SENATE

Tuesday, December 11, 2018

The Senate met at 1.30 p.m.

PRAYERS

[MADAM PRESIDENT *in the Chair*]

PLANNING AND FACILITATION OF DEVELOPMENT (AMDT.) BILL, 2018

Bill to amend the Planning and Facilitation of Development Act, 2014 and to consequentially amend the Environmental Management Act, Chap. 35:05, brought from the House of Representatives [*The Minister of Planning and Development*]; read the first time.

PAPERS LAID

1. Sessional Report of the Third Session (2017/2018), Eleventh Parliament of the Republic of Trinidad and Tobago. [*The Vice-President* (*Sen. Nigel De Freitas*)]
2. Annual Report of the Judicial and Legal Service Commission for the year 2017. [*Sen. N. De Freitas*]
3. Ministerial Response of the Ministry of Works and Transport to the Fourth Report of the Joint Select Committee on Land and Physical Infrastructure, Third Session (2017/2018), Eleventh Parliament on an Inquiry into the Trinidad and Tobago Inter-island Ferry Service with specific focus on the Procurement and Maintenance of Ferries. [*The Minister of Works and Transport* (*Sen. The Hon. Rohan Sinanan*)]
4. Ministerial Response of the Ministry of Social Development and Family Services to the Eighth Report of the Joint Select Committee on Human Rights, Equality and Diversity, Third Session (2017/2018), Eleventh Parliament on an Examination of the Perceived Inequality Faced by Single Fathers in Trinidad

5. and Tobago with specific focus on Custody Matters, Policies and Access to Programmes and Services. [*The Minister of Energy and Energy Industries* (*Sen. The Hon. Franklin Khan*)]
6. Criminal Procedure (Amendment) (No.2) Rules, 2018. [*Sen. The Hon. F. Khan*]
7. Civil Proceedings (Amendment) Rules, 2018. [*Sen. The Hon. F. Khan*]

JOINT SELECT COMMITTEE REPORTS

(Presentation)

Public Accounts (Enterprises) Committee Reports

Sen. Wade Mark: Madam President, I have the honour to present the following reports as listed on the Order Paper in my name:

National Commission for Self Help Limited

Fourteenth Report of the Public Accounts (Enterprises) Committee, Third Session (2017/2018), Eleventh Parliament on the Examination of the Audited Accounts, Balance Sheets and other Financial Statements of the National Commission for Self Help Limited (NCSHL) for the financial years 2008 to 2015.

Youth Training and Employment Partnership Programme

Fifteenth Report of the Public Accounts (Enterprises) Committee, Third Session (2017/2018), Eleventh Parliament on the Examination of the Audited Accounts, Balance Sheets and other Financial Statements of the Youth Training and Employment Partnership Programme (YTEPP) for the financial years 2008 to 2014.

Local Authorities, Service Commissions and Statutory Authorities

(Including the THA)

Regulated Industries Commission

The Minister of Labour and Small Enterprise Development (Sen. The Hon. Jennifer Baptiste-Primus): Thank you kindly, Madam President. I have the honour to present the following report as listed on the Order Paper in my name:

Eleventh Report of the Joint Select Committee on Local Authorities, Service Commissions and Statutory Authorities (including the THA), Fourth Session (2018/2019), Eleventh Parliament on an inquiry into the Efficiency and Effectiveness of the Regulated Industries Commission (RIC).

URGENT QUESTIONS

Impersonation of G4 Security Officer
(Implications for Airport Rating)

Sen. Wade Mark: Thank you, Madam President. To the Minister of Works and Transport: In light of reports that someone impersonating a G4 Security Officer walked away with a large sum of money from a Caribbean Airlines counter at Piarco International Airport, does this pose significant implications for the international rating of said airport?

The Minister of Works and Transport (Sen. The Hon. Rohan Sinanan): Thank you, Madam President. Madam President, categorically, no. The incident referred to does not, and is not related to the rating and status of the airport. The status of the airport relates to the standards and practices which are being measured by the International Civil Aviation Organization, which are unrelated to the issue of purported robberies. Thank you.

Sen. Mark: Madam President, can I, through you, ask the hon. Minister if you can share with this Senate what was the large sum of money that was removed? What was the size? What was the sum involved—of the value? Could you share that with the honourable House?

Madam President: Sen. Mark, that question does not arise. Next supplemental.

Sen. Mark: Can I ask the hon. Minister, then, what are some of the standards and practices that will determine, for instance, our ratings, either upwards or downwards, in the instance of a re-rating of our international airport, as you have outlined?

Madam President: Sen. Mark, that, too, does not really arise. Next question?

Money Stolen at Caribbean Airlines Counter

(Security Issues to be Addressed)

Sen. Wade Mark: Thank you, Madam President. To the Minister of Works and Transport: In light of reports that a large sum of money was stolen from a Caribbean Airlines counter at Piarco International Airport, what is being done to immediately address security issues both in and around the airport?

The Minister of Works and Transport (Sen. The Hon. Rohan Sinanan): Thank you, Madam President. Madam President, the Airports Authority continues to work with all its tenants and concessionaires to ensure the systems are enforced in accordance with international airport standards. In addition to the security systems operating at the airport, the Airports Authority collaborated with the TTPS to enhance security arrangements in and around the terminal building. Thank you.

Madam President: Sen. Mark.

Sen. Mark: Madam President, can the hon. Minister indicate to this Senate, what is the system, or what systems are employed by the Airports Authority to ensure that standards are maintained?

Sen. The Hon. R. Sinanan: Thank you. Madam President, this incident yesterday is an incident with a breach at a CAL counter and not necessarily a breach by the Airports Authority. And as I said, the Airports Authority continues to work with its tenants and concessionaires to ensure that the systems are enforced

in accordance with international airport standards with their internal security. I thank you.

Sen. Mark: Madam President, can I ask, through you to the hon. Minister, what was the sum? We hear about a large sum of money and all kinds of speculations are being raised here and there. Can the hon. Minister share with this House what is the value of the sum involved? Can you share that information with this honourable House?

