simple process. You have to go to your local embassy, you complete the documentation, you have to pay a US \$450 fee and then depending on your particular circumstances, you may have to file five years’ worth of IRS returns. So renouncing US citizenship is not a simple process, stand there and say I renounce.

So that I think that there are instances, Madam President. There are probably too many people I know who live in Trinidad but have green cards. They immediately become liable because you have a green card, you “kinda” live in Trinidad but you have a green card, you go back to wherever, spend a couple of months and you go back but if you have not been reporting your Trinidad banking activity here, you are in trouble with the passage of this legislation. I hope a lot of

those people understand that. You are in trouble if you have not been filing your returns with the IRS. And what is the fine? It is serious.

You are a US citizen, US resident, it is treated the same under FATCA. So that we have people here in Trinidad and Tobago—there is another instance. You have a family member who lives overseas and is preparing for retirement and you have a joint account with a friend or a family member here, immediately that account becomes liable for FATCA. You might be the person helping a family member or a friend, just managing the account for them but immediately, with the passage of this legislation that account becomes liable for reporting to the IRS.

So that there are situations where people in Trinidad and Tobago who live here and whether they are citizen or not, they could actually have a Trinidad birth certificate, they could have a Trinidad passport but they could still be, as far as the IRS and the US Government is concerned, US citizens and they would be reportable. And those are the issues that I think that while we cannot do anything about that, what I think needs to happen is that there needs to be some process of putting out a notice or helping people to understand the categories of people and a communication effort needs to happen to help people to understand that, “hey, if these are your circumstances, perhaps you need to be able to go to your bank and get your stuff sorted out”. That is all I am saying.

I am not trying to say that the Bill is not correct or there is something wrong with the Bill but these are—actually, Madam President, there is a term floated around about “accidental Americans” because people have become Americans purely by accident, and there are so many categories. When you go to US citizenship through parents, the child is born outside the USA by one parent, whether married or unmarried, it does not matter, and whether the parent is the

male or is a female, it does not matter. The categories of citizenship and they all fall liable to FATCA.

So that if you are a citizen of the USA, you might be a citizen of Trinidad as far as you are concerned. Your parents may have conceived of you and you were born in the USA and then you came back here as a toddler, and you have never seen America for 25 years. As far as they are concerned, you are a US citizen unless you have renounced and to renounce, you go to the embassy, follow the procedure, US \$450, plus you may be liable to be filing tax returns to the IRS and you would not get the certificate of renunciation until the IRS clears you.

So I just wanted to share that because—forgive me, I am always trying to understand why things are the way they are because I was actually doing some research and I found that the former mayor of London, the current UK foreign Secretary, found himself, a couple of years, with difficulty because it seems that he was born in New York and when he attempted to board an aircraft with his British passport, they refused to board him because, you see, your passport says you are born in the USA and you have a British passport. Something is wrong with you. You are not going anywhere today. That is real life and at that time, he was the mayor of London. He had to leave the airport, go to the American embassy and swear and then when he found out, oh, he had to file tax returns too, it became painful and these are real things.

So all I am saying is, in our communications, in the way in which the legislation is crafted, it cannot cater for all of that but that little phrase there that speaks to the “indisha”. I hope I have that word right. [*Interruption*] The indicia, the indicia. Forgive me, I did not go to the wonderful big high schools, I went to a simple school, I went Tranquility Government. [*Laughter*] Where it says:

“(a) Identification of the Account Holder as a U.S. citizen or resident;”

That is so filled with subsets. So while it seems very easy, US citizen/ resident, yeah, there is a whole bunch of levels underneath there, that as a Parliament, we should at least try to make sure that the Government or the parties that are going to be actioning this, put out a public notice and say if you already have a green card—or you have a green card but you left America, you came back here, your green card expired, that does not mean anything. Until you have renounced, you are a US citizen and you have to go through the procedure.

So I suspect—I know several people who are in that situation. I know several people personally who are in that situation, either have green cards now and are shuttling back and forth or have repatriated back to Trinidad, have finished with North America as far as they are concerned. Their green cards have expired but they have not terminated formally. So until you have terminated formally by going through the procedure, you are subject to FATCA and then you find yourself in problems with the IRS.

So, Madam President, that was one of the cases I wanted to touch because, according to the IRS, you need to have a foreign bank account report and if you do not, the civil penalty is \$10,000 per violation and penalties could reach as high as US \$100,000. US, real money. So this is not something of light consideration. So that persons who have their own sets of connections and friends and families and helping out families, you need to perhaps now do a proper examination of your arrangements. The Bill will be passed, it would not be assented to for a few days so you still have a few days to get out of it. [*Laughter*] Yeah?

So that is one of the key things, Madam President, because we are operating in a space where—I had to explain to someone. People read the newspaper and

read the headline. The President of the Bankers Association says, well, this Bill does not affect Trinidad and Tobago citizens. Okay, that is correct, 100 per cent. But the way in which the US citizenship law is crafted and the way in which citizenship applies and the way in which the IRS, in particular, views citizenship, it requires—there is quite a bit of definitions, there is quite a bit of subsets and it requires us, I think it is incumbent upon us to make sure that our citizens who may fall into those groups understand what their challenges are.

The other thing I want to talk about is something called the cost of FATCA. More than one speaker has spoken about this and again, right now, as I have stated earlier, the Central Bank has no authority to regulate fees and service and charges that the banks charge, so I do not expect any legislation between now and September on that. I am a realist. I would hope but I am a realist. So what it means, Madam President, any fees or charges that the banks hope to charge for FATCA, they have free reign. They could charge it however and I suspect even if they have not done it as yet, they will make sure that every citizen of Trinidad and Tobago pays for the luxury of them being able to continue to make their profits and we have to find a way to fix this. Because there is no structure now to regulate fees and charges of the banks so there will be a cost for implementing FATCA and they will pass it on, and everyone in this room and everyone outside this room will likely be paying for it, and if we are okay with that and everybody is happy with that, well, fine. I am not. I am absolutely not.

The banks have not—and it is interesting. These associations are quick to quote numbers when things are going bad. I find it very interesting that in all of the dialogue on this, the Bankers Association have not said, listen, this is going to cost us, you know, 50 million. They really do not care what the number is going to cost

them because they have worked out how to recoup it. I think Sen. Mahabir and I have had more than one contribution that they have a whole floor in each building of resident schemers and the head schemers have worked out how they are going to charge this back. And so that I think it is incumbent upon us to try to make sure that this is applied in a way in which those who are really affected are the ones who have to pay the charges. Not me, I am already being overcharged.

So, Madam President, with all of those few things that I have said, I actually support the Bill. I think that a lot of my exhortations are around the implementation of the Bill. My concerns about the capability of the Central Bank to really deliver on all of the things that they say they are going to be able to do here. The capability of the SEC, I have zero faith in them, I have zero confidence in them. None.

I think that the hon. Attorney General spoke earlier about convictions for white-collar crime, I think the jury is still very much, you know, in on that, that zero speaks to either we have the cleanest system in the world or we have the dirtiest system in the world. And I think that there is no obvious easy fix to that but when are we going to start? When? Who? Clico, FCB IPO, HCU, all sorts of things. People have raped and pillaged the economy and are living fat and what? It is fine. So perhaps I should stop complaining. A very good friend of mine who sits in a very high place in a bank said, "David, why you keep talking about this, we not taking yuh on".

And, Madam President, I just want to share one bit of information because I think my push on this is about understanding that as a citizen, we have to understand how things impact us. But sometimes it is also important for us, who are the legislators, to make sure we give the citizens as much information about how things are going to impact them because we cannot take it for granted that

everyone is going to have the same level of access to information or be like me, be digging through the details, go into the IRS website, go into all the various websites, getting the information, go into the citizenship website, seeing all the various things and trying to understand what that means for a citizen living in Trinidad and Tobago

I think that is our responsibility to, at the very least, have the Central Bank or whoever put out a notice or set up a desk and say, if you think you may be under, come in and let us discuss how we could help you manage. Something. I think that is something that needs to happen.

But just to give you a scheme, Madam President—I am about to wrap up. I went to the website of a bank that has a local website and a foreign website and just a quick thing, it is always interesting to me. On their US website, they have all the various types of credit cards that they offer and they have the interest rates, and the interest rates range from 11 per cent to 20 per cent. In Trinidad, they have a list of all of the credit cards that they have and they have one interest rate, 25 per cent. *[Laughter]* And it is because in the US, you cannot lump one—give one card. You go, you have to list all the cards, list all the terms and conditions. Some of them have no annual fee and the interest rates range from 11—and why? Because depending on how they treat the customers, how they know the customer, they will start you off with either a lower or higher rate.

In Trinidad, good customer, bad customer, 25.2 per cent. And again, all of us have relations with the banks. We think that we have a good relation with our bank and things are going fine, and they laugh at us every time we come in because they are killing us and we just do not know it or we refuse to accept the information that is out there. It is just out there.

Madam President, so I believe that while—I have looked with much interest at the debate on FATCA in the Canadian Parliament. I would ask anyone who has time to go and see what the debate in the House of Commons in Canada, how this debate was handled. I also looked at the House of Commons debate in the UK where they had to do it in the frame of regulations. It was all very interesting. All 2,000 pages, I did not read all but I read enough of it. That this legislation is a legislation that is far reaching—and I actually applaud the US Government for being able to take a position on this and say, listen, if you want to do business with us, this is what is required. If you do not like it, you can do whatever you feel you need to do.

And Trinidad and Tobago is in a place where we do not have the luxury of being able to say we could do what we want to do, we have to fall in line and in falling in line, my whole argument, at the beginning, was the model that we have chosen required reciprocity. There was a model that required no reciprocity. So what we have done is taken the model that required reciprocity and then removed reciprocity from it. That does not seem to be logical in any sense or form but we are way past that.

Madam President, if you would permit me, as I am about to close, to digress for one minute. Tomorrow celebrates International Women's Day. It is the celebration of the social, economic, cultural and political achievement of women and I would like you to permit me just to name a few, in my respectful view, to give my thanks and personal thanks and appreciation for some women who have served in this Senate and who have really demonstrated of being champions of gender parity: Sen. Elmina Clarke-Alleyne, Sen. Dora Bridgemohan, Sen. Louise Horne, Sen. Carol Cuffy-Dowlath, Sen. Anna Mahase, Sen. Glenda Morean-Phillip,

Sen. Helen Drayton, Sen. Eastlyn McKenzie and of course, the late Sen. Dana Seetahal. [*Desk thumping*] I want to record my personal thanks for every woman who has come and has served and has demonstrated that women are our equals. [*Interruption*] Corinne Baptiste-McKnight. I have a long, long, long list, I just went through some. [*Interruption*] And all the others. But I want to record my thanks because I have come here—and it will be remiss of me, Madam President, it may be improper for me to record my appreciation for you, for your studious management of the House. [*Desk thumping*]

But we should always remember we are in a place where—I think the debate on the whole issue of marriage of children, while it is an oxymoron, it is actually topical because we are talking about the ability of women to contribute to Trinidad and Tobago and our development. Women have a vital role to play and I want to record my personal thanks and appreciation for every woman who has served in this august Senate and in other places who contribute and not only the Members of the Senate, but all of the female police officers, the female support staff. Everybody here is making a contribution and for me, because the celebration is tomorrow—I am aware the Parliament had an event yesterday, unfortunately I could not attend so this is my way of extending my appreciation.

So, Madam President, with those few words, I think FATCA, it is something that is interesting. It is going to happen. I support it. I have some challenges with some of the ways in which—how we got here but we are here. I have a challenge with the way in which it is going to affect people that perhaps people did not understand. We did not do the research. There was not enough rigour applied and if it is one thing with me, Madam President, when I do something, I apply rigour and I try to make sure that—if everyone is talking about one issue, let me find the

issue that perhaps somebody missed and I think this is something that somebody missed. Because we looking at the indicia and we missed the fact that there are a lot of citizens or people living in Trinidad who will be affected. Whether they are citizens of Trinidad and Tobago, we could fix that but there will be people who are residents here, living here who will be affected. It might be 10 people, it might be 1,000 people, I have no idea.

But I think that is one of the cases for me that I wanted to put on the table and with those few words, Madam President, I want to thank you. [*Desk thumping*]
Sen. Rodger Samuel: Thank you, Madam President. I always consider it a tremendous honour and privilege to speak in this Chamber and in so doing, not just only to address you and my colleagues but to address the nation at large. The Bill before us, a Bill to repeal the Tax Information Exchange Agreements Act and replace it with a Tax Information Exchange Agreements (United States of America) Act, which would make provision for the implementation of agreements between Trinidad and Tobago and the United States of America providing for the exchange of information.

I am quite concerned about that little phrase “the exchange of information” because what we have heard thus far that it is a one-way street. There is no exchange of information but it is information that is solicited from Trinidad, but we really have no access because there is no reciprocity, as the learned Sen. David Small clearly outlined. So I think “the exchange of information” is a misguided phrase because I think exchange should be two way and not one way.

But, Madam President, we did not get here—and I have had the opportunity to sit and listen to the hon. Minister of Finance graciously present the Bill this morning, just like that. As a matter of fact, FATCA has caused tremendous disturbance in

our society. Disturbances based upon misunderstandings, misrepresentations, political influence and statements that have not really educated our society. But what we have found is that the society is still up in air when it comes to FATCA and how it affects us and Sen. Small was very clear as to do people really know the impact of FATCA and the average citizen is still unaware.

And if you were concerned about FATCA and you listen to many of the talk show hosts over the last couple of months and how they ridicule people and who have cocoa in the sun and stuff like that, you would realize the ignorance of our society and that people only take what they hear from political circles and never for themselves go and do the necessary research that is required for clear understanding and education, so that we can be a far more informed society.

But there is also a lot of misinformation that led to this kind of chaos. Misinformation based on statements by Government Ministers and many other circles that has instilled a sense of tremendous confusion and turned out to be, after hearing the hon. Minister of Finance this morning, a tremendous case of propaganda that did not leave a far more educated society, but still has left the society in ignorance.

6.10p.m.