Sen. The Hon. R. Sinanan: Madam President, again, the money that was removed from the CAL counter is not the Airports Authority's funding and as Minister with responsibility for the airport, I am not in a position to comment on the amount of money that CAL would have lost. The Airports Authority has asked CAL for a detailed report on the incident and until then I cannot comment on the money that CAL would have lost.

Madam President: Next question. Sen. Mark?

Point Lisas Desalination Plant

(Resumption of Water Supply)

Sen. Wade Mark: Thank you, Madam President. To the Minister of Public Utilities: Given the recent issues at the Point Lisas Desalination Plant which continue to affect the pipe-borne water supply to a large number of citizens, can the Minister advise when will said water supply be resumed?

The Minister of Public Utilities (Sen. The Hon. Robert Le Hunte): Thank you, Madam President. Madam President, you would recall that on Tuesday the 4th, at the last sitting of this Senate, I explained to Members of this Senate that the water supply to the population from the desalination plant was disrupted on the 3rd of December, as a result of an electrical defect on the plant due to salt-water corrosion. The original information coming to me, and that I related to this House,

was that the production of water back to the citizens would have happened on a phased basis—the increased production—and by Wednesday, the next day, that they would have gotten back up to full production of water.

Subsequently, as a result of additional problems at the plant, the company was only able to take its production up to 30 million gallons by Sunday. And as a matter of fact, on that day there was actually another problem which resulted in the plant dropping production to five million gallons, but within a short space of time they were able to ramp back up to 30 million gallons.

There was need for additional parts to be flown in and these parts are arriving tonight from Finland via airfreight. As a result of these changes and these events, the plant is now producing, as I said, 30 million gallons of water. It is expected to go up to 36 million gallons as they work overnight and they fix the particular problems. But full production, back up to 40 million gallons, is not expected until Friday of this week. Again, I do apologize for the hardship, and WASA continues to try to alleviate this problem.

Madam President: Sen. Mark?

Sen. Mark: Thank you, Madam President. Madam President, can the hon. Minister, through you, share with this honourable House what were some of the additional problems encountered by this plant? Could he share with us what were those additional problems?

Sen. The Hon. R. Le Hunte: Thank you, Madam President. Basically, there was an electrical problem that, as I said, was a result of corrosion. The problem was actually fixed, using the spare parts that were available. However, that particular spare part, again, another electrical problem. When they were about to start the plant up, there was a surge of electricity again and there were certain problems that arose, which then caused a burnout of another part which, as I said, needed to be

flown in from Finland. So they are all electrical related. But as one was fixed, another one happened and therefore this particular part needed to be flown in from Finland, and it is going to be arriving tonight.

Madam President: Sen. Mark?

Sen. Mark: Given the defective nature of this desal plant, can the Minister indicate to this House what steps are being taken to ensure that problems that he has identified will not arise and thereby affect the population in south and central Trinidad? Can you identify and can you give this House the assurance?

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

ANSWERS TO QUESTIONS

The Minister of Energy and Energy Industries (Sen. The Hon. Franklin Khan): Madam President, the Government seeks a deferral of questions 13, 14 and 15 for two weeks, and we will be answering all other questions on the Order Paper.

WRITTEN ANSWERS TO QUESTIONS

Police Officers

(Damages Awarded Against)

10. **Sen. Gerald Ramdeen** asked the Attorney General and Minister of Legal Affairs:

Over the period September 2015 to September 2018, can the Attorney General advise:

(i) what is the total amount of damages awarded by the High Court and Court of Appeal against the State in matters involving Police Officers, for claims of assault and battery, malicious prosecution and false imprisonment;

(ii) against how many of the said officers has the State instituted disciplinary proceedings as a result of the damages awarded; and

(iii) if no action has been taken, can the Attorney General provide the reason(s)?

Vide end of sitting for written answer.

Importation of Petroleum Products

(Terms of Agreements)

60. **Sen. Wade Mark** asked the Minister of Energy and Energy Industries:

Having regard to the impending importation of fuel and the petroleum products for use by the local market, can the Minister inform the Senate of the terms of the commercial agreements between Trinidad and Tobago and the vendors of the respective products?

Vide end of sitting for written answer.

ORAL ANSWERS TO QUESTIONS

The following questions stood on the Order Paper in the name of Sen. Gerald Ramdeen:

State Witness Protection Programme

(Number of Persons Admitted)

13. Could the Minister of National Security state:

During the period September 2015 to September 2018 how many persons have been admitted into the State Witness Protection Programme?

Police Officers on Suspension

(Details of)

14. Could the Minister of National Security state:

How many police officers are currently on suspension pending the outcome of the following:

(i) Criminal Investigations; and

(ii) Departmental/ Internal disciplinary investigations?

Murder Accused at the State Prison

(Amount Currently Awaiting Trial)

15. Could the Minister of National Security state:

How many murder accused at the State Prison are currently awaiting trial having been committed to so stand?

Questions, by leave, deferred for two weeks.

Solomon Associates and McKinsey

(Total Cost of Consultancy Reports)

29. **Sen. Wade Mark** asked the Minister of Energy and Energy Industries:

What is the total cost of each of the consultancy reports tendered by Solomon Associates and McKinsey to the Government?

The Minister of Energy and Energy Industries (Sen. The Hon. Franklin Khan): Thank you very much, Madam President. Madam President, McKinsey did not produce any report per se. McKinsey was engaged as industry experts to help the board to understand and design solutions to the continuously deteriorating operations of Petrotrin. This was done in incremental work streams that involved experienced Petrotrin subject matter employees working in a team, together with the consultants. At any one time McKinsey had between eight to 10 experts working along Petrotrin staff for approximately one year. The global cost was US $9.9 million paid as at October 28, 2018, covering the following work modules:

(a) Initial engagements, strategic review;

(b) review of upstream operations;

(c) review of downstream operations;

(d) organizational design; and

(e) transition fees, which is still currently in progress.

With regard to Solomon Associates, the cost of consultancy was US $1.279 million and covered the following activities:

First invoice, $164,850. Petrotrin workforce optimization study, phase one.

Invoice No. 2, US $384,650. Petrotrin workforce optimization study complete.

Invoice No. 3, US $90,000. E&P benchmarking exercise, 50 per cent professional services.

Invoice No. 4, US $549,500. Professional services 100 per cent contract awarded, and

Invoice No. 5, US $90,000, E&P benchmarking exercise No. 2, giving a total of US $1,279 million.

Sen. Mark: Madam President, can the Minister indicate to this House what exactly did McKinsey submit to Petrotrin and, by extension, the Government and people of the Republic of T&T, for close to TT $60 million?

Madam President: Sen. Mark, I believe that that was covered in the Minister's response, so perhaps you can ask another question.

Sen. Mark: Can I ask the hon. Minister, through you, if he can give us a breakdown, Madam President, of this 9.9, or roughly US $10 million that was paid to this firm—exactly what areas he can provide to us, that money went towards.

Sen. The Hon. F. Khan: Well, if the question is so worded, "I will be complied" to answer. So if he can phrase a question to say each invoice, what it was for, I will comply.

Sen. Mark: Can the hon. Minister indicate whether, based on the reports of the body, the McKinsey Report, as it is called, or submissions, whatever it is called—can the hon. Minister indicate to us whether in their submission any recommendations would have been made for the shutting down of Petrotrin,

particularly the refinery operations? Can you share with this honourable House, whether any of their submissions surrounded that particular proposal?

Sen. The Hon. F. Khan: Madam President, as we have said on numerous occasions, there was not one specific report from any party or parties that said, take the action which we did, which is the shutting down of the refinery and remodelling the operations of former Petrotrin in the way we have done. It was the cumulative effect of a series of studies and interventions that finally distilled the decision, and the decision was made in the interest of the people of Trinidad and Tobago, the interest of the energy sector of Trinidad and Tobago and, in particular, the interest of the oil sector in the south-west peninsula.

1.50 p.m.

Sen. Mark: Based on the fact, Madam President, that we have spent close to TT $70 million on this McKinsey group, can the hon. Minister indicate to us what is tangibly available for the public so we can actually see and feel as it relates to that sum of money that was expended by the taxpayers to this particular organization called McKinsey? Can we see anything concretely? Can you make anything available to this honourable House?

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

Los Iros Farmers

(Details of Relocation)

30. **Sen. Wade Mark** asked the hon. Minister of Agriculture, Land and Fisheries:

In light of the Minister's stated commitment to relocate Los Iros farmers following the earthquake on August 21, 2018, can the Minister indicate how soon will this relocation take place and to what part(s) of Trinidad?

The Minister of Agriculture, Land and Fisheries (Sen. The Hon. Clarence Rambharat): Thank you very much, Madam President. I thank Sen. Mark for his question. Madam President, the Ministry of Agriculture, Land and Fisheries has a section of state land at Royal Engineer Road, R.E. Road, Los Iros, designated road for food/crop farming. The Los Iros food/crop project comprises approximately 270 hectares with 149 plots divided into three phases. The August 2nd earthquake damaged a section of phase one.

Madam President, the damage caused by the earthquake included deep land settlement which caused major disruption of certain sections of the roadway, actual movement of entire sections of the road off its original alignment, damage to farm ponds, substantial movement of cultivated lands in farm plots, land movement affecting shed and yards and land movement along the coastline. Nine farmers were affected. These farmers are Kheswar Basdeo, Balchan Singh, Dhanraj Sagar, Ishwar Dwarika, Kumar Dwarika, Hematie Samaroo, Sunil Balsingh, Lady Pierre and Selwyn Karim.

On investigation, it was found that one affected farmer was in illegal occupation of a substantial part of the forest reserve. This will not be allowed to continue on that site because it would continue to degrade the stability of that particular area. The Engineering Division of the Ministry of Agriculture, Land and Fisheries conducted several assessments and identified work to be done for site rehabilitation.

Madam President, I am pleased to advise that the entire project is now accessible by vehicles. Relocation of affected farmers to locations in close proximity remains an option, but is conditional upon the farmers ceasing all cultivation activity on the affected plots. I thank you.

Sen. Mark: Madam President, can the Minister indicate to the Senate whether the

farmers who have been affected, including the illegal farmer, can you indicate whether they are back in active agricultural production since the efforts have been made to rehabilitate those areas affected by the earthquake?

Sen. The Hon. C. Rambharat: Thank you, Madam President. I am happy to say that the Ministry was able to assist with the preparation of those affected plots, and to date the farmers have—initially, they went in and they were able to reap some of the produce and they are back to cultivating their lands, and the issue of the long-term occupation and use of it is something that is still outstanding.

Sen. Mark: Madam President, through you, can the hon. Minister indicate what compensation, if any, would have been offered or paid to these farmers during the period of dislocation and distress?

Sen. The Hon. C. Rambharat: Madam President, there is no policy of the Government which caters for compensation to farmers for losses arising out of natural disasters and related matters. But, Madam President, I must also say that there is some assistance that is available to farmers affected in this manner, but as of Friday last, the Ministry received no application of request for assistance. Thank you.

Sen. Mark: Madam President, can the Minister outline what assistance is now available to farmers which they are yet to access?

Sen. The Hon. C. Rambharat: Madam President, the assistance available to the farmers, that assistance has already been rendered. It consisted of repairs to the roadway—immediate repairs—assistance in preparing the land that was affected so that they could return to the land, and that is the assistance that they have asked for and that is the assistance that has been rendered.

Sen. Mark: Can I ask the hon. Minister what crops these farmers are able to engage in and provide to the market in this country? What particular crops are

they engaged in or specializing in?

Madam President: No, Sen. Mark, I would not allow that question. Next question, Sen. Mark.