So the results of all of this caused fear in some circles as well as uneducated discussions. As a matter of fact, so many people have been stigmatized because of this FATCA situation in the atmosphere, the gainsayers and others who, from the beginning, asked for the Bill to be sent to the Joint Select Committee. When that happened, you heard so many things that would give people, the average person, the feeling that if you send something to a joint select committee you are attempting to hide something and the *Hansard* would have proved that, based on

statements made by hon. Members in the other place.

As a matter of fact if, Madam President, we had to rate the FATCA debate as they would rate movies I think we would have probably gotten a double R rating because it turned out to be kind of crazy in the atmosphere from a political standpoint.

I found, Madam President, that there were quite a number of things that we could have dealt with carefully when it comes to FATCA. Even today there were quite a number of things said that were not necessarily correct, and that needed to be corrected and some of my colleagues would have dealt with that.

But there was one thing, Madam President, and I would have thought that the hon. Attorney General, I respect him, would have said—because there was a newspaper report in the *Guardian* dated Monday, December 12, 2016, if I am permitted to refer to it, where:

“T&T’s banking system will ‘shut down’ if the Foreign Accounts Tax Compliance Act...is not passed in Parliament says Attorney General Faris Al-Rawi.”

And he went on to say:

““What is on the table for us is to have countries outside of T&T tell us who has foreign accounts that are inexplicable. To tell the people of T&T there is a foreign account in England, the United States, in China, belonging to this person. You have got to ask why the whole country would not want it to happen. If we do not put this into effect the banking system will shut down””.

That, to me, is misleading; misleading because what this Bill turned out to be, with regard to an agreement in place, with regard to Trinidad and Tobago and the

United States. And to me, Madam President, that was not good information or clarified information passed on to the society.

But, Madam President, it is important for us to realize that in the midst of all of the debate and in the midst of all of the exchange of views and ideas; some misguiding, some may have been informative, depending on who gave it; it was not just passing statements that evolved. As a matter of fact I am very careful, Madam President, that when we speak in the House and when we speak in the Senate, the information that we impart, the citizens that are watching and listening take it to heart and they believe that we are speaking the truth, and we must be careful that when we do such that we actually speak the truth.

Madam President, if it was not for learned people in our society who were able to take the Bill and articulate it to our society, and later down I will tell you what Republic Bank has been able to do and it would answer some of Sen. Small's concerns, with regard to informing our society. Noel Kalicharan in his little discourse on the Bill clearly defines to citizens in the *Express* newspaper editorial of the 29th of September, 2016, and he was clearly stating in his little discourse that, you know, the craziness that was taking place; the fact that the banking sector would shut down and if FATCA is not passed, failure to pass the Bill could ultimately result in higher prices for the average consumer, something that probably we need to look at and any US transaction would be subject to 30 per cent withholding tax.

I want to talk a bit about the withholding tax that is clearly stated on page 19, sub-section (4), and I am down at the end of (b).

The US source withholding payment means any payment of interest including any original issue discount, dividends, rents, salaries, wages,

premiums, annuities, compensations, remunerations...

—and it goes on and on and on. If such payment is from sources within the United States of America.

But, Madam President, that is not what we are being told. As a matter of fact, we are being told, based on the *Hansard* of the 9th of September, 2016, page 77, that if Trinidad and Tobago fails to meet the September 30, 2016 deadline that is imposed by the United States, via the passage of legislation, what it will mean is that the list, but it goes on to say so every—if it is allowed to take place to do with any of the American banking system would result in the immediate automatic 30 per cent withholding.

So that every \$100 of a transaction by any Trinidad and Tobago citizen within the United States, this is on *Hansard*, and that will include credit card transactions. It will include shopping on the Internet. It will include any transaction, you are wiring, transferring money to your children in school. It will include purchase of any goods out of the United States. It will immediately result for every \$100, according to the *Hansard*, you will attempt to spend, and you would only be able to spend \$70 because 30 per cent will be withheld by the United States via Treasury Department or their IRS, if we do not pass this legislation.

Madam President, that is not true. I mean, it is sad. This is by a learned attorney. It is a Minister in the Office of the Prime Minister that would say such a thing of this nature. Yet, this is not what withholdable payment says in the Act, nor does it say that, Madam President, with regard to the IGA. It does not say that. As a matter of fact, to emphasize withholdable, I mean Dr. Noel Kalicharan was very clear when he says withholdable payment refers only to income earned in the US.

It does not include, for instance, payments from TT to US.

It would be interesting to know the genesis of the notion. And he was very concerned about that kind of situation that this is not the truth. Thirty per cent on all transactions is not the truth. As a matter of fact, the 30 per cent issue is not something new. That has always been there. And we made it look as if, well we know, the fear tactic is that “eh” if you do not do that you are in trouble. They will charge you 30 per cent so your money’s value has immediately disintegrated. It is gone low. With \$100 you could only have \$70 because of the 30 per cent, and I heard something of that nature this morning and that is not truth, Madam President.

The penalty was always there in the IGA, section 14 (71)(b). It has always been there. So it is important for us to take note of that, Madam President, and for us to realize that our approach must be one of education.

As a matter of fact, Madam President, Sen. Small was 100 per cent correct, because in the *Newsday* of January 20, 2017, the outgoing United States Ambassador John Estrada said he will not shut up on the FATCA issue because it was a US law that will affect not only US and Trinis holding dual citizenship but ordinary citizens too, quote. So he was 100 per cent correct and I am thankful, because people out there are quite confused. They are quite confused. The average citizen is quite confused.

I came across a document, Madam President, produced on the Web by Republic Bank, and Republic Bank attempts to alleviate the fears that have been instilled by the Government, and I want to thank them for doing it. I just want to reiterate a little bit, so that the average citizen can understand what this FATCA and what this Bill does for their lives and how it impacts them or it does not impact them. The frequent questions asked is what they have produced. What exactly is

FATCA? And they went on to declare what FATCA is rapidly becoming and they went on. But it says: What will be required of Republic Bank Limited? In other words, what will the bank require?

- the bank must report annually to the Board of Inland Revenue, information on customers who are US persons, US entities and non-US entities with substantial US ownership commencing September 30, 2016;
- report accounts of certain customers who will provide sufficient information to determine if they are a US person, a US entity, commencing September 30, 2016.

The next question: Why did the US introduce FATCA? They attempted to answer that:

- FATCA is intended to increase transparency for US Internal Revenue Services, with respect to US persons that may be investing and earning income through non-US institutions. The primary goal of FATCA is to gain information about US persons. Republic Bank.

They asked another question to answer it: who does FATCA affect? Republic Bank:

- FATCA does not directly affect the ordinary Trinidad and Tobago citizen with a bank account and no ties to the US. However, if you intend to open a new account you will be asked specific questions to determine if you are a US person or entity.

So the average citizen can read this and be informed.

- Customers with US indicia who are deemed to be US persons or entity and hold cumulative deposit balances above a specific limit.

Then they tend to answer, Madam President who is a US person for FATCA

purposes, which is informative.

- a US person is a citizen or resident of the United States including a green card holder;

You are correct, including.

- a US entity, a partnership corporation, estate, trust incorporated or created under US law, US incorporated entity.
- a non-US incorporate entity having shareholdings of 10 per cent or more or ownership held by a US person or a US incorporated company.

The question that people are asking: Does FATCA apply to TT accounts? Republic Bank attempts to clear the air, which, to me, the Government should have been doing all the time, clear the air. Sen. Small talked about they must publish something so that the citizens can be able to understand. Madam President, the answer:

- FATCA applies to your entire account relationship with the bank, that is TT, USD and currencies.

How are customers being advised?

- Letters are sent to existing customers whose account with the bank indicates that they have US indicia. As a new account applicant you will be asked to complete our declaration of US status form to determine if you are a US person or entity.

What should you do? That is a question people ask all the time because FATCA is important. We are now at the point of ensuring that this legislation is passed and the society is still existing in ignorance. So I thank Republic Bank. Madam President, what should you do?

- Complete the declaration of US status form to indicate whether you are a US person or entity.
- Inform Republic Bank or any bank, I guess, of any changes relating to your US status.

It goes on, if you are a US person, it goes on after that, if you are a US entity, if you are a non-US entity. Does FATCA replace the existing US tax withholding? And it goes on to be able to give them information, the average citizen, which, to me, this should be spread to every home. Let them understand because there is a fear in the society, because of statements made in the past by Ministers of Government, Madam President. It is not good. It is a terrible thing.

Madam President, it is Prof. Rose-Marie Belle Antoine who tried a bit to clear the air likewise. She tried a bit to clear the air and probably she cried, because in the process of dealing with it and the misgivings, wanting to alleviate the fears of our society and ensure that the society does not go down a road of misgivings and misunderstandings and then we end up in psychological chaos.

Madam President, there has been a lot said, a lot said with regard to truths and a lot said with regard to untruths, if I may use that term. A lot of the untruths have come from the Government. A lot of the untruths have come and published and they are in the *Hansard* and in the newspapers as to how we are going to approach all these things. I am saying the time for those things are over. It is now necessary to educate our society. It is necessary to deal with the situation the way it is, so that the average citizen can be assured that we are there to protect them.

I am saddened that we are not protected as citizens, because there is no protection under US law for us. I am saddened by that. I am saddened that there is no recourse, but that they have protection under our laws, quite a bit of protection.

I am saddened by that, and it tells us a great deal as to how the big fish always try to eat up the small fish and destroy them, and that is the world we live in, Madam President. In other words, if you cannot abide with what we say then we will bring you down to nothing. It is a sad state of affairs because we are a sovereign state. And, indeed as a sovereign state we must be able to determine our future on our own.

Madam President, another salient point, and I would not be much longer, is that the average US citizen or person must be clear because a US person's account in TT is reportable if the balance exceeds \$50,000. That has to be known. And whereas a TT person's account in the US is reportable if it earns more than \$10 interest in any calendar year. I want to say that again. Madam President, a US person's account in T&T is reportable if its balance exceeds US \$50,000. Whereas a Trinidad and Tobago person's account in the US is reportable if it earns more than US \$10 interest in any calendar year. What a disparity. What a disparity we have in this Bill. What a disparity we have in this arrangement. What a disparity we have and our citizens must now understand that there is no equal footing between us and America, even though it is an agreement and an exchange, really there is no change. It is just dominance and power dominating small nations over and over.

Madam President, the Bill is here. We have debated it in both Houses. I want to commend the Leader of the Opposition. I want to commend those who were on the Joint Select Committee for the attentiveness and the awareness and the alertness. I want to commend the hard work that was done. Now, we can criticize joint select committees and those who are on it, but it is not easy to sit down there day after day and deal with the issues that are salient as dealing with this particular

Bill. So I want to commend them, and this Senate should applaud them and we need to be thankful for what was achieved, even though I see tremendous imbalances, Madam President. I see benefits for Americans more than benefits for citizens of Trinidad and Tobago. Madam President, I thank you. [*Desk thumping*]

Sen. Dr. Dhanayshar Mahabir: Thank you very much, Madam President, [*Desk thumping*] as I too join in this to debate at this rather late stage in the proceedings. I do not have much to say but I may say much.

I want to start, as usual, by thanking my colleagues on the Independent Bench, Sen. Shrikissoon and Sen. Roach. When they were asked so sit on this joint select committee they did not indicate to me that they were part-time Senators. They jumped at the opportunity with enthusiasm and alacrity and they served the people of Trinidad and Tobago with distinction, and I am really very happy for their cooperation and the fact that they served on this joint select committee. Having served on a joint select committee, on a few in the past, I know how valuable the exercise can be.

Let me, at the outset, Madam President, indicate that I am always an admirer of the United States of America. And to take the cue from Sen. Coppin, I have looked at how the United States economy—Mr. Vice-President.

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

I have looked at how the United States economy has recovered and I can assure you all of this will have some bearing on my own position on the Bill before us. In 2008, there was a major financial calamity and today, approximately 10 years later, well nine years, we are seeing a full recovery under way in the United States. There is buoyancy in the US economy. The Federal Reserve system is raising the interest rate and I say this is excellent news for Trinidad and Tobago

and the wider Caribbean. The reason, Mr. Vice-President, is this, whenever the United States' economy grows, it acts as a locomotive, according to the late Nobel Laureate W. Arthur Lewis, and it pulls the rest of the world along so that if, since the Chinese economy is now a bit sluggish and the Europeans are experiencing their own difficulties, with respect to the problems in Greece and Ireland, et cetera and the Brexit issue and we are seeing the Japanese economy struggling, it is indeed heartening and a good sign that the United States economy is recovering, an indication of that, indicias, an indication of that is that, Mr. Vice-President, the interest rates there are rising and we in Trinidad and Tobago can benefit from that, via the increase in visitor arrivals from the United States to Barbados and the rest of the Caricom trading partners and the commensurate increase in trading that that will allow Trinidad and Tobago to experience.

So that it is in everyone's interest to recognize the importance for economic growth in the United States and to do what we can to facilitate that particular growth. I admire the United States for innovation, for science and technology and particularly for education. There would be some other areas in which the admiration is not going to be so great, which I am sure we would want to address.

But, Mr. Vice-President, it is important for us to understand amidst all the hysteria out there, and I too want to share the concerns of Members of this honourable Chamber for the misinformation which existed in areas outside of the Parliament, which created in my mind unnecessary fear and panic and that is that this particular FATCA legislation was never about terrorism financing. It was never about human trafficking. It was never about any of those pernicious things that we keep hearing about internationally. It was purely and principally an attempt

by the United States to collect its fair share of taxes.

It is important for us to understand the history of FATCA. The United States is, in addition to one other country in the world, from my own research, a country that I shall mention, that levies are taxed on its citizens regardless of where they live. The basis of a tax is really a jurisdictional tax. So that if a Trinidadian lives in New Zealand, he earns his income in New Zealand, Trinidad and Tobago will not expect for him to pay a tax to Trinidad and Tobago. We expect him to visit and spend money here when he returns, but he is liable to paying the taxes due in New Zealand.

The United States is an interesting country. Together with one other country in the world; it is called Eritrea. That country says regardless of where you are, as long as you carry the passport under, we have these indicias, in addition to the passport, you have to pay our federal taxes. And the history of that is peculiar to the United States. The history, it is important to understand why we are doing what we are doing.

In the civil war, the famous civil war, which ended slavery. It did not start the civil rights process immediately. It ended slavery. Many Americans left the United States to live in Europe, Mexico and elsewhere and they were wealthy Americans and it was the view of the Congress at the time that they should not avoid paying taxes simply by scuttling or avoiding their duties under the war. They were still liable whether they lived in Mexico, whether they lived in Europe or elsewhere. You were liable to paying your federal taxes. And in the civil war they started the process. So it has a long history in the United States.

It was tested, Mr. Vice-President, in 1924 in the Supreme Court, famous case of *Cook v Taitt*. Mr. Cook or Mr. Taitt, one of them, lived in Mexico and it was

deemed that he was liable to paying his taxes although he had left the United States many, many moons ago and the Supreme Court ruled that being a US citizen carries certain benefits and even if you are living outside of the United States, you are, of course, going to be liable to taxes. And 1924 *Cook v Taitt* is in existence. It has not been repealed.

In 2010, an opportunity came during the financial crisis of 2008, in the Obama administration where, whenever the kitty runs dry in any jurisdiction we start to look around and we cast the net, and it was deemed that we could try to catch some revenue from Americans living abroad. So that this FATCA issue is really the policy of the United States, a policy for collecting their own taxes. But it has really no benefit to Trinidad and Tobago, directly.

What are the implications for Trinidad since we signed on to the IGA, of what I have a few more things to say subsequently? We did not sign on to the number two, as Sen. Shrikissoon indicated was, perhaps, the better arrangement for us. We signed on to the one. It implicated a number of agencies in Trinidad and Tobago to assist in the collection of US taxes. This is where the asymmetry arose.

6.40 p.m.

We are going to use our institutions to assist a foreign state to collect its share of taxes. What are the institutions? First, the Board of Inland Revenue. The legislation, as before us, indicates that the Board of Inland Revenue is the principal agency to assist in the collection of this information that is necessary, but it is going to burden the BIR. The concern I have from a public interest, you see, my particular duty and responsibility is to the people of the Republic of Trinidad and Tobago only, and also to all those who have been admitted through our ports of entry, who may not be citizens of Trinidad and Tobago, but who are now residing

in Trinidad and Tobago protected under our laws.

It does not matter whether you are European, whether you are a Japanese pan player or anyone else, once immigration—they tend to give us a kind of a look when we come in, but after they give us a look and they stamp our passport, I tell you one thing, we are protected. We are signing a contract with all of those people outside of Trinidad and Tobago who are not citizens, but once we admit them here we say, you come under the protection and we expect you to follow our laws. That is why there is a cable TV programme called *Locked up Abroad*. There were people out there who went to Singapore. They expected to be protected under Singaporean law, but they broke Singaporean law by taking narcotics with them.

So that whenever an individual is given entry into Trinidad and Tobago and he has his passport stamped, we implicitly are saying, after we have screened you, you come under our protection. When I look at the institutes that are going to be affected, Mr. Vice-President, I see the Board of Inland Revenue. The Board of Inland Revenue in Trinidad has been struggling for a long period of time. We have been talking about a Revenue Authority and changing the structure to try to collect the fair share of taxes.

You see, not only does the Federal Government of the United States need its share of taxes. Our Minister of Finance needs his desperately. The gap here is larger. Since we are signing an agreement that is asymmetrical, I am hoping the Minister of Finance, in his winding-up, will indicate that he will give consideration for some mutually technical assistance arrangement between the IRS in the United States and the BIR in Trinidad so that they can strengthen our tax collecting mechanism here. After all, we are helping you collect your taxes, can you train our officers in some of the techniques that you are aware of from your own IRS

structure? The US IRS is said to be a very good revenue collecting structure. I would expect that we would have some kind of arrangement using this particular law, hopefully, as a lever, but not only that. Sen. Small alluded to the Securities and Exchange Commission. If ever there was a commission that needs some help, it is the Trinidad and Tobago SEC.

For 20 years, two decades, that organization has failed to prepare a case on white-collar crime or securities fraud to bring it to the level of prosecution. I am not talking about prosecuting someone. They have failed, totally. The FCB IPO, insider trading. Raj Rajaratnam is now doing—I think he has already done about four years out of his 11 years. Our SEC is facing a clear-cut case, and whenever you ask anyone associated with the SEC, these things take time. These things take forever. Our SEC, I am hoping, we will be able to have our SEC liaise now because we are giving the US something and getting nothing in exchange. I am hoping the US SEC—if we were to go on the website of the US SEC, we are seeing on an annual basis hundreds of prosecutions, on an annual basis, of white-collar criminals. Our SEC is going to have some reporting duties, but our SEC, then if it cannot comply with prosecuting Trinidadians, will it then use its limited resources and work only for the Americans? That cannot be right, because we are funding them.

And so, just as in my contribution on the SSA legislation, my concern was that the SSA had not done anything major with respect to drug finds, et cetera, and yet we are giving it all these powers to probe into people's private lives. We have an SEC, we are going to call upon it, let us call upon the United States Government, the Federal Government to say, if you build up our SEC you will help us and we will help you because currently as BIR and SEC is so structured,

we cannot help anybody as it stands. So there is a golden opportunity for there to be some institutional strengthening.

The Central Bank of Trinidad and Tobago has a duty of regulating commercial banks. Commercial banks are going to have a reporting mechanism in place. Commercial banks are going to face tremendous cost. If one does the research on commercial banks' investments on software technology, one found over the last two years, when you looked into the major commercial banks in the world, they indicated that they were suppressing investments in new software. So companies which supply software, called FinServe companies, were not doing very well because banks were busy becoming FATCA compliant. They were spending a lot of resources complying with regulatory requirements, and now that they are complying with these regulatory requirements and it is costing them, then we know they are going to try to recoup.

And from whom will they recoup, Mr. Vice-President? They are going to recoup from those who cannot escape. There is a golden rule. Those who cannot escape will pay, and the account holders in Trinidad and Tobago are going to have to pay. This is where the Central Bank—and they will pay in fees. They will pay in high charges; they will pay in credit card interest rates; they will pay in overdraft rates. There are a number of rates a financial intermediary will be able to levy on an individual because he or she needs a service of that institution, and this is where the Central Bank needs to come in and the Minister of Finance.

The Minister of Finance is piloting this particular Bill, and I need to hear from the Minister of Finance that he is already in the process of looking at the Central Bank Act to determine which clause in there needs to be amended or to be added so that the Central Bank will be given the power to regulate fees based upon

the Australian model. We do not have far to go. There is the Australian model on bank fees, there is the British model and there is the Canadian model, and we would need to look at that.

The theory of regulation is very simple. Regulation is, you try to mimic the competitive market, and in mimicking the competitive market, a fee should be based upon an estimation of the cost of service. So that if the cost of service of holding a chequing account is \$5 a month, then the regulator would say you cannot charge \$25. If the cost of service of providing a statement is \$2, the regulator would say the most I would give you is \$2.20. I would not allow you to charge \$10, and we need to regulate and to give the Central Bank that authority. If we do not do that, what will happen is this. The institutions that we have in Trinidad and Tobago will comply and will be of benefit to American citizens and the American Federal Government, and my duty to the people of Trinidad and Tobago will not have been served. I need these institutions, of course, to be very much up to speed and running.

FATCA: FATCA we know is not a treaty. An IGA is not a treaty. It is for this reason there is no reciprocity. A treaty in the United States by definition must pass through the US Congress with, at least, I think 70 per cent of Senators voting for it. They have a lot of respect for the Senate there. Mr. Vice-President, 70 per cent of their Senators must vote for the treaty and then you will bind the Federal Government. These IGAs are just arrangements between one Government, an Executive arm of the State and another Executive arm of the State, and the Parliament is only by the way. The Parliaments do not get involved in IGAs. A treaty is a different animal altogether.

Now, we understand that there is no reciprocity and there is nothing in the

IGA which would bind the Federal Government of the United States. What we could only do now is moral suasion. We can indicate to them, look, we really want your economy to grow, but in order for your economy to grow and for your taxes to be remitted to you, our institutions must be strengthened and we need some assistance from you, because the United States is full of technical expertise. [*Minister Al-Rawi on his feet*] Yes.

Hon. Al-Rawi: Thank you for giving way, hon. Senator. Would you mind if I just put onto the record there is, in fact, reciprocity in the body of the agreement. It is a very different thing to say there is no reciprocity, but the reciprocity has not yet passed through the US end of legislators. However, there is reciprocity upon request. It is the automatic exchange by way of reciprocity that must pass through the US position.

I have received a number of messages so far where people in the public are asking about this: is there really no reciprocity? And I felt compelled—and I thank you for giving way—to just make that clarification as to the blanket statement that there is no reciprocity. Thank you.

Sen. Dr. D. Mahabir: And I have given way to the Attorney General, but the Attorney General has not disputed the fact that until this matter has been ratified by the US Senate—I think a vote of 70 per cent of the Senate—the reciprocity of which we speak is academic. We will be signing into an agreement waiting in the hope that their Senate will agree which may or may not occur. This is an IGA, you see. I am not faulting the Government, and the reason I am not faulting it is that I looked at jurisdictions across the world and I am seeing that they have all signed on to the FATCA.

One must know—and my colleague, Sen. Small, has always advised me,

Sen. Mahabir, it is what it is. So, it is what it is. I will come back to “it is what it is”, but there is really at this time—Attorney General, I know he is going to work assiduously. I have no guarantee that he will be successful. You see, the United States is a very insular country. It tends to look at its own interest first. It is expecting me to look after its interest. The plea I am making is that when I look after my interest it will be in the US interest, because if I build up my institutions, it helps me to collect my taxes, it will help you to collect your taxes.

But there is really an issue that I have, and it is for this reason I took exception to those commentators on the outside who wanted to fast-track this process and indicating to the general population that really heinous things will occur if we do not pass this legislation by a particular date. Mr. Vice-President, I am now a relatively experienced legislator and whenever I see a piece of legislation, any legislation that has any implications for section 4 and section 5 of the Constitution, I want to carefully consider that piece of legislation, because what I am doing is that I am passing a law or agreeing to pass a law that will have effect even though it may infringe upon the rights of a fellow citizen. I am very reluctant to infringe upon the right of any citizen. When I do that it has to be absolutely necessary. When I infringe upon a right, I say yes I know I am doing it, but I am infringing on your private right to secure a public gain. The gain to the public will be in excess of the loss you will experience on the loss of certain rights, in particular the right to privacy.

But in this particular situation—and I keep saying it is always a good thing to be a Senator for an extended period of time. This is the first time since 1996 in which I have been debating laws, I am being asked to waive or suppress or look aside sections 4 and 5 of the Constitution, not in the interest of the people of

Trinidad and Tobago, but in the interest of citizens of a foreign power. I feel uncomfortable with it because, in my view, any citizen in Trinidad and Tobago who holds a Trinidad passport is entitled to be protected by sections 4 and 5 of the Constitution, but also any visitor too.

Anyone who comes under our shores, I would like to think that he receives, she receives, the protection of the State that any other Trinidad—we do not discriminate in that way, and that if you are visitor and you get into an accident—you come for Carnival and you injure a limb, I would think that the nearest taxi would rush you to Mount Hope and we would not charge you any money. We will say, “Oh, oh, this is someone in Trinidad and Tobago, resident in the United States, we would put on the cast for you and we would wish you well.”

A Trinidad citizen abroad does not have these types of facilities. We have to pay. But in Trinidad we operate—you see, we have many things wrong in this country, Mr. Vice-President, but we have many things right too. We will not turn away somebody at a public hospital the way they would do. If one of our citizens is injured we have to pay, find the money, but here Port of Spain or Mount Hope—so we complain a great deal, but I am telling you, we are not going to turn the foreigner away. Given that he has certain benefits here, he must comply with our laws. Take, for example, an American citizen, he decides he comes to Trinidad. He is a gynaecologist and works in the relevant section at Mount Hope. He looks after people but, you know, he cannot perform abortions in Trinidad although he would say. “I am an American and working in Mount Sinai Hospital or something, I can perform an abortion all the time.” In Trinidad he has to fulfil our law but, at the same time, he gets our protection.

What I am now saying in this particular FATCA legislation is this. You are

complying with all the laws of Trinidad as an employee of the Mount Hope Hospital, you are not performing abortions though you are trained to do it and so on. There are things you did in the US, but you cannot do here and, at the same time, I am saying well, you know, I am not treating you like—I have all the obligations imposed upon you—a regular Trinidad and Tobago citizen. It is, in a sense, discriminatory and I do it reluctantly. But, you see, if that is the policy of your home government, then that is the policy. You have an option like Tina Turner did to renounce your citizenship, but in view of renouncing that particular citizenship requirement, I say yes I am willing to waive that particular constitutional right.

But since we are interfering with our Constitution, Mr. Vice-President, another issue arises you know. The Constitution is sacred law. The Constitution in the United States is sacred law. The Constitution in Trinidad and Tobago cannot be in any way less sacred and the United States as a country—I do not know how many of us have heard the story of *The Devil and Daniel Webster*. Well, let me just give you one minute on that story. It is relevant, because Daniel Webster cut a deal with the devil, and after seven years the devil came back for the man's soul, and Daniel Webster was this great constitutional lawyer told the devil, he says: "Mr. Dev, you know, are you a foreign prince?" The devil says, "Yes, I am the prince of darkness." He says, "Let me tell you something, under US constitutional law no foreign prince can press an American citizen into his service, no foreign prince." That is the US Constitution. The devil lost his case. He was kicked out of the State of New Hampshire. They said he resides somewhere in Maine or something, but the US Constitution was supreme. Our Constitution—we are being asked as a sovereign State to waive sections 4 and 5 of our Constitution to pass a law with a

special majority so that the US could collect its taxes. Let us see what we can get in return.

Mr. Vice-President, I am impressed with the United States—their economic development, science and technology, education—but there are certain things that the majority of Americans do not find agreeable at this time. My colleague, Sen. Paul Richards, asked a question earlier, a question that Malcolm Nance raised about Trinidad and Tobago. He said Trinidad and Tobago is the home of a great deal of really undesirable guys who engage in terrorist activities.