University of the West Indies, Debe Campus
(Delay in Opening)

31. Sen. Wade Mark asked the hon. Minister of Education:

Given reports that the University of the West Indies, Debe Campus, will not be completed in time for the start of the 2018/2019 academic year, can the Minister indicate the following:

i. how many students have been affected by this revised timeline;

ii. what measures have been put in place to mitigate the impact on the students who were to have commenced classes at that campus in September 2018; and

iii. when will the facility be completed?

The Minister of Education (Hon. Anthony Garcia): Thank you very much, Madam President. The University of the West Indies, St. Augustine Campus, has advised that given the delays caused by contractual matters and unpredictable weather, the campus management thought it prudent not to advertise programmes to be offered at the Debe Campus in 2018/2019. No student has been affected as there were no new or continuing students registered to read courses or programmes at the Debe Campus in the academic year 2018/2019. In light of the above, no mitigation measures targeted at prospective students are needed at this time.

With respect to the completion date of the facility, the campus management advises that work towards completion and handover of the Debe Campus continues apace as follows:

(a) the internal works on all buildings are almost completed and the

furniture installations have commenced in several locations;

(b) the installation of the Information Communication and Technology components (ICT) has also commenced;

(c) final arrangements are being made for a multimedia and audio-visual installations to commence;

(d) the services infrastructures are almost nearing completion and initial testing and the commissioning have commenced on the water storage and the distribution systems and on the waste water treatment plant system; and

(e) December 31, 2018 is the deadline date for handover of all buildings with the commissioning of the ICT and the multimedia and audio-visual systems earmarked for completion by February 2019.

Thank you.

Sen. Mark: Hon. Minister, did I hear you say that by February of 2019 you anticipate, based on the advice that you have received, that the campus would be up and running? Did I hear that, Sir?

Hon. A. Garcia: Madam President, for Sen. Mark's information, I said that all the systems are earmarked for completion by February 2019. That is the answer.

Sen. Mark: Madam President, through you, can I ask the hon. Minister when in his estimation, based on the reports that you have before you, you anticipate the operationalization of the campus and the use thereof by students? Can you share with us your information in this regard?

Hon. A. Garcia: Madam President, although this is a matter solely in the hands of the University of the West Indies, the information that is available to me is that every effort is being made to have this campus up and running in the academic year 2019/2020. Thank you.

Sen. Ramdeen: Thank you, Madam President. I want to thank the Minister for the information that we were provided with this afternoon, but I want to ask the Minister, when last did the Minister go down to Debe and visit the campus to see the work that is being done and to assure himself that these completion dates that have been given to us will be met by the contractors who are involved in the work down at Debe?

Madam President: Sen. Ramdeen, that question does not arise

Petrotrin's Point-a-Pierre Facilities
(Details of Bunkering of Fuel)

56. **Sen. Taharqa Obika** asked the hon. Minister of Energy and Energy Industries:

Given the Minister's public statement that Petrotrin's Pointe-a-Pierre facilities will be used for bunkering of fuel, can the Minister indicate:

i. how many days/weeks of supply of fuel will be stored in the designated bunkers; and

ii. what will be the cost of same?

The Minister of Energy and Energy Industries (Sen. The Hon. Franklin Khan): Thank you, Madam President. Madam President, I think I will start by saying I have to give Sen. Obika a crash course in energy terminology. He asked how many days/weeks supply of fuel would be stored in designated bunkers. This is not an army bunker. "Bunker" is not storage in the energy sense, but a type of fuel used by ships which includes fuel oil and gas oil. Bunkering is the sale of bunker to passing ocean-going vessels. You want me to repeat that for you?

Hon. Senators: Yes.

Sen. The Hon. F. Khan: Bunkering is the sale of bunker—bunker is not a storage—to passing ocean vessels. The bunkering operation will continue at

Pointe-a-Pierre to vessels in the Gulf of Paria. Inventory is based on the demand for fuel and is typically a month's supply, which is approximately, based on the market, 100,000 barrels.

The cost of bunkers will be driven by international prices because we are no longer producing bunker from the refinery. We are purchasing it, structured in a manner to ensure the sustained profitability of the bunkering operation. For Paria to survive it will purchase bunker on the international market, have a mark-up and we sell to passing ships and that is the business of trading. I so direct, Madam President.

Sen. Obika: Thank you very much, Madam President. Unfortunately, the hon. Minister had not indicated a single item of cost, so I wish to ask the question: What is the cost of saving?—not international prices. There must have been moneys expended by the State, can the Minister inform the Senate what is the cost?

Sen. The Hon. F. Khan: Madam President, Sen. Obika continues to baffle me. He is an economist. Paria is involved in a business, a business of purchasing bunker, having a mark-up, and reselling it on the international market in a competitive environment. So I must come here and tell you every single price that Paria purchases bunker at, and every sale they make to every ongoing ship? It will destroy their competitive advantage. Okay? So let us get real, Madam President, this is not politics. This is business and Petrotrin has been restructured to operate as a business venture. So let us respect that. [*Desk thumping*]

Sen. Obika: Thank you very much, Madam President. The hon. Minister in his submission stated that there will be one month's storage. Could the Minister indicate—you are giving a range—what is this one month's storage expected to cost the citizens of Trinidad and Tobago?—or admit he was unprepared to answer the question today.

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

Sen. Obika: Do I have another supplemental to this very question that I can ask?

Madam President: Yes you do, Sen. Obika.

Sen. Obika: Could the hon. Minister indicate what is the average cost of the inventory that he indicated should be at least one month's supply?

Madam President: I would not allow that question, Sen. Obika, based on the answers that have already been given. You have one more supplemental to ask. Next question, Sen. Obika.

Removal of Fuel Subsidy

(Details of)

57. **Sen. Taharqa Obika** asked the hon. Minister of Energy and Energy Industries**:**

Given the Government's stated policy on removing the fuel subsidy, can the Minister indicate the following:

i. what is the dollar value of the subsidy applied to each of the three types of fuel obtained at the pump; and

ii. when will the fuel subsidies be completely removed?