Recently, the following countries were mentioned: Syria, Iran, Iraq, Yemen, Sudan and Libya. Some order was given so that citizens of those countries were going to be prevented entry into the United States. I think in Trinidad there are icons. I consider Brian Lara to be a real icon in Trinidad and Tobago. I consider Dwight Yorke to also be one of the superstars of Trinidad and Tobago, principally because I am no athlete whatever and I love to see the real giants in the field play. Here is Dwight Yorke going to Iran—and in the Middle East they are passionate about football, so much so that in Qatar one of the individuals tried to get to be head of FIFA and a lot of problems occurred. So, they really love their football in Iran, Iraq, everywhere—and so our citizen was refused entry into the United States. I would like to know what overtures are being made for two things: for citizens of Trinidad and Tobago since we were mentioned and named by this Mr. Nance—and in the United States once you name a country it tends to get into the media and without any kind of justifiable reason, you could very well find Trinidad and Tobago joining that list of seven.

I would like to get an assurance that having agreed to help you collect your tax, you are not going to really point to Trinidad and Tobago and identify us as a

terrorist-producing country and then say the following: “Well, not all the citizens of Trinidad and Tobago, only the citizens of Trinidad and Tobago with Muslim names.” It could happen, because that is what happened to seven countries. As I said, I admire the United States, but there are things which worry me.

I get patted down in the airports all the time. I do not have a Muslim name and I do not look very Arabic. I fear for citizens of Trinidad and Tobago who look a little more Arabic than me and who may have a Muslim name, how they are going to be treated when they try to enter the United States. Maybe we should be very much aware that in the United States, the majority of terrorists are home grown. When you look at Timothy McVeigh, Google Timothy McVeigh. I would sit next to McVeigh—yes. [*Interruption*]

Mr. Vice-President: Senator, as much as I understand the connection that you are making, I think you are going on a little bit too long along that point. So I am asking you to bring it back in so that you remain relevant to the Bill in front of us. Thank you.

Sen. Dr. D. Mahabir: Mr. Vice-President, let me point to relevance now. It is to reciprocity. The reciprocity is that the Attorney General has assured me that it will come once the US Senate has agreed. I do not know if it will come. What I am saying, in the interim there are things we can do as a Government to protect the citizens of Trinidad and Tobago. One of our star citizens has been adversely affected. Could we then engage in the negotiations so that the trend I am seeing which could be discriminatory to Trinidad and Tobago is averted, and that is in the public interest, because two days of Parliament time, months: what are we getting in Trinidad? Are you going to tell me, Mr. Vice-President, that in this country that we will give the US so much and we will still be harassed? No, no, no, it is not

going to be right.

Mr. Vice-President, 17 years ago there was an incident. We are going to assure—I hope we are able to convince the United States that Trinidad and Tobago and the citizens here are no threat to it and that really we should have a much more harmonious relationship, and we have started with the FATCA.

Mr. Vice-President, I will not support this Bill because of geopolitical considerations. Not at all. The United States is a very large military power, but it is not the only military power. Over the last 20 years the following has happened. Russia, China, India and Turkey as No. 10 have become really very large military powers. So that militarily, the United States is not as strong as it once was. However—and I come back to the first point I made—economically it is now the engine of growth, and we want it to remain so. We want to support the growth in the United States and we want to benefit from that growth. We want to benefit from that growth via the trade relationships that we will enhance and develop, but we also want to benefit by Trinidad and Tobago having freedom of movement of people. Not only should there be freedom of movement of capital, freedom of movement of goods, but freedom of movements of people. This is something that we need to be looking at because, you see, if they are going to say that because I have an Iranian stamp on my passport I cannot enter their country, they will turn me away, they are going to frustrate the movement of people. I have business—suppose I want to get a Hillman Hunter—

Mr. Vice-President: You have five more minutes.

Sen. Dr. D. Mahabir: Thank you very much. Mr. Vice-President, there are two things I like, one is economic theory and one is cars. The only place in the world I can get a new Hillman Hunter to buy is Iran. It is called the Paykan. P-A-Y-K-A-

N. You get a brand new Hunter. I went to school with a PhD Mathematician who was Iranian. Suppose I want to write a technical paper with him on subadditive cost functions—Sen. Henry knows what they are—and I go to Iran and I want to pick up a “lil” Paykan at the side, the car, and I have that Iranian stamp on my passport, you know, I will get some serious trouble to enter the US. This is what I am talking about, reciprocity. This is the kind of arrangement I want for Trinidad and Tobago since we are signing on to a treaty for which we are currently getting nothing. I do not want to sign on to a treaty and we get harassed at the same time.

Mr. Vice-President, the United States is a country with which we must always cooperate economically. Why? In the few minutes I think I want to impress upon the Senate why we should support this Bill. One, it runs the reserve currency. If we wish to trade with Kenya to buy tea from Kenya, then we need to pay in US dollars, and we need a US bank to be able to facilitate that transaction for us. So we need the US reserve currency and we do not wish to run afoul of US authorities by telling us that the reserves that we want to hold in US dollars can no longer be held in US banks, not that it could happen, but we want to have very good relations because, remember, they froze accounts once in Iran many years ago.

7.10p.m.

International transactions—we want to be able to raise capital. Recently our Minister of Finance raised, I think, US \$1 billion on the capital market from US underwriting firms. Once we show that we are complying with what they require of us, we will have easy access. I want Trinidad and Tobago to have access to the financiers in the capital markets in the US.

They rate our papers, Standard & Poor’s and Moody’s—they rate our papers. We want, Mr. Vice-President, finally, for there to be a tremendous flow of

investments from the United States into our various sectors, oil and gas, manufacturing, tourism, elsewhere. A booming US economy generates a surplus of capital. Since we are now going to be FATCA compliant at the level of the country, I want to encourage investments. I want to encourage the flow of technical experts from the US into Trinidad, and I want Trinidadians to be able, regardless of their surname, to be able to enter the United States freely, without let and hindrance. I think if we are able to secure all of that, it would not have been such a bad arrangement after all.

I thank you, Mr. Vice-President.

The Minister of Foreign and Caricom Affairs (Sen. The Hon. Dennis Moses):

Thank you very much, Mr. Vice-President, for the opportunity to rise in a rather precipitated fashion. I am honoured to address this House today on the Tax Information Exchange Agreements Bill, 2016. At the core of this Bill is the United States Foreign Account Tax Compliance Act notably referred to as FATCA.

FATCA, enacted in 2010, is aimed at ensuring that citizens of the United States of America with financial assets outside of the United States are paying their taxes to the United States Government. It requires foreign financial institutions to report directly to the United States Internal Revenue Service all clients who are US citizens and green card holders living in the US or abroad, or foreign entities in which the US taxpayers hold a substantial ownership interest.

Mr. Deputy Speaker, TrinidadandTobago is recognized by competent institutions such as the IMF, the World Bank and the Financial Action Task Force as a transparent jurisdiction. TrinidadandTobago has a history of compliance with authorities responsible for preventing money laundering and terrorist financing. From a foreign policy perspective, TrinidadandTobago is party to roughly 17

double taxation treaties enforced, and there are others awaiting ratification. The double taxation treaties include those with both Norway and Denmark signed in 1969, and the double taxation treaty with the United States signed in 1971.

It should be noted that this country's efforts toward FATCA compliance are not new. In a report in 2012 the then Governor of the Central Bank of Trinidad and Tobago stated that the banking institutions of Trinidad and Tobago were taking steps to becoming FATCA compliant. He stated that the two Canadian banks, as part of their parent banks, have been preparing as a means of their global programme for FATCA compliance, and the local-owned banks have initiated projects which will enable them to be well in train to comply with FATCA requirements. Furthermore he stated that smaller banks were currently in the process of amending their procedures to identify US residents and citizens.

Caribbean countries in their own respective ways have been undertaking steps to cope with the introduction of FATCA. As seen thus far, Caricom has taken the lead on FATCA by creating a task force led by Jamaica and has hired the accounting firm of PricewaterhouseCoopers to advise on the best approach for the region on the issue.

The region's strategic approach to FATCA was also dealt with at the Caricom Central Bank Governors meeting held in Suriname in November 2012. It would be remiss of me not to mention some of the concerns raised with the introduction of FATCA. Regionally, a number of States have expressed concerns with respect to the anticipated implications of the implementation of FATCA. One major issue that has been ventilated is that costs will invariably increase as financial service providers pass on the costs associated with meeting the

requirements of FATCA.

Another area of concern relates to the possible creation of an underground financial system, as the regulated entities become less attractive to customers due to FATCA requirements. Notwithstanding the concerns, tax transparency and the fight against cross border tax evasion have been high on the international agenda.

At the G20 Summit held in Los Cabos in Mexico in June 2012, leaders reiterated their commitment to strengthen transparency and comprehensive exchange of tax information, including through the Global Forum on Transparency and Exchange of Information for Tax Purposes, and through the multilateral Convention on Mutual Administrative Assistance. Additionally, five countries from the eurozone have estimated to have lost at least \$100 billion in revenue annually as a consequence of tax evasion. As such, these five countries, namely United Kingdom, Spain, France, Germany and Italy have seen FATCA as an opportunity to counter offshore tax evasion and improve international taxation compliance. They have each agreed to enter into intergovernmental agreements with the United States for collecting and reporting FATCA-style information to their local tax authorities, and on September 14, 2012 the United States and the United Kingdom announced that they had signed the first bilateral agreement to implement FATCA.

Mr. Vice-President, from a foreign policy position, Caribbean countries have had to grapple with the exercise of the asymmetrical global application of power and influence when it came to the increased regulatory scrutiny by the advanced countries of the region's offshore financial centres, particularly with respect to tax evasion and money laundering.

The implementation of FATCA can allow for the advancement of national

interests such as the preservation of trade relations between Trinidad and Tobago and the United States of America, and any other State that has aligned itself with the implementation and the notion of FATCA. Non-compliance with FATCA can amount to reputational risk for the country, and it is the remit of the Ministry of Foreign and Caricom Affairs, through diplomatic initiatives and representation, to preserve the country's foreign relations and the reputation with other States and international entities.

Mr. Vice-President, Trinidad and Tobago enjoys a robust bilateral relationship with the United States of America the inception of diplomatic relations which commenced in 1962. Bilaterally, Trinidad and Tobago and the United States of America have signed more than a dozen memoranda of understanding, treaties and bilateral agreements, such as the double taxation agreement, which was entered into force in January of 1970; the treaty concerning the encouragement and reciprocal protection investment, that was in 1994 and the original Tax Information Exchange Agreement which entered into force in 1990, but is now in the process of being replaced by the Tax Information Exchange Agreements Bill, 2016.

The United States is an important partner, particularly in the areas of trade and security cooperation. In the area of trade relations, the United States of America is Trinidad and Tobago's largest trading partner and our leading markets for this country's natural gas and petrochemicals such as ammonia, urea and methanol. In 2015 and 2016, Trinidad and Tobago recorded a combined trade surplus of more than TT \$8 billion with the United States of America.

Trinidad and Tobago is also a beneficiary of the US Caribbean Basin Initiative, a trade programme intended to facilitate the economic development and export diversification of Caribbean Basin economies, through duty-free access to

the US market for most goods.

In the areas of security and defence, the United States of America engages Trinidad and Tobago within the framework of the Caribbean Basin Security Initiative. This programme is dedicated to the strengthening of regional security by addressing transnational threats, that is, a United States strategy focused on citizen safety through the hemisphere, bringing all members of Caricom and the Dominican Republic to jointly collaborate on regional security with the United States as a partner. The United States of America military also collaborates directly with the Trinidad and Tobago Defence Force on several initiatives.

Additionally, negotiations are well advanced in the Maritime Technical Assistance Field Team Agreement which seeks to enhance the ability of Caribbean partner nations to secure the maritime borders and to address transnational threats. The Federal Air Marshal International Procedures which is expected to enhance security arrangements of regular scheduled commercial passenger flights between territories and departments, by providing a framework for the deployment of air marshals on such flights, and the Customs Mutual Assistance Agreement, which will aid Customs information sharing critical to interdicting narcotics and other contraband, as well as enable initiation of a variety of programmes such as a Trade Transparency Unit, which combats trade-based money laundering through the sharing of customs and border protection of export data.

Mr. Vice-President, Members of this honourable House, with respect to the Bill before us, the Government of the Republic of Trinidad and Tobago has been collaborating with the United States of America since 2013 to implement an appropriate response to that Foreign Account Tax Compliance Act. The Tax Information Exchange Agreements Bill, 2016 flows from an agreement between

Trinidad and Tobago and the United States of America on the sharing of tax information with respect to US citizens and/or United States companies doing business here in Trinidad and Tobago.

On August 19, 2016, the hon. Minister of Finance signed the Intergovernmental Agreement Model 1 with the US. The signing of the Intergovernmental Agreement regarding the implementation of FATCA with this country signalled Trinidad and Tobago's desire to be at pace with the global developments in financial transparency, and continue to be regarded as a country with which to do business.

Another possible implication of non-compliance with FATCA is the potential loss of correspondent banking relationships. Caribbean companies are particularly vulnerable to such an outcome. Correspondent banking relationships are considered to be high risks, and agencies such as the Financial Action Task Force, a bank for international settlements as well as regulators, recommends that financial institutions perform enhanced due diligence for foreign correspondent relationships.

Given the cross-border nature of money laundering, terrorist or proliferation financing and economic sanctions violations, there has been a significant global effort to legislate and enforce appropriate controls to curb illicit financial flows. Currently, financial institutions are required to assess and mitigate these risks, prevent sanctions violations or face penalties. Therefore, regulatory pressure and increased perception of risk and increasing costs of compliance are reducing profit margins to such an extent that some banks consider that there is a significantly reduced business justification for continuing correspondent banking relationships.

Given the facts before us, therefore, it is imperative for all stakeholders to

continue to assiduously work together toward the passage of the Tax Information Exchange Agreements Bill, 2016. This collaborative thrust will not only safeguard the interest of the Republic of Trinidad and Tobago and its citizenry, but will also serve to maintain our strong relationship with the United States of America, which has been mutually beneficial in many ways of cooperation.

Trinidad and Tobago has, not without significant financial outlays, cultivated linkages and working relationships with a number of countries and international organizations. This allows for fluidity of operations, to have relations grounded in the assurance that Trinidad and Tobago is a worthy partner to do business. A democratic State, one that respects the rule of law, where common sense rules and the national good trumps self-destruction and the political mileage.

We all live here in this country. Anything that could conceivably lead to a downward spiral cannot be the hallmark of worthy parliamentarians. As a responsible Government, we persevere in safeguarding the interest of our people, indeed ourselves, as we move forward in addressing whatever shortcomings there might be in our society.

I extend congratulations to the Attorney General, to Minister of Finance and stakeholders who have critically lent their support to this Bill. I fully support the passage of this Bill. Mr. Vice-President, hon. Members of the House, allow me to thank you very much.

Sen. Stephen Creese: Thank you, Mr. Vice-President. At the outset the only concern I really had with this legislation was whether it harkened back to the old imperialist orientation, getting little countries to do what you say. But as I read more of it, I was satisfied there was not that need for the old anti-imperialist thrust and that, in fact, what the United States Government was doing was reasonably

consistent with US self-interest. The question that arose was whether what we were doing was reasonably consistent with T&T's self-interest. When I came to realize that this thick document was short on—what is the word?—reciprocity, then I felt cheated, in the sense that what we were doing was not reasonably consistent with Trinidad and Tobago's self-interest.

I have no problem with the United States Government pursuing an agenda that ensures that its Internal Revenue Service is effective and efficient, and the basis for doing that is the cultivation of their Financial Intelligence Unit. I think it was in this House I had already alluded to the fact that I used to watch *The Untouchables*, Saturday night after Saturday night as a kid, and it was very late in the game that I realized—as a matter of fact I think it was when they did the movie as opposed to the television series—Eliot Ness was not a regular state police, that he was an IRS enforcement agent. So that I have an appropriation for the role of the Internal Revenue Service.

In our case, what we call the Board of Inland Revenue and how critical they are, especially with regard to the State's budgetary proposals, because they are a significant part of the revenue that is inside that equation. So I have no problem with any agreement, any arrangement, any Bill that facilitates a friendly government's pursuit of its tax revenue.

The problem I have is what is the point of such financial intelligence, if it is going to operate on one side only? We all know how critical it is, not just for taxation revenue purposes; how critical it is to follow the money. For all the other things that following the money is able to tell you, if you trace that money trail then the information about other nefarious activities becomes easily accessible. When one looks at that, against the information age or the age of cyberspace as I

prefer to call it, against the background recently of terms like “fake news” and “hacking”, and when one realizes that what the Russian Government is alleged to be engaging in, cyberwars—so we have gone from the threat of nuclear war to active cyberwar—and that they are accusing the Russian Government of meddling in domestic US election politics, of contemplating the same in France and Germany, that that kind of cyber activity is really a threat to democracy. It is from that vantage point I begin to realize how crucial this legislation is.

If the US Government is so concerned about its revenue supply that it would take the time to ensure that a small country like ours is compliant, then one has to understand how all of this comes together, and the question of the threat to democracy—which the Russians seem to be engaged in—and the link to that with the money trail, because if the investigations that they are arguing for within the US are to take place in the various agencies—and there are about 10 of them now currently investigating and they are talking about having an independent prosecutor and so on—if one understands that all of that comes together in actually following the money trail and the challenges to link President Trump, if they are to impeach him, to some kind of money trail, then one begins to see how critical this legislation is, where it falls in the scheme of things locally, regionally and internationally. Because the Democrats in the States are saying that this is a threat to democracy everywhere, because the Russians are engaging in terms of cyber warfare.

To get to the bottom of it, it is either you are able to track through the antennae system where the hackers are operating from, or you are able to track the payments. So some of the allegations against the Trump appointees is the question of moneys received, whether over the table or under the table. So, again, the

money trail is important; it is critical, and that is what FATCA is all about. It is about the money trail.

So when we give up the opportunity, and those of us who are comfortable in giving up the opportunity for the reverse side of the process—that is, for us being able to access the money trail, and not just the US revenue service accessing the money trail—then the question of how sovereign we are as a State, of our own self-perception and the notion of whether we see ourselves as a First World, Second World, Third World, Fourth World nation, and whether the whole problem with identity and self-worth and our young ones coming up with low self-esteem, whether all of this is not linked in how we see ourselves as a nation and how we function as a nation, and how easy we have given up reciprocity in this matter.

When one views this against the background that we are a coke trans-shipment port, if not a coke consumption place, and the implications of the power of drug lords, so here we are in America's backyard once again. Here we are in the age of cyberwars, not having the kind of hacking potential that the big boys have or the resources to hire hackers as the big countries do. Here we are, a coke trans-shipment point. Here we are, a place where some US citizens may have been fiddling or hiding money from the IRS. Here we are, a place where the banks have—some of my colleagues have been alluding to, I am not joining the bank beating game today—do not tell us the extent to which they have been a victim of local hacking, although it slipped out some time earlier last year. I understand it is much deeper than that, but we do not know, we probably never will, but we are caught up in the whole cyberspace scenario, and the threat to our financial institutions, if not our political institutions.

So there are the coke lords. There are the cyber warfare people. I am trying

to get some contextual clarity in which to make sense of all of this, and I think Sen. Mahabir brought onto the table the question of perceptions of radical Islamism and the extent to which that can influence things. It occurred to me that we cannot hide from that one either, because in 1990 I was watching television and I saw a gentleman, about my height and complexion with a big gun in front of him, appear on the television screen, and somebody in the background was saying “Allahu Ackbar”. So radical Islamism—sorry, Sen. Mahabir—was on our agenda long before the United States had a concern about it, or that phrase even existed in the US vocabulary.

So radical Islamism is also in the mix, because I heard the guy, I saw him on television with the Trinidad accent somewhere in the Middle East in the ISIS outfit. So radical Islamism is also in the mix, and also points to the need for some amount of reciprocity in terms of information sharing, because “what meet yuh once, could meet yuh twice”. And it has met us once, long before the US ever had a concern about radical Islamists.

So in terms of contextual clarity, is it a question of sovereignty? Is that the issue? Is it a question that we are bordering on being a failed State? Is that the issue? Do we have the kind of cyber intelligence units that would allow us to fend our way in these times? Do we have the kind of financial intelligence unit capability, capacity that could take us through these times? These two things, given the times that we are in, cyber intelligence capability, financial intelligence capability, these are the lynchpins of modern democracy. Democracy in the 21st Century is a different ballgame from the last, and that is what we have to understand, and that is why the Russians are alleged to have been doing what they have been doing through cyberspace.

7.40 p.m.

So that cyber-warfare is not what it looked like in *Star Wars*, you know the lighted swords and all that sort of stuff. That is not the game. That is not the kind of gimmickry that it is “gonna” be all about, nor even *Matrix Loaded* or *The Matrix Reloaded*, whichever one. The new threats and the consistent threat is to undermine the fabric, the concept of democracy, and I am arguing today that it comes from the old nuclear powers, now cyber-warlords, the drug lords, the old colonial entities in the North Atlantic alliance. And it forces us to really ask the question, just who are we, we here in T&T, and what are we in effect? And it is against a backdrop of falling oil and gas prices, falling oil and gas production, the question as to whether we are a failed State really comes up. But, to me, and I have said this, and I keep repeating myself in this Chamber, the question that—

Mr. Vice-President: The Acting Leader of Government Business.

The Minister of Agriculture, Land and Fisheries (Sen. The Hon. Clarence Rambharat): Mr. Vice-President, in accordance with Standing Order 14(5), I beg to move that the Senate continue to sit until the completion of business at hand.

Question put and agreed to.

Sen. S. Creese: And this brings me right back to the comment I have made earlier about the history of this place, the Caribbean on the whole, and it is a line I took out of the O Level history text, “they smuggled and grumbled, grumbled and smuggled”. That was the description given to the planter class of the 17th and 18th Century, and though times have changed, things seem to have remained the same.

I think it was Slinger Francisco, the Mighty Sparrow, Dr. Bird, in his classic *Good Citizen* calypso speaks of these good, no good citizens who are the architects of economic slavery.

My friend, Sen. Small, thinks that is the banking class. I do not know. I am not in a position to certify who they are, but that they are the architects of economic slavery, is obvious. But, who are these people that Sparrow berates? They are not necessarily drug lords, quite frankly. Are they the cyber-gods like the Russians? Or Chinese? Or the Koreans? Are they the nuclear warlords? My contention is, and it may not be mutually exclusive, but they are the political lords of T&T, and membership in that those are the mixtures overlap from time to time, and has overlapped. And the problem I have with all of this, that we have moved over the last few weeks quickly, the both Houses of Parliament, to get the job done for the US, for the United States, so that they can pursue all of the revenues which may be lurking around in our State, and we have not insisted on any reciprocity.

Matter of fact, if you look at it, we have had a successive series of Government changes since 1986, from 1956 or so to 1986 one regime in power, and then after that a series of changing regimes from 1986 onwards; NAR, PNM back in, UNC once, UNC twice, PNM back in, yet the question of political party funding has not made its way into these august Chambers, and it would seem to me—

Mr. Vice-President: Senator, I have allowed—you are 20 minutes into your contribution and I am trying to follow along in relation to the Bill that is in front of us now. I have heard you speak about reciprocity and cyber-warfare, and the lot, but I am really finding it a little bit difficult to get the relevance to the Bill that is in front of us, so I am going to ask you to try and connect it a little bit better as you make your points going on.

Sen. S. Creese: Thank you, Mr. Vice-President, and that was just what I was about to do. [*Laughter*] The political lords of T&T, and that is the group I am saying that

from time to time there are a mixture of some of the other groups, have kept the political directorates who have changed over the years, and I was just enumerating the number of changes, have kept them from dealing with, and in this particular instance of excluding what was in the original draft Bill, and what was in the original draft Bill was reciprocity.

Our political lords who would have taken money out of the country were included in the net that was designed in the original Bill. The Bill before us now excludes them. So, all of this is much ado about the US's business, not our own. We have had these successive changes of Government and they have left that issue very much alone. The US Government whose interest we are now serving in this Bill, their citizens enjoy the right to know who funds whom in the elections. We apparently have not evolved to that high state of democracy as yet, and seem to be a long way 1956 to 1986, 1986 to 2017, from that state of evolution. That is the connection. That is the salient point about this legislation.

So that when Sen. Mahabir asserted that he thinks that the AG would work assiduously to deal with reciprocity, it reminds me of clause 34, when those two Houses of Parliament then retired from the Chamber with the view the little unfinished business will be finalized, and it never was. It led to the whole clause 34 fiasco. When you spoke Sen. Mahabir, that is what ran through my mind, that we would leave the Chamber tonight having voted, or abstained, or whatever we do, with the notion that reciprocity is coming around the corner. That legislation dealing with the political lords who have been allowed to hide in the background of the Parliament and the political system would continue so to do.

So, I have grave difficulty in allowing *Hansard* to record my name as being a participant in this process, when the historians will write about us, that we came

here, we did the US bidding, and we assisted them in going after those who were hiding from the IRS, those who were passing money through whatever economy, whatever island system, for whatever nefarious purposes, because although this FATCA is about tax avoidance and tax evasion, make no mistake about it information is information, and information in the information age is the most powerful tool, there is no getting around that. That is why the Russians have resorted to cyber-warfare, that is the connection in all of this. Because true cyber-warfare in the US deals with whatever information is in your system, you know. Make no mistake about that. Do not think that this is how they would get the information. This is how legally they would get it to present it in a court. But, in terms of knowing who to go after and where to go after them, rest assured that the Russians did not invent cyber-warfare. We all grew up on those movies about the CIA, rigging the elections all over South America and Africa. Let us not be naive in that regard.

So at the end of the day, the critical question really is the extent to which we are masters of our own destiny. The extent to which those who are writing our destinies, those who are really in charge of us, those behind the curtains, what they consider to be important and/or relevant, and whether 1956 to 1986, the regime did not deal with going after information for those who were moving money in and out of this country, whether it is Panama, Costa Rica, and as I call the country you could probably think of the name associated with those places out of our political culture. 1956 to 1986, no such legislation; 1986 to 2017, three, four, five different Governments, no such legislation. If the US did not come to us for this it would not have even made its way to a draft Bill, and now it is excised from the draft.

Hansard tonight is going to record for posterity what was excised from the

draft. So you could vote and be happy, but no, like clause 34, your contribution to the political development of Trinidad and Tobago will now be on the permanent record. So, I am giving leave, explanation as to why I have no choice but to abstain, and place that abstention on the permanent record, because this is not about service to the people of Trinidad and Tobago, and they are the ones who are paying me “eh”.

Thank you, Mr. Vice-President.

The Minister of Agriculture, Land and Fisheries (Sen. The Hon. Clarence Rambharat): Thank you very much, Mr. Vice-President, for the opportunity to join this debate, and before I start I just want to say that on the assumption that Sen. Creese’s contribution focused on reciprocity, I know that the Minister of Finance in his winding-up would address that issue. I see he has taken note.

I, Mr. Vice-President, just wish to make four points in relation to the Bill. The first is that, we have heard a lot during the course of the day, but the title of this Bill sets out in very clear terms the four objectives of the Bill, and those four objectives are to repeal, to replace, to implement, and to validate. In the first instance the Bill aims to repeal the Tax Information Exchange Agreements Act, and that Act is rooted in the 1989 agreement which we have referred to on several occasions today. I know that Sen. Ramdeen in his contribution has pointed or made an argument in relation to the provision for repeal, and I know that the Minister of Finance will address that in his winding-up, suffice to say that it is not a point that we agree with.

In the context of replacement, the Bill aims to put in place new legislation for the purpose of implementing the IGA which is in response to the FATCA. FATCA being the Foreign Account Tax Compliance Act. And in that replacement,

one of the key clauses this Bill contains is Clause 12(2), which provides for disclosure on an automatic basis. In relation to the objective of implementation, the Bill aims to implement the terms of the IGA, and there has been much discussion about that today. And, finally, in respect of validation, we have had some discussion today about the need for validation and the view which has been expressed that since 1989, the 1989 agreement and the 1989 Act, any disclosures made under the legislation may have been in breach of section 4 of the Constitution, and in particular the right to family and private life, and I will make a point later about that particular argument. So, those are the four objectives of the Bill: to repeal, to replace, to implement, and to validate.