The Minister of Energy and Energy Industries (Sen. The Hon. Franklin Khan): Thank you very much, Madam President. Madam President, both super gasoline and diesel fuel generated subsidies whereas premium gasoline generated a small surplus as is commonly known. The subsidy on super gasoline and diesel fuel for the period 2016—2018 is as follows:

In 2016, the subsidy on super was 83.4 million, the subsidy on diesel was 438.1 million;

In 2017, the subsidy on super was 253.3 million, the subsidy on diesel was

450.9 million;

In 2018, the subsidy on super was 500.23 million, the subsidy on diesel was 412.9 million;

The subsidy per litre generated on the super gasoline and diesel fuel over the period is as follows:

In 2016, the subsidy on super was TT 12 cents per litre, the subsidy on diesel was TT 88 cents per litre;

In 2017, it was 38 cents for super and 99 cents for diesel;

In 2018, it was 76 cents on super and 96 cents on diesel.

Sen. Obika: Thank you very much, Madam President. I am very grateful for the submissions made by the hon. Minister and I wish to ask why premium was not added, if not to say that there was no subsidy on premium?

Sen. The Hon. F. Khan: You lost me there. Just repeat it please and I will answer it.

Sen. Obika: Just for the record for the public's interest, there was no mention of any subsidy applied to premium, and I wish to ask the Minister if that was because there was no subsidy applied to premium gas?

Sen. The Hon. F. Khan: The answer is that the price of premium approximates the international market price and sometimes it actually generates a small surplus for the State.

Sen. Obika: And the other supplemental I wish to ask through you, Madam President, is if the hon. Minister has any indication as to a timeline as to when the subsidies on diesel and super may be or would be removed?

Sen. The Hon. F. Khan: In the last budget, the 2017 budget, the Minister of Finance did indicate that it is the intention of the Government to phase out the subsidy of fuels. While it is still our intention to so do, there are consequences to

that and we are very cognizant of that especially as we have to go ultimately to a market-driven price where prices are posted, say like in Jamaica every month where the prices changing. United States, it virtually changes every day at the service station.

With fluctuating oil prices, that is a cumbersome system to manage and it can cause great aggravation to the population where you get up every month expecting to see an increase in the price of fuel. Conversely, there can also be a decrease in price. So it is a difficult situation we are in. We have removed most of the subsidy based on the $55 oil price that we forecasted in 2017. However, with the $65 forecasted for this fiscal year the subsidies would have gone back up and we are monitoring the situation very, very closely.

University of the West Indies

(Incomplete Course Curriculum Policy)

58. **Sen. Taharqa Obika** asked the hon. Minister of Education:

What is the policy of the University of the West Indies on incomplete course curriculum arising from class disruptions caused by natural disasters?

The Minister of Education (Hon. Anthony Garcia): Thank you very much, Madam President. The University of the West Indies (UWI) does not have a policy on incomplete course curriculum arising from class disruptions caused by natural disasters. However, in the wake of the recent widespread flooding that occurred during October 2018, and which affected many of the staff and students, the campus management directed that measures be immediately implemented to facilitate the students and minimize the impact of those unforeseen events on their studies.

Accordingly, the following measures were put in place:

1. Examinations were rescheduled;

2. Deadlines were extended for the submission of assignments;
3. Make-up classes were conducted as soon as affected students were able to resume.

Additionally, students who indicated that they were severely traumatized by the flooding were offered counselling services to manage the floodingtrauma, leave of absence for semester one in the first instance and the option to read fewer courses depending on their ability to cope. Thank you.

Sen. Obika: Thank you very much, Madam President. In light of the hon. Minister's submission that some persons may have taken leave of absence, is there any provision that the university has communicated to him to allow them to recoup, to do over these courses in the summer—in the short semester, sorry.

Hon. A. Garcia: Madam President, my response is clear. If the university management has decided that they will allow students to defer courses, obviously they will take into consideration, allowing them to write those courses later on. Simple as that. Thank you.

Sen. Obika: Madam President, from my understanding, the short semester programme is hamstrung to some extent at the university, so I want to ask the Minister, particularly, if they will be accommodated in this academic year in the short semester?

Madam President: Well, I think the Minister—you just repeated the question—

Sen. Obika: He said at a later date.

Madam President: But you have repeated the question. You can ask another supplemental.

Sen. Obika: Oh no, I do not wish to.

Madam President: Okay.

DEFINITE URGENT MATTER
(LEAVE)
Sale of Petrotrin's Assets
(Lack of Accountability and Transparency)

Sen. Wade Mark: Thank you very much, Madam President. Madam President, in accordance with Standing Order 16, I hereby seek leave to move the adjournment of the Senate for the purpose of discussing a definite matter of urgent public importance, namely the lack of accountability and transparency in the sale of Petrotrin's assets.

The matter is definite because it pertains specifically to the Government's intention to sell the assets of Petrotrin without proper public procurement, transparency and accountability. The matter is urgent because the Government has now indicated that within 30 days they intend to secure a new owner for Petrotrin's assets. As such, the Procurement Regulator is unable to oversee this transaction to ensure that there is accountability and transparency in the disposal of said assets.

The matter is of public importance because Petrotrin, as a state enterprise, was owned by the State on behalf of the citizens of Trinidad and Tobago. Any disposal of its assets must be subjected to the full requirements of the public procurement laws. I so move.

Madam President: Hon. Senators, I have considered the Motion and I am not satisfied that this matter qualifies under the Standing Order.

PERSONAL EXPLANATION
Response to Question No. 54
(Correction of Record)

The Minister of Works and Transport (Sen. The Hon. Rohan Sinanan): Thank you, Madam President, and thank you for the opportunity to correct the

records. I refer to a response to Question No. 54 in the Senate of the Republic of Trinidad and Tobago on December 04, 2018, and wish to advise the following: Based on the information received from the Trinidad and Tobago

Civil Aviation Authority at the time when the question was posed, there were no applications from Sunwing Airline Incorporated to operate direct flights between Toronto and Tobago, Tobago/Toronto.