The Bill itself is not a lengthy document. I just want to point to four areas of the Bill in relation to what it sets out to achieve. First, clause 4 contains the exchange mechanism which is rooted in the IGA, and I think the exchange mechanism is where a lot of contention arises, the need to exchange information, the need to provide information to the United States. There are provisions which are inconsistent with the Data Protection Act, and the Bill in clauses 11, 12 and 13 sets out the way in which the actions which are done under the legislation may be inconsistent with the Data Protection Act, and the Bill aims to provide coverage for that. The third area in relation to the contents is Part IV of the Bill which provides for some consequential amendments, and those essentially are amendments to the Securities Act, the Insurance Act, Central Bank Act, and the Income Tax Act. And the fourth area of the Bill relates to what I referred to earlier as the validation provision

And I just want to make a point, Mr. Vice-President, in relation to the validation provision, because a few speakers before me have said almost as though

it was a fact that the Board of Inland Revenue would have acted illegally since 1989 in providing information requested under the agreement. And I just want to make the point that in the report of the JSC you would see two things, the first is a question which was put to the BIR, and that is at page 448 of the report, and it is in particular question 32, and I will quote:

“What are the possible illegalities which the BIR might have committed prior to this legislation which:

...will need to be addressed and made legal by enactment of the Tax Information Exchange Agreements?”

And secondly:

“...may be determined through the Judicial System, if any?”

I just want to place on record the response of the BIR which was that, and I quote:

“There have been no illegalities committed.”

So, that is a matter I am not sure if in his winding-up the Minister of Finance will address, but just to say that that was the response of the BIR, that the BIR felt that there were no illegalities committed.

The third point I want to make is in relation to impact, because there has been a lot of discussion on the impact of this Bill and the impact of the legislation. I want to point to four areas in terms of identifying how narrow this piece of legislation is. The first thing is to say that this legislation deals with defined persons, in particular a definition used in the Bill of a United States person, and that United States person could be a citizen of the United States, a resident individual, a partnership or a corporation organized under US law, or a trust which exists in certain specified conditions. So, first the impact in relation to who it

impacts is narrow, and it is defined in the legislation.

The second is that it deals with defined financial institutions, and defined accounts. So, it is not far-reaching, it does not cover every single financial institution, or every single account, or every single financial instrument. And clauses 5 and 9 of the Bill provide the details of the definition of financial institution and defined accounts, and those things which are covered. And the third area is that this Bill deals with taxes, nothing more than that, and those taxes are specified taxes which are listed in clause 6(1) of the Bill. So, again, it is not far-reaching, it is not as far-ranging. I do not think, with all due respect to Sen. Creese, it extends to cybercrime and aliens, and I do not think the consequences are so far-reaching. It does, in fact, deal with taxes which are clearly defined in clause 6(1) of the legislation.

The fourth point I want to make, Mr. Vice-President, going back to, of course, and I am going to identify some red herrings very quickly, and of course I cannot speak about red herrings without referring to the contribution of my colleague, Sen. Wade Mark. The fact is that there has been a lot of discussion on this issue of Competent Authority and the inclusion of the Minister of Finance as the Competent Authority in the original version of the Bill, and I just want to make the point, that the Competent Authority as the Minister of Finance is routed in the 1989 agreement, the 1989 Act, and in fact in the model IGA which was committed to by former Minister Howai. So it was not a creation of this administration, it is something that came out of the IGA, and through the discussions which took place subsequently, the amendment has been made and it is now the Board of Inland Revenue who is the Competent Authority.

Second point, and I will not labour on it except to say that this issue of

sovereignty was raised in the other place and was touched on in here, and I think my colleague Sen. Dennis Moses addressed the issue of sovereignty to the point that we have had a series of relationships with the United States, which from time to time means entering into agreements of this nature and it in no way, in my view, impacts upon our sovereignty, and I think it is something that Sen. Creese also touched on. And then we have had the lament by Sen. Mark and the complaint of the involvement of the Bankers Association of Trinidad and Tobago, and I am quite surprised that Sen. Mark would take that position.

I think that when I listened to Sen. Sturge, and when I listened to Sen. Mark, I found that there were a lot of contradictions in what they were saying, and sometimes when we deal with the Opposition we find that there is sometimes the push towards consultation, and more and more consultation, and then in relation to some pieces of legislation, like this one, there is a complaint about the extent of consultation. But, I think that if we are dealing with something relating to banking, and international banking, and the impact of our banking relationship with the United States of America, I believe that the Bankers Association is an appropriate body for us to be talking to, and I do not think we are out of place in doing that.

Finally, Mr. Vice-President, I want to say that I sat as a member of the committee, and we have all recorded our gratitude to our Minister of Finance, and the Attorney General, and of course the Opposition and Independent Members, and I just want to close on one point and one observation as we celebrate International Women's Day tomorrow, is to make the point that one observation I made was that when we met with the representatives of the CPC, the BIR, the Central Bank, and the Bankers Association, you know, the presence of a man was very, very rare. The CPC was all female, the BIR, I saw all but one female there, the Central Bank, the

Bankers Association, and throughout as we go through the country, in this Parliament and the country we see the dominance of women is something that I personally welcome, and I congratulate all women on their achievements, and in this particular work that has been done and led by the Minister of Finance, we saw the best talent of our women in Trinidad on display. And with those few points, I thank you. [*Desk thumping*]

Sen. Jennifer Raffoul: Thank you. Thanks. Thank you, Mr. Vice-President, for the opportunity to speak. As always it is a pleasure to be here, and I would like to start by thanking, through you, my fellow colleagues who have all spoken. I know that very often we might disagree or appear to disagree, and we have raised voices, but we are here because we love our country and we are here to serve, and I thank you all for that. As usual I aim to be extremely concise, technical and collaborative in my contribution. I am going to give two administrative recommendations as opposed to legislative, because this has gone through the JSC, and then one observational overview feedback as a citizen.

First, I would like to start with a commendation. I always believe it is good to give commendation where commendation is due. I worked in the banking sector previously and saw a lot of collaboration on this between the regulatory agencies, legislative bodies, private individual banks, associations, and so a lot of collaboration around this, and I think that is worthy of commendation and noting. In terms of my recommendations going forward, first it is notable that we can learn lessons from the IRS on how they are increasing their tax collection through this initiative. One thing that we can do before we look at reciprocity is looking at increasing the volume of our tax collections and decreasing revenue leakage.

One statistic I raised in my last contribution was that at the EITI seminar that

was in December 2016, on the extractive industries, the statistic was raised that when the EITI was extended to quarry companies the revenue collected from quarry companies in total increased from TT \$34 million in one year to over a billion dollars TT in the following year. So, there is quite a bit of leakage that is happening now, and there are opportunities in which we can tighten the revenue collection, and we can learn a lesson from the IRS through that.

The second administrative point, briefly, is that we have to make sure that we are not depleting the staff of the Board of Inland Revenue by giving them more workload without supplementing and giving them additional staff, additional training. The way the legislation is worded mandates that the Board of Inland Revenue staff is the ones to monitor and make sure that the information is transmitted, and we have to make sure that we are not having an institutional weakening effect because of this. So, we have to make sure that we help to supplement the staff and their requirements to carry out this mandate.

My final comment is that as a citizen I am very proud of us for the level of collaboration. We had an international mandate to fulfil, and we all collaborated and got it done. But, this was something that was externally imposed on us as a country, and my concern is that, do we have the same level of proactiveness when we can identify a domestic need that we identify as being important?

Post-carnival, there is a lot that I am very proud of, and yet at the same time there is a lot that I have seen that we are making international press for the wrong reasons. So, on the things I am very proud of, I love to see pan reaching international newspapers, international documentaries, I love to see our music on international stages. Two mere highlights for this year: I met someone who is Irish and I asked them how they ended up in Trinidad, and they said, "I got lucky", and

that made me smile. And I met someone else recently who was English, moved here and has our Coat of Arms tattooed on their back, “Together we Aspire, Together we Achieve”. There is still so much that we can be proud of, the unity that we have, the music, the culture. There is something very special about Trinidad and Tobago. I know that is why we are all here in service.

And on the negative side I have seen us make international news for the wrong reasons. So, we have one of the highest rates of cancer in the world; us and Guadeloupe have the highest rates of prostate cancer.

8.10p.m.

We are listed in a World Economic Forum report of one of the top ten countries in the world for toxicity levels. We are the highest country in the world for production of physical waste per capita per year and we often look at the United States and think that they are so wasteful. They were number five on the list, two point something metric tons per person per capita per year. Number two was Guyana, three point something tons per person per year. We were number one at 15 point something. So we outnumbered number two by a multiple of five. We have serious problems that we kind of seem to be postponing, will get around to it one day and yet on this we have shown that we have the capacity to collaborate and get it done.

So I hope, as a citizen, that we start really addressing these issues and I commend Sen. Samuel because he said in a debate a few months ago, there is a connection between pollution levels, toxic waste, mental health and violence. We can see that over the last few months there has been a massive increase in violence, violence towards women, in particular, and also Sen. Khan, he is not here with us today, but he had said in the debate about GDP that Sen. Wade Mark had raised,

not GDP, sorry, the Sustainable Development Goals, that development is not just about big buildings, it is about quality of life.

As a young person, as an economist, I really resonated with that statement that he made and we have, our GDP has quadrupled, from 1999 to 2008, our GDP quadrupled in that time. And yet the quality of life indices have been stagnant and our poverty rate is increased. We do not have the best data on cancer, but given the data we do have it is showing that we have extremely, extremely high rates compared to global averages.

So I hope as a citizen that we take the impetus that we have demonstrated that we have in this debate and on this issue. We have seen collaboration from academia, legislation, industry, the media and I hope that we can take that and also emulate that and things that are really of critical importance for us going forward as a nation.

As always, I would really like to say that we should be leading ourselves by what we are doing in this room. I always noticed that we still have these water bottles which are the number one source of BPA altering hormones. We have received this on our desk today, [*Senator shows a box*] and I assume you all got it also.

Hon. Senator: No.

Sen. J. Raffoul: No, maybe only the women got it. It is a little commemorative box of memorabilia for International Women's Day and you know the term, "greenwashing", it is about a company might take a nice slogan like, "think green" and put billboards of it and they might still be producing high amounts of waste. But it is the slogan, it is catchy and I saw this box and I thought, I do not need a key chain that says International Women's Day, 2017. Or, it is a nice pen, but I do

not really need a pen again or a notebook and I think, are we “International Women’s Day washing” and are we producing waste in the meantime? And given that we are in a deficit right now and we have massive waste problems, why a key chain, why a pen, why a notebook?

We received this document via email four days ago, why do we need 170 pages printed. Why every year do we need seven boxes or is it 11 now?—seven or 11 boxes of our legislative documents if they are all online. I know some people prefer a hard copy but then they can print them themselves. So it is just the level of waste in this room.

Today I was wearing four layers. We had an assurance earlier when we started a year and a half ago that we would at least get a thermostat in the building. When you drive by at night you see all the lights on and this building has been up for about 10 years. We are in a deficit, we are not changing things. So the waste problem we have, these going into our dump, the plastic going into our bodies, the fact that this to me is also a band-aid solution. We have test showing that we have high lead contamination in our water supply. But this is the Band-Aid and even the Band-Aid is doing us an injustice. And as a female, in particular, I notice that this interferes with our fertility levels.

I saw a colleague a few days ago; she got married a year and a half ago. She had two miscarriages; she got married, trying to get pregnant. She is spending half her salary on fertility medication and struggling with her health and trying to change her diet, trying to figure out where the source of the imbalance in her body and in her health care is. And as a young person the more and more females I talked to are saying that there is something in the food supply, the chemical supply, the water supply.

[MADAM PRESIDENT *in the Chair*]

So I do not want to go off in a very long tangent because it is not directly relevant to this debate and I recognize that it is nearing the end, but I would like to just say that I hope that we take this level of collaboration we have demonstrated and address it to other matters that are of critical importance facing us. I know many of us have family members that are ill or have experienced illness ourselves and I would like to say that we can do more as a nation and more as a legislative body. Thank you. [*Desk thumping*]

Sen. Racquel Ghany: [*Desk thumping*] Thank you, Madam President. As I rise to make my maiden contribution in this honourable Senate I wish to thank the Leader of the Opposition for giving me this opportunity to represent the people of this country. [*Desk thumping*] My appointment, Madam President, is a testament of the recognition of the Leader of the Opposition, of the contribution of women to the development of our country and the valuable contribution that women continue to make to our society and our country.

It is timely that tomorrow is International Women's Day and to that extent allow me, Madam President, to join in with the speakers before me and pay tribute to the contribution of women to the development of our country. [*Desk thumping*] I am privileged to be part of an Opposition that is led by the first female Prime Minister. There may have been many before who could have aspired to this position but the hon. Kamla Persad-Bissessar SC opened a way for all women to have confidence that there is no office in this country that a woman cannot aspire to hold. Sorry for the emotions. [*Desk thumping*] Her achievements have motivated and continue to motivate many young persons, male and female, in our society.

So today, Madam President, I wish all our mothers, grandmothers, sisters

and all the women of our society happy International Women's Day. [*Desk thumping*]

Madam President, I have listened attentively to all the contributions to the Bill that is before this Senate and I wish to make a short intervention. Many of the ordinary people, and I speak on behalf of the ordinary people of this country, are not aware of the implications of the piece of legislation that we are debating today. This may be for many reasons but I think, Madam President, that it is mainly because there has not been a proper education drive to educate the people of the country about the implication of this legislation.

Thankfully, the parliamentary channel would give access to many persons to at least have the opportunity to know what we are debating today. I myself, Madam President, have been following the public debate in and out of Parliament since the FATCA debate has started. Having done so and listened to the speakers today, I would like to thank all of the Members who contributed and sat on the Joint Select Committee, especially the Opposition Members who, from reading the report of the committee, contributed substantially to the work of the committee. [*Desk thumping*] This is an important piece of legislation and what this legislation demonstrates more than anything else is that this Parliament and all of the Members of this Parliament can work together for the benefit of the people of this country. [*Desk thumping*]

If I can make a suggestion to the Government it will be that a greater effort is made to educate the population of the pieces of legislation that comes to the Parliament and the manner in which such legislation affect ordinary people like myself. In that way the people of the country could better understand the working of the Parliament and the ways in which the laws of the country affect ordinary

citizens.

The Bill that is presently before the Senate is a product of the work of the Opposition, the Government and the Independents. From the point of view of the ordinary person I can say that the people of this country are pleased that all sides could have reached agreement with respect to this Bill. The manner in which all sides worked together to get this legislation to the state that it is in today should be an example for the future and the pattern that should be followed.

The Parliament, while a place where both sides can advance their differing point of view, is a place where the business of the people is to be conducted for the best interest of the people of the country and many times in the banter and political wrangling this is lost on most of us. The people of this country are looking for their leaders to act in the best interest of the country. The Bill is an example of the Opposition, led by the hon. Kamla Persad-Bissessar, demonstrating that the Opposition is prepared to act in the best interest of the country. [*Desk thumping*] If we follow in that example it will only benefit the country and our children which is why we are here.

As I conclude I wish to congratulate the Opposition for always paying great attention to the development of our country and its citizenry. Once again, I wish on behalf of the Opposition and, in particular, the hon. Kamla Persad-Bissessar to extend greetings to all our women on occasion of International Women's Day. Thank you. [*Desk thumping*]

Madam President: Permit me to congratulate Sen. Ghany on her maiden contribution. [*Desk thumping*] Minister of Finance.

The Minister of Finance (Hon. Colm Imbert): Just one second. Thank you, Madam President. [*Desk thumping*] Madam President, I wish to thank all Members

of the Senate for contributing to this debate. I will attempt to deal with the points raised by various Members of the Senate. Let me start first with Sen. Ramdeen. One of the issues raised by Sen. Ramdeen, I certainly would not get into the competition as to who is responsible for what. This Bill was the product of the joint efforts of everyone concerned. I do not see any point in quarrelling about who did what, when, where, why and how.

However, Sen. Ramdeen had a complaint that there was an “S” missing in the definition of the former Act and made a big song and dance about that, accused various people of incompetence and so on. I would like to educate the new Senator—[*Interruption*]

Hon. Senator: Newish.

Hon. C. Imbert:—new Senator, that there is something called “proofing” in Parliamentary Practice and if Sen. Ramdeen had looked at page 30 of the Joint Select Committee Report that was laid in the House of Representatives, page 30—

Sen. Ramdeen: Three-zero?

Hon. C. Imbert: Three-zero, yes. You would see in the Consolidated Bill which was presented for the consideration of the other place, that the “S” occurs at the end of the word, “agreement” in the definition of the former Act. Page 33, actually.

Sen. Sturge: Why are you being so nice?

Hon. C. Imbert: So that under the—with respect to what was laid in the House and with respect to what was passed in the other place, the former Act is defined with an “S” at the end. In the transcription from the House of Representatives to the Senate this often happens where sometimes a word, a comma, it is actually on page 30, I have it in front of me. Former Act means the Tax Exchange Agreements Act. [*Crosstalk*] That is okay. That is quite all right. It means the Tax Exchange

Agreements Act, in proofing this Bill the Parliament will deal with those typographical errors. That is standard practice. So I would not worry about it if I were you, Sen. Ramdeen, through you, Madam President.

With respect to the statements made by Sen. Dr. Mahabir, a complaint was made about the treatment meted out to Mr. Dwight Yorke when he sought to enter the United States and he was denied entry. And Sen. Dr. Mahabir asked, whether the Government of Trinidad and Tobago was doing anything to prevent incidents like this recurring and what was being done about this situation. I think it is necessary to correct the record. Dwight Yorke is a dual citizen of Trinidad and Tobago and the United Kingdom. He has two passports. In the case of the United Kingdom they are part of a group of approximately 38 countries—the last time I checked it was 38—that enjoy something called a Visa Waiver Program.

So if you are a citizen of the United Kingdom, along with the citizens of 37 other countries, you can enter the United States without a visa once you go through the paperwork necessary to get a visa waiver. Dwight Yorke sought to enter the United States using his UK passport. In other words, he did not enter as a citizen of Trinidad and Tobago, he entered as a citizen of the United Kingdom. Unfortunately for him, not under the Trump administration, under the Obama administration, some years before—[*Interruption*]

Mr. Al-Rawi: In 2009.

Hon. C. Imbert: In 2009? The Obama administration passed a law indicating that if you had travelled to certain countries, certain Middle Eastern countries, then your visa waiver would no longer apply and you would have to apply for a visa, like people who are not part of the Visa Waiver Program, to enter the United States. So he no longer had a visa waiver. Apparently this goes back several years,

so that when he tried to enter the United States with his UK passport he was entering without a visa. In fact, they stopped him on the plane in the Middle Eastern—I think it was Dubai—[*Interruption*]

Hon. Senator: Doha.

Hon. C. Imbert: Doha, yeah, they stopped him there because the authorities in that country were aware that the visa waiver law had changed and that he was in fact trying to enter the United States as a UK citizen without a visa. So it had nothing to do with his Trinidad and Tobago citizenship. [*Crosstalk*] Sure.

Sen. Dr. Mahabir: Clarification. What I am concerned about hon. Minister is this. A Trinidadian with a Trinidad passport who happens to visit one of those countries on legitimate business, is there any guarantee that could be given that that particular citizen who has visited one of those countries will not be denied entry into the United States?

Hon. C. Imbert: I was dealing with the specific case of Dwight Yorke, I wanted to correct the misconception that the United States and, in fact, President Trump was blamed for this, because of the law, the Executive Order that he had signed, than the travel ban that that is why Dwight Yorke was not allowed—it is just not correct. [*Crosstalk*] It is just not correct. He was a UK citizen and his visa waiver had been cancelled because of that legislation in the United States.

In terms of what will happen to Trinidad and Tobago citizens, we will have to apply for a visa in the normal course of things. We are not automatically allowed entry in the United States. We have to apply for a visa. So when we apply for the visa then you comply with whatever requirements United States imposes on visa applicants. I am not aware of any onerous or special conditions applied to citizens of Trinidad and Tobago at this time. There was a bogus—fake news. This

fake news thing is really getting quite interesting nowadays.

I remember about a month ago, it must be approximately a month ago, I was on a construction site and the contractor showed me something on his phone saying, look, this is from CNN and Trinidadians are now being denied visas as a result of the travel ban signed by President Trump. And I said, “that cyah be right”. I am not aware of that, that does not make any sense. I have never heard of this. It turned out to be a gentleman whose initials were CNN, like Craig Newton, something. So he had, you know, the big “C” and he put the rest of his name with an “N” and he called himself, CNN, BBC, or something like that. It was fake news. He had made it up, but he used the CNN logo, he put it on the web and people read the thing and say, what! So Trinidadians cannot get into the United States anymore because of this travel ban.

So I am just telling you there is a lot of fake stuff outside there. Fake news apparently has become quite lucrative now. People actually have fake news websites and they advertise on them and they earn revenue by publishing fake news. Believe it or not. I mean this is the madness that we are seeing in the international community. But I just wanted to clear that up so that, I just wanted to reinforce that there are no adverse consequences for citizens of Trinidad and Tobago that I am aware of with respect to travel to the United States.

With respect to the legislation itself, Sen. Mahabir expressed the view and I mean I have a contrary view, that this Bill does not benefit Trinidad and Tobago, it benefits the United States. I do not agree. There is something that has occurred in the world over the last 10 years or so. You have the emergence of FATF, the Financial Action Task Force; you have the emergence of the Global Forum and whether we like it or not if we wish to do business with the outside world we will

have to comply. We cannot isolate ourselves, we cannot be like North Korea and say, well we do not care, and we would not comply with any international conventions and international laws, then you become isolated, you become a pariah state.

So this country is a member of the Financial Action Task Force. This country, under the last administration, joined the Global Forum. This country, under the last administration, agreed to sign the Model 1 Inter-Governmental Agreement and the reason why countries such as Trinidad and Tobago do these things, it has nothing to do with imperialism or doing things to help the United States, it is practical business common sense. Because if you do not comply with FATCA all that will happen is that any bank in Trinidad and Tobago that is sending money to a correspondent bank in the United States and 75 to 80 per cent of all trade in Trinidad and Tobago is with the United States, whether you like it or not. You are talking 75 to 80 per cent, it could be higher. It could be as high as 90 per cent and we trade with the US. That is our major trading partner. If you do not become FATCA compliant it means that any money that is leaving Trinidad and Tobago to purchase raw materials or to purchase services or for any other lawful purpose and going to a correspondent bank in the United States, 30 per cent will be deducted as withholding. And similarly, it is not just money going out, it is money coming in.

So any money coming from a United States bank to a bank in Trinidad and Tobago, if we are not FATCA compliant they will withhold 30 per cent. So we cannot stand on a high horse and say look, we are not doing this thing because it does not benefit us, because it is imperialistic or whatever. The fact of the matter is, if you want to do business with the rest of the world and we do, we have an

open economy, we trade with the rest of the world. If you want to trade with the United States and continue trading with them then we have to become FATCA compliant. “You cyah be like the mouse that roared”, you know, and say, “well I not doing it”. Okay. What happens after that? What happens after that is that you face the spectre of de-risking. Now de-risking is really not the proper term, it is really de-banking. That is really what de-risking means. When a correspondent bank—and let me explain what a correspondent bank is.

In order to do a transaction, let us say, I wanted to send some funds to somebody in Kansas but the bank that I deal with, let us say I deal with Republic Bank Limited or First Citizens Bank as the case may be, does not have any arrangement with a bank in Kansas, and that is quite possible and quite probable. In order to get the money to the person or the company or the entity in Kansas and vice versa, if somebody in Kansas wanted to send funds to someone in Trinidad and Tobago you have to route that funding through what is called a correspondent bank.

So FCB, for example, may have correspondent banking relationship with Wells Fargo. So you want to send money to somebody who has a Bank of America account in Milwaukee or something like that, FCB would send to Wells Fargo, which acts as a clearing house and then Wells Fargo, Wells Fargo in New York, for example, would then distribute that to the various banks all over the United States. Correspondent banking is essential. If you do not have correspondent banking you cannot do a wire transfer, you just cannot do it. It is physically impossible, because you have to route the money transfer through a correspondent bank which would then distribute it to the final destination and vice versa.

If somebody in the United States wants to send money it must be routed

through a correspondent bank if it is not coming through one of the money transfer agencies like Western Union and so on, where those are small quantities of money, \$100, \$200 that sort of thing. But if you want to engage in trade or you want to engage in commerce you have to go through a correspondent bank.

The problem with FATCA is that FATCA requires these correspondent banks, Wells Fargo or whoever it is in the United—Chase Manhattan or whichever bank it is in the United States, to be FATCA compliant. And whatever bank they have a relationship with—so let us say, Wells Fargo again, would have a relationship with FCB. The United States requires the bank in the United States to be FATCA compliant. And to be FATCA compliant, whichever institution they have a relationship with in Trinidad and Tobago, must also be FATCA compliant. So in order to avoid de-banking we have to do this thing. Now, of course, we could say we are not doing it.

Sen. Dr. Mahabir: Minister can you give way?

Hon. C. Imbert: Sure, sure.

Sen. Dr. Mahabir: Clarification Minister. Is it true to say that the Canadian banks which operate in Trinidad, like Scotiabank and Royal Bank were FATCA compliant for quite a while so that if other banks in Trinidad were not FATCA compliant we had the option of having banking transactions with those Canadian banks which had established long relations with their American counterparts.

Hon. C. Imbert: I cannot tell you when RBC, or a bank like that, was FATCA compliant or not as the case may be. What I can tell you if they want to do business with Republic Bank or FCB, then Republic Bank or FCB has to be FATCA compliant. You understand the point?

Hon. Senator: Local banking.

Hon. C. Imbert: So it is the local bank that has to become compliant to allow the transfer of money either to the United States or back from the United States. So this is all about practical common business sense. If we do not do it we could—Belize has a problem where they have lost correspondent banking. And what these banks do is they assess the cost and the difficulty of doing business with banks in another territory. So, it is easy to do business with Bermuda or Barbados or something like that because they are compliant. So that the regulatory cost and the regulatory constraints put on Chase Manhattan or Wells Fargo or Bank of America or whoever it is, that wants to have a relationship with a bank in the Caribbean, are much lower than the cost of doing business with a bank in Belize, for example, which is not compliant in terms of anti-money laundering and other FATF requirements.

So the correspondent bank has a choice. Let us use Wells Fargo as a hypothetical example. They have a choice. Does it do business with a bank in Bermuda, First Bank of Bermuda, for example, if that bank exists, or does it do business with First Bank of Belize. To do it with the First Bank of Bermuda, no problem. They are compliant, there is no regulatory problem. They tried to do banking with the First Bank of Belize, they are not compliant. So there are all sorts of other administrative arrangements have to be put in place in terms of know your client and that sort of thing. So what is the correspondent bank do and this is what happened to Belize. They just stopped doing business with the banks in that country and that is the problem Belize faces right now. It has lost the vast majority of its correspondent banking because it is not compliant with all of these new global regulatory frameworks.

So that when we say that if you do not pass this legislation there will be

adverse consequences. We are not making it up. These are facts. You can look around the world, you can look around the world at countries that have lost correspondent banking, that have been victims of de-risking. And that is why, recently, at the Caricom Heads of Government Conference, something that was taken out of context when Prime Minister Dr. Rowley came back from the Heads of Government Conference in Guyana and said that the Caricom countries had agreed as a group to hire a firm to go and lobby on their behalf with the United States Department of the Treasury and other institutions in the United States in order to avoid the damage that de-banking and de-risking can be done to countries of the region. That is why that was such an important thing. It was taken out of context, of course, some politicizing.

8.40p.m.

But if you go deeper into the real issue, the entire Caricom has recognized that de-banking is a threat to the way of life of us in the Caribbean, and we are either part of the world or we are not part of the world. As I said, we could come like North Korea. No problem. We are on our own. But then what? What happens after that?

So, I just wanted to answer that. While on the face of it this does not appear to benefit Trinidad and Tobago, in my opinion, it most certainly does, because it takes us towards compliance. And you heard the Attorney General talk about the Global Forum, because after this one we now have to be compliant with the OECD countries—European countries—who also require Trinidad and Tobago to enter into an agreement with them.