However, on return to office on instant day, information was received that an application was subsequently lodged. This application is currently being evaluated at this time.

Thank you, Madam President.

Sen. Obika: I wish to ask if I can seek clarification, given that was the question I raised?

Madam President: No, Sen. Obika. Under the Standing Orders, you are not allowed to so do.

MAGISTRATES PROTECTION (AMDT.) BILL, 2018

Order for second reading read.

The Attorney General (Hon. Faris Al-Rawi): Thank you, Madam President. Madam President, I beg to move:

> That a Bill to amend the Magistrates Protection Act, Chap. 6:03, be now read a second time.

Madam President, I am sorry to ask you this, but how much time is there permitted in this House?

Madam President: Forty-five minutes.

Hon. F. Al-Rawi: Forty-five minutes. Much obliged. Madam President, it gives me great pleasure today to pilot what on the face of it seems to be a short and rather simple piece of law. It is not quite that, however, when one appreciates the

depth that this law cuts through. The Bill before us seeks to form a levelling of equality to allow Magistrates a certain privilege, a certain status, a certain immunity that is afforded to other parts of our judicial system. This Bill, to be understood in its correct form, requires a little bit of an historical journey, it requires an appreciation as to where our society has come to at present, it requires an understanding of the administration of law as it now in Trinidad and Tobago to be applied and an appreciation of what is to come ahead of us.

So permit me, Madam President, by starting off with the supreme law of the Republic of Trinidad and Tobago, which is the Constitution, and I wish to start by way of reflection upon the Preamble to our Constitution which, of course, by way of expression in 1976 confirmed that:

"…the People of Trinidad and Tobago—

(a) have affirmed that the Nation of Trinidad and Tobago is founded on principles that acknowledge the supremacy of God, faith in fundamental human rights and freedoms"—which I stress—"the position of the family in society of free men and free institutions, the dignity of the human person and equal and inalienable rights with which all members of the human family are endowed by their Creator."

That is in subparagraph (a).

Similarly in subparagraph (c), the people of Trinidad and Tobago in our written Constitution:

"have asserted their belief in a democratic society in which all persons may, to the extent of their capacity, play some part in the institutions of the national life and thus develop and maintain due respect for lawfully constituted authority;"

I turn next, Madam President, to section 5 of the Constitution, in particular section 5(f), subsection (ii), and that, of course, is in reference to protection of rights and freedoms and the manner in which we deal with the derogation of those rights in section 4. But in subsection 5(1), we say that:

> "Except as is otherwise…provided in this Chapter and in section 54, no law may abrogate, abridge or infringe or authorise the abrogation, abridgment, or infringement of any of the rights and freedoms hereinbefore recognized and declared.
>
> (2)…but subject to this Chapter of the Constitution and to section 54, Parliament may not—
>
> (f)…deprive a person charged with a criminal offence of the right…"

—listen to this one—

> "(ii) to a fair and public hearing by an independent and impartial tribunal..."

Now I have stressed upon the Constitution so far because that is the principle upon which this debate is really hinged. We are looking at the fact that our Constitution recognizes the protection of individuals, the balancing of rights, but it embraces the concept of due process, of fairness of tribunals, of independent tribunals. And when we look to the construction of the Constitution and we look to the establishment of the fixtures of the Constitution, we of course have the Executive—that begins in section 74 of the Constitution—we have the DPP for instance at section 90, the Ombudsman at section 91, but very importantly we have the Judiciary at Chap. 7, and in establishing the Supreme Court and the Court of Appeal in sections 99 onward of the Constitution, we recognize that limb of our life which really falls to interpret our laws.

But, Madam President, the Bill before us seeks to amend a law which is now quite old. We are seeking to cause an amendment to the Magistrates Protection

Act, Chap. 6:03, and here the antiquity of this law. The Magistrates Protection Act is an Act of Parliament, No. 34 of 1917. We stand here 101 years later. Alongside with the Magistrates Protection Act, we had the Indictable Offences (Preliminary Enquiry) Act. The Indictable Offences (Preliminary Enquiry) Act was in 1917.

2.20 p.m.

But the Magistrates Protection Act is actually quite a short piece of law. It is across 13 sections. Sections 4 and 5 in particular, and the Magistrates Protection Act, itself, says, "look, if yuh gonna sue ah Magistrate or a Justice"—

> "In this Act, the term 'Magistrate' includes a Justice."

—is what section 2 of the Act says, the parent law.

Section 3:

> "Every action to be brought against any Magistrate for any act purporting to have been done by him in the execution of his office shall be brought in the High Court."

The existing section 4 says that:

> "The endorsement of the writ of summons in every…action…"

That is the method by which you sue someone.

> "…shall allege either that the act was done maliciously and without reasonable and probable cause, or that it was done in a matter not within the jurisdiction of the Magistrate, otherwise the writ shall be set aside on summons; and if the plaintiff fails at the trial to prove the allegation, a verdict shall be given for the defendant."

Section 5 says:

> "Any person injured by any act"—not—"done by a Magistrate in a matter not within his jurisdiction, or in excess of his jurisdiction, or by any act done in any…matter under any conviction or order made by warrant issued

by him, may maintain an action against the Magistrate without alleging that the act complained of was done maliciously and without…reasonable and probable cause."

Those are the two sections of the existing law. Translated 19th Century language into 20th Century because this law comes from the English Justices Protection Act of the UK; that is an 1848 law. So the 1917 Trinidad law is based upon 19th Century English law of 1848.

In 1917, we cast two particular sections: section 4 and section 5, and these sections have been applied in the courts of Trinidad and Tobago. And in the courts of Trinidad and Tobago—and I will come to the jurisprudence a little bit later on—we have come to the position that Magistrates and Justices have limited immunity and the limited immunity is grounded in an understanding of section 4 and section 5.

So who is a Magistrate? Who is a Justice? That is an important question for us today in seeking an amendment to the law. A Magistrate is actually a creature of statute. A Magistrate is someone who fits the position of the Summary Courts Act, in particular section 3, and I want to take us there. The Summary Courts Act is Chap. 4:20 and when we look to section 3, this is what it says:

"General Provisions

"There shall be such number of Magistrates in the public service as may be required for purposes of this Act.

(2) Every Magistrate shall be *ex officio* a Justice of the Peace for Trinidad and Tobago."

And then 3A goes on to say the:

"Qualification…"—for a—"Magistrate.

No person shall been appointed a Magistrate unless he has been admitted to

practise as an Attorney-at-law in Trinidad and Tobago and has practised…for…not less than five years…" et cetera.

A Magistrate under 3B is someone to be appointed by the Judicial and Legal Services Commission.

Who is a Justice? A Justice is to be found by way of reference to the Indictable Offences (Preliminary Enquiry) Act. This was, again, Act No. 12 of 1917, just a couple of Acts in the same year that the Magistrates Protection Act was passed. And Justices are not Justices of the Peace as the Interpretation Act sets out. Justices, in fact, are the persons that occupy the Office of the Clerk of the Peace. Justices are, under the preliminary enquiries law, entitled to carry out the functions of Magistrates as it relates to certain things and that is to be found in section 2(2) where it says:

"For the purposes of this Act, Justices shall have and exercise concurrent jurisdiction with the Magistrates to issue summonses, warrants, other process of Court, to grant bail and to fix the amount, to take recognisances, and to bind over parties and witnesses, and to administer oaths."

So, Magistrate is a creature of statute. Magistrate is to be found under the Summary Courts Act. Magistrate is not found in the supreme law of Trinidad and Tobago which is the Constitution. The Constitution provides for the High Court and the Court of Appeal and in fact, the Privy Council. Magistrates are equal to Justices in certain parts or rather Justices exercise concurrent jurisdiction with Magistrates so determined under the Indictable Offences (Preliminary Enquiry) Act and Justices are not Justices of the Peace.

So in 1917, the position was that Trinidad and Tobago was arranged in a very convenient way to administer justice. Effectively, we had our courts at the higher court level and we had Magistrates who were really people that

administered justice in the hinterland, if you wanted to call it, in districts or divisions of Trinidad and Tobago. In Trinidad and Tobago, the position is that Magistrates are now full-time frontline persons entrusted with the administration of justice. The statistical information to be found in relation to Magistrates can be found in the Judiciary's latest annual report called *Improving Court Services through Process Reform*: *Annual Report 2017-2018*. In particular, and in commending the Judiciary for an excellent publication, one has very good reading at section 10 at page 52 onwards.

So who is our magistracy today? The magistracy is comprised of 12 magisterial districts as per the Summary Courts Act. Magistrate districts operate with a distribution of 18 Magistrates' Courts. There are 46 members of the Magistrates' Court. There is one Chief Magistrate, one Deputy Chief Magistrate, eight seniors, 36 Magistrates.

Listen to the case volume of what Magistrates treat with. Magistrates, in the year 2017 to 2018, the total number of cases filed in the Magistrates' Courts stand at 165,154. Listen to what Magistrates deal with: capital offences, 168; domestic violence, 8,332; petty civil, 1350; private summary matters, 8,242; ejectment, 772; inquests, 797; non-capital offences, 28,186; family matters, 14,535; and traffic, of course, 102,875. The disposition rates in 2017/2018, capital, we have only disposed of roughly 40 per cent per year, 60 per cent goes into backlog; non-capital, we disposed of roughly 50 per cent, 50 per cent goes into backlog; family matters, better statistics, we have about 70 per cent disposition, 30 per cent goes into backlog; domestic violence, 30 per cent goes into backlog; traffic, 46 per cent, 50 per cent goes into backlog; ejectment, 70 per cent goes into backlog; inquests, 98 per cent goes into backlog.

What do our Magistrates treat with? Magistrates, in today's world, not

1917, treat with summary offences, preliminary enquiries in particular, if I look at the criminal jurisdiction of Magistrates' Courts. Summary offences are matters which the Magistrate has exclusive jurisdiction over. The Magistrate is the arbiter of fact and the Magistrate applies the law and comes up with a decision. Of course, there are rights of appeal coming after that. Indictable offences are offences which pass through a preliminary enquiry where a Magistrate sits to see if there is a sufficient case. If there is a sufficient case, the Magistrate says you will go to the High Court in the Assizes and a Judge will apply the law and a jury will consider the facts, unless, of course, you choose a judge-only route which we have only now introduced into law.

In the Magistrates' Court, these are current laws that Magistrates apply. Listen to this one: the Anti-Terrorism Act, section 15C, failure to give notice that you are travelling to a

"…declared geographical area…"

—a Magistrate shall consider that on summary conviction, a fine of $50,000, a term of two years. Again, in the Anti-Terrorism Act, notice of travelling with a child to a geographical area, summary conviction, fine of $25,000, imprisonment of three years. Duty of parents, summary conviction, fine of $25,000, term of three years. Offences and penalties, breach for listed businesses, a fine of $500,000, imprisonment for two years.

We go on to the financial obligations, financing of terrorism, summary conviction. Under the Proceeds of Crime Act where we treat with money laundering which is a scourge of criminality in our jurisdiction, section 44, section 45, section 53, summary conviction to a fine of $5 million and imprisonment for five years.

We go on to the Insurance Act. The Insurance Act—listen to this one.

Registrants are subjected to:

> "on summary conviction to a fine of three hundred thousand dollars…continuing offences…thirty thousand dollars for each day…"

Prohibition against disclosure, restriction on registration, again, summary offences, fine of $300,000, imprisonment for one year. Securities Act, again, a serious issue, 156B, 165, summary offences, $2 million, imprisonment for five years. Let us go further, sections 11, 14, 54, 18, 51, 60, 90, 91, 92, price rigging, false trading, all of these things are summary offences heard before a Magistrate. Needless to say, I have just given a smattering of matters. There is the Copyright Act, there is the Trade Marks Act. There are multiple versions of the law where the Magistrate, as the first responder, is the arbiter of facts and of law.

But what we have, Madam President, is an incongruity of the law and that incongruity of the law has been the subject of consideration in this jurisdiction and in other jurisdictions for quite some time. I recommend to hon. Senators that they have a view of the excellent work by Dana Seetahal, *Commonwealth Caribbean Criminal Practice and Procedure*, in particular her reflections at page 8 and page 9 of the Magistrates' Court, again reciting what I have just said, that Magistrates are creatures of statute. Magistrates must act within the boundaries of the statute, they cannot step out of it and particularly, that Magistrates do not enjoy the immunity that Judges of the High Court enjoy.

So we are in a position, 101 years later, where Magistrates are now no longer what they were cast as in 1917 based upon the 1848 English law. Magistrates, in today's world, are Magistrates dispensing serious justice at first instance as arbiters of facts and arbiters of the law. But in our jurisdiction, we have had exhortations from the Bar, we have had exhortations from the magistracy, we have had exhortations from the Judiciary asking us to look at the anomalous

situation of the lacuna in the law where Magistrates can be subjected to claim for damages in their personal right where they are acting in circumstances, they are within no malice, no contempt but may be without their jurisdiction.

So what does that mean? What does "within jurisdiction" and "without jurisdiction" mean? Well the case law is very replete. First of all, in saying that that is a fairly straightforward yet technical consideration. Effectively what it means to the non-lawyer is that the Magistrate must act within the boundaries of the law that the Magistrate is applying. Is the Magistrate acting within the boundaries of the Children Act? Is the Magistrate acting within the boundaries of arrest procedures, the Summary Courts Act, the Municipal Corporations Act? If the Magistrate has not acted within the strict confines of what the Magistrate is permitted to do, the Magistrate is acting without jurisdiction. But the current law allows for the Magistrate to be subjected to a claim for liability even though the Magistrate has not acted with malice or without reasonable or probable cause as the legislation says, and of course, to the non-lawyer, what is meant by malice, what is meant by reasonable and probable cause is a very good question.

Put in its most simple term in the simple context, malice is something which the courts have had over a 100-plus years of consideration as to the definition of "malice". Reasonable and probable cause, again, are concepts that the courts have applied over and over again as to what an ordinary person, skilled in the particular area would consider to be the standard of reasonableness for the person looking at it. The reason that there is no statutory definition for "reasonable and probable cause", or statutory definition for "malice' is because the law is allowed to speak, and in the law being allowed to speak, the task of deciding what these terms mean is the task of the Judiciary.

And with each judicial pronouncement, the Judiciary develops what we call

the common law and the case law comes about and grows up over time to categorize what malice looks like, to categorize what reasonableness and probable cause looks like, and therefore there is no need statutorily to define these principles because the case law and common law provides for the understanding. It must be allowed to breathe and grow and metamorphosize itself over time into a different form of being as our society itself changes over the years.

So, Madam President, what tells us that we should do this? Let us start—Madam President, what time precisely do I end?

Madam President: You have one minute to three.

Hon. F. Al-Rawi: Thank you. So let us start with the various levels of altitude. What tells us that we should do this? Let us start off with an excellent piece of work. It is a report called the *Status of Magistrates in the Commonwealth*. It is a publication dated February 2013. It is the Commonwealth Magistrates and Judges Association, and they have given an excellent treaty saying, firstly, that:

> "The right to a competent, independent and impartial tribunal is articulated in the Universal Declaration of Human Rights (Article 10)…the International Covenant on Civil and Political Rights (Article 14)…in regional treaties…including the European Convention for the Protection of Human Rights and Fundamental Freedoms (Article 6), the American Convention on Human Rights (Article 8), and the African Charter on Human"—Rights—"and Peoples' Rights (Article 7)."

Now you know why I started with our Constitution in respecting international rights and I am grounding, therefore, that our own Constitution finds itself as a receptacle to receive these exhortations.

They go on to speak about the UN General Assembly recognizing certain things and they say:

> "Within the Commonwealth, the importance of an independent, integrity led judiciary has been recognised in strengthening democratic standards and in fulfilling Commonwealth countries' commitments to the Commonwealth fundamental values…"

Again, you understand the relevance of starting with the Constitution. It says this:

> "Magistrates are…"

—and I have already acknowledged this and everyone here can understand that—

> "Magistrates are usually the first and often the only point of contact"—for—"the public…"

We can see that by the numbers that I have referenced a little while ago, 146,000 cases. But in going through their recommendations, and in their exhortations, they have come up with a very important principle that Magistrates need to be protected because their immunity is something which is at risk. And this is found at page 20 of the report. It is under the heading "Immunity from Suit".

> "Magistrates shall enjoy personal immunity from civil suits for monetary damages in respect of any act done or omission made in the execution of his or her duty, or any act done or omission made in good faith in the purported execution of that duty."

They say that:

> "The rationale for the guideline is that without immunity from suit, judicial officers would be less able to perform their functions independently and without fear or favour. The proposed guideline is broadly based on Principle 16 of the *Basic Principles on the Independence of the Judiciary*. Note that sometimes the immunity from suit is expressed in wider terms to cover criminal proceedings. In the Australian context the immunity of magistrates is occasionally expressed as being the same as that enjoyed

by…"—Justices—"of the Supreme Court."

I ask hon. Members here to bear in mind that global perspective.

Let us come down to another seminal piece of work, the New Zealand Law Commission, in its publication, has gone on to consider that Magistrates ought to be given judicial immunity, as they have put it, for the following reasons.

"…reasons for protecting, according to judicial immunity, include:

- promoting"—fearlessness in the—"pursuit of"—justice and "the truth;
- ensuring that judicial function is fairly and efficiently exercised without improper interference;
- safeguarding a fair hearing in accordance with natural justice, which should reduce the prospect of error;
- promoting judicial independence;
- achieving finality in litigation in accordance with essential principles of *res judicata*…"

And saying that:

- "there exist adequate rights of appeal against, and rehearing of review of decisions itself…"

—therefore