Fortunately, a few years ago we were told we would have to do 15 different intergovernmental agreements with 15 different countries of the OECD. Now, I

guess because people within the system or countries within the system have said that this is too onerous, you can now do a multilateral agreement with the entire membership of the OECD and that gives you compliance with the Global Forum. That is something that is coming and that is something we, as a country, have to do this year in 2017. Again, we can say we are not doing it; we “doh” want to bow to the imperialists in the European Union. But “doh do it nuh.” And then you would not be able to have correspondent banking relationships with banks in continental Europe and the other members of the OECD. Just “doh” do it.

I mean, that is one approach. “Doh” do it, and then, well, all right. So you stand up on a point and then what happens after that? Because we are part of the world and we must recognize that we are part of the world.

With respect to Sen. Creese’s point, I struggled to understand the reciprocity complaint. We cannot pass a law that has extra-territorial jurisdiction. We cannot. We cannot pass a law here commanding the United States of America to give us reciprocity with respect to the sharing of tax information. Our law would have no effect in the United States. There is no possibility of extra-territorial jurisdiction of a law of that nature. What the US has done is sign an agreement with us that they will exchange information. So we already have a written contract with the United States, but that does not have the force of law in the United States until the US Congress passes a law to allow the sharing of information on accounts held by citizens of Trinidad and Tobago in the United States with our Board of Inland Revenue.

So that I am sorry. I tried. I did not understand the point how it was possible for us to put reciprocity into this law. It is not. And I did not also understand the point about deleting the clause on reciprocity. There never was one. There is not

one. I do not know where all of this came from. I do not know if in the noise in the public when the Opposition was complaining about reciprocity, there was an impression somehow created that the legislation required reciprocity on the part of the United States and we took it out. It never was there. We cannot, in this Chamber, legislate—[*Interruption*] But there is no clause. There never was a clause. There is a clause in the agreement for reciprocity.

Hon. Senator: We see it in the recitals.

Hon. C. Imbert: There is a clause in the agreement, but there is no section in the law of this Bill—

Hon. Senator: Privileges for you, boy.

Hon. C. Imbert: Behave, all of you all—that would force the United States of America to comply with our local laws. We cannot do that, and they cannot make us comply with their laws. We are complying with FATCA because it makes common sense to do so, but there is no correspondent bank in Trinidad and Tobago that deals in Trinidad and Tobago dollars. Let me give you the parallel. What reciprocity would mean is that there is a bank here that trades in Trinidad and Tobago dollars and somebody in the United States wants to get Trinidad and Tobago dollars through a correspondent bank in Trinidad and Tobago. Now, no bank in the United States would have any interest in a correspondent relationship with a bank in Trinidad to get Trinidad and Tobago dollars to send those Trinidad and Tobago dollars to the United States. The probability of that is zero.

Whereas on the other hand, there is a lot of interest in Trinidad and Tobago sending US to the United States and receiving US from the United States. There is no interest in the United States—in a United States citizen receiving Trinidad and Tobago dollars by wire transfer. They could not do anything with it. It is not a

traded currency. It is not one of the world currencies that is traded on the world exchange.

So Sen. Creese, with all the greatest respect, I could not understand the reciprocity thing, because we cannot legislate in this Chamber and compel the United States to provide us with information on their citizens. I think that was an unfortunate bit of smoke that came out at the beginning of this debate way back in 2016, and as I said, it is smoke that came from the Opposition, with due respect to the Opposition. The smoke, Madam President, came from them, with all this noise about how this law will cause Trinidad and Tobago citizens in the United States to be under threat. [*Interruption*] But it is in the agreement. So at some point in time one expects that the United States will, through their Congress, legislate the Inter-Governmental Agreement between Trinidad and Tobago and the United States and give the required reciprocity.

I also want to say, Madam President, that despite the harsh words that Sen. Ramdeen routinely throws at the hon. Attorney General, he gave yeoman service in the committee—yeoman service. [*Desk thumping*]

Sen. Sturge: “Not even Coppin ponging de desk.” [*Desk thumping and laughter*]

Hon. C. Imbert: There would be sometimes, Madam President—[*Interruption*] I “doh” know what so funny, Madam President. These are facts, and Sen. Ramdeen, if he is politically honest, will admit it. There were times when Sen. Ramdeen—and I must say something about Sen. Ramdeen. He was the only Member of the committee on the Opposition side who took their work seriously. I must say that about him. It is a fact. Because when we sat and met with the others they just talked. The first person to put something in writing was Sen. Ramdeen. The only one who put something in writing was Sen. Ramdeen, and having done that, gave

us these memorandums and gave us draft amendments so we were able—and that is why I thanked him at the beginning of my presentation—[*Crosstalk*]—at my introduction, sorry. Because once we got things in writing, which is something we have been asking for since September last year: we want written amendments; nothing. Give us something in writing; nothing. Come to the Parliament and circulate your amendments; nothing. But finally, Sen. Ramdeen started to put things in writing in the committee and we were able to reach closure on this matter. And that is why I thanked Sen. Ramdeen.

But Sen. Ramdeen, if he is politically honest, would admit—

Hon. Senator: Politically.

Hon. C. Imbert:—politically honest, would admit—[*Crosstalk*] No, “it ha’ no 46 in dat.” If he is politically honest, he would admit that sometimes he would give us a memorandum at four o’clock in the afternoon and by nine o’clock the next morning the Attorney General would have an answer to every single point. [*Desk thumping*] And not a verbal answer, a written answer. I was amazed. And Sen. Ramdeen thanked the parliamentary staff, and they deserve commendation, but I want to commend the Chief Parliamentary Counsel’s staff, Ms. Eversley, in particular. [*Desk thumping*] Sometimes at midnight I would see a response to Sen. Ramdeen’s 10-page memorandum coming through from the CPC—midnight.

Hon. Senator: One line?

Hon. C. Imbert: No. He used to write us all sorts of pages and pages of stuff and drop it on us at five o’clock in the afternoon and next morning, through the diligence of the Attorney General and the Chief Parliamentary Counsel’s office, we would get, not just answers, but cogent answers, with explanations, with competent and professional attention to every detail that was requested of us in the

committee. And the Attorney General—[*Interruption*] You could laugh all you want. The Attorney General put out 120 per cent in this joint select committee. [*Desk thumping*] If he was not a member of this committee, we would not have achieved the success, the consensus that we eventually achieved.

Hon. Senator: Right, you could laugh now.

Hon. C. Imbert: No, this is not a joke. There were two people—there were three people I singled out: Sen. Roach for his incisive interventions, essentially to—if you would permit me, Sen. Roach, a little latitude, to tell the Members of the Opposition, stop wasting time. Yes. His incisive interventions that came at critical moments in the deliberation of the committee.

Hon. Senator: That is what he said, “stop wasting time”?

Hon. C. Imbert: No, this is my paraphrase, Madam President, of what happened in the committee. As I said, I want to thank Sen. Roach for his focus on the task. I want to thank Sen. Ramdeen for reducing the concerns of the Opposition into writing and finally at the end producing four amendments, all of which we were able to accommodate. I want to thank Sen. Ramdeen for that and I want to thank, again, the Attorney General and his staff for the fantastic job they did in the committee. I also want to thank Sen. Shrikissoon for his participation in all the meetings and his support for the process for the joint select committee process.

Sen. Sturge: “Doh” forget Sen. Coppin.

Hon. C. Imbert: Sen. Coppin—today, Madam President, for the second time I have had the pleasure in this session of Parliament to hear an eloquent, well-researched, well-focused, and I dare say, [*Desk thumping*] brilliant contribution from Sen. Coppin on a piece of legislation.

Now with respect to Sen. Shrikissoon’s point about why a Model 1 and why

not a Model 2, just let me reemphasize that for some bizarre reason—

Hon. Senator: What did you say?

Hon. C. Imbert: Bizarre—the former administration—and they spent all their time talking but they would not talk about that. Not one of them who spoke today, not one, spoke about why the former UNC Government chose a Model 1 IGA Agreement with reciprocity instead of a Model 2 Agreement. Not one of them! So I am sorry, Madam President, through you, Sen. Shrikissoon, I “doh” know how and when you will ever get the answer to your question. I cannot answer that.

But I want to tell you something about Model 2 IGA. All these agreements are signed between governments. It goes without saying “I” and “G” are for “Inter-Governmental”. The Model 2 places the burden on the financial institutions to register directly with the Internal Revenue Service of the United States and to report. But the Model 2 also places a burden on the Government, because these are agreements between governments, the IGAs. So both the Model 1 and the Model 2 would be signed by the United States of America and a government.

So even if we had entered into a Model 2, the initial burden would be placed on the financial institution to report to the IRS. But there is a clause in that Model 2 that says if a financial institution does not comply and report on US persons and a period of six months has elapsed, they then hold the Government of the country responsible, and if the Government of the country cannot compel that bank to provide the information, then the country becomes non-compliant. And the Model 2 Agreement requires the country to direct—that is the word. It requires the country to direct the banks within that country to comply with the IRS.

So that even though in the first instance to activate a Model 2 Agreement, you do not require legislation, if after the passage of time banks just refuse to

comply, a government might be forced—might have no choice but to come and incorporate the Model 2 Agreement into its domestic legislation. So even though it is not as onerous on the face of it, it can lead to complications just like the Model 1. And, in fact, when you read the literature, the majority of countries have opted for the Model 1 because it is more definite. There is more certainty in the Model 1 as compared to the Model 2. *[Interruption]* Big joke. *[Laughter]*

Now, Madam President, I want to follow Sen. Roach's advice. I was not in the Chamber when he was talking but I was watching on the television, as I was when Sen. Mahabir was speaking and Sen. Ramdeen was speaking. That is how I know about the missing "s". And I want to thank everybody that contributed. I want to follow Sen. Roach's advice. I think we have talked enough about this legislation. I think we talked it to death. We had consensus in the other place. I expect the Opposition to support the legislation.

I regret that Sen. Creese is unable to support the legislation because of this reciprocity issue, but having explained that our laws do not have extraterritorial jurisdiction, we just cannot legislate reciprocity by another sovereign country. Hopefully that might assist a better understanding of the situation. But I want to thank everyone who has participated. I must say at the end of the day, Parliament is to pass laws. Forget the old talk and the fighting that goes on. At the end of the day the purpose of Parliament is to pass laws.

Sen. Ramdeen: Good law.

Hon. C. Imbert: Madam President, it goes without saying that the laws must be good. *[Laughter]* Sen. Ramdeen took the words out of my mouth.

Hon. Senator: Thank you, for the Opposition then. Thank the Opposition.

Hon. C. Imbert: So I want to thank everybody. I want to thank the Opposition, if

that is what you want. [*Laughter*] I want to thank you. And I mean, it is no skin off my back. I agree that there were some small points in the legislation [*Laughter*], little, little points that we have dealt with in the exercise. But what I am happy about is at the end of the day everybody—we were able to reach consensus and we were able to pass the legislation unanimously in the other House, and I beg to move, Madam President. [*Desk thumping*]

Question put and agreed to.

Bill accordingly read a second time.

Bill committed to a committee of the whole Senate.

Senate in committee.

Clauses 1 to 3 ordered to stand part of the Bill.

Clause 4.

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

Madam Chairman: Hon. Senators, we will defer clause 4. The Minister has asked—

Hon. Imbert: We are checking on the proofing, because we will have to go back to the other place. That is what I am trying to avoid. I am just double-checking with the Chief Parliamentary Counsel's office that any typos in the Bill will be dealt with in the proofing when the final version is prepared for assent and publication. I am advised so far that we are okay. But CPC will continue to look at that as we go through the other clauses and if we need to revisit the clause, we will. Okay?

Madam Chairman: So we will defer clause 4. Okay?

Clause 4 deferred.

Clauses 5 to 34 ordered to stand part of the Bill.

Clause 4 reintroduced.

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

Hon. Imbert: We are just waiting on the CPC. Could we go to the Schedules?

Clause 4 again deferred.

Schedules 1 to 4 ordered to stand part of the Bill.

Clause 4 reintroduced.

Hon. Imbert: Madam Chairman, I am advised by the Attorney General and also by the Chief Parliamentary Counsel's office that the typos will be corrected in the proofing because it is clear throughout the Bill that the former is the Tax Information Exchange Agreements Act. It is merely a typographical error. So I am advised that we are okay. So we can approve it.

Question put and agreed to.

Clause 4 ordered to stand part of the Bill.

Hon. Imbert: And, Madam Chairman, even though we are finished, I just want to put on the record again—

Madam Chairman: No, we have not finished yet. We have to do—

Hon. Imbert: Oh, you have not finished?

Madam Chairman: No. We have to do the Preamble.

Preamble approved.

Hon. Imbert: I just wanted to say something. I was also told another reason why the missing “s” and the missing word “information” can be picked up in the proofing is that it is not a substantive point—not a substantive amendment. So it is okay.

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

Senate resumed.

Tax Information Exchange Agreements
(USA) Bill, 2016 (cont'd)
Committee Stage

2017.03.07

Bill reported, without amendment.

9.10 p.m.

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

The Senate voted: Ayes 29

AYES

Rambharat, Hon. C.

Baptiste-Primus, Hon. J.

Sinanan, Hon. R.

Moses, Hon. D.

Hosein, Hon. K.

Henry, Dr. L.

Singh, A.

Coppin, W.

Cummings, F.

De Freitas, N.

Baksh, Miss A.

Dookie, D.

Lewis, Miss A.

Romano, Miss A.

Thomas, A.

Mark, W.

Solomon, D.

Sturge, W.

Samuel, R.

Ramdeen, G.

Tax Information Exchange Agreements
(USA) Bill, 2016 (cont'd)
Committee Stage

2017.03.07

Ghany, Miss R.

Mahabir, Dr. D.

Roach, H.R.I.

Small, D.

Shrikissoon, T.

Ramkissoon, M.

Chote SC, Miss S.

Raffoul, Miss J.

Richards, P.

Mr. S. Creese abstained.

Bill accordingly read a third time and passed. [Desk thumping]

ADJOURNMENT

The Minister of Works and Transport (Sen. The Hon. Rohan Sinanan):

Madam President, I beg to move that this Senate do now adjourn to Tuesday, March 14, 2017 at 1.30 p.m. when the Government proposes to deal with the Miscellaneous Provisions (Trial by Judge Alone) Bill, 2017. Thank you.

Question put and agreed to.

Senate adjourned accordingly.

Adjourned at 9.18 p.m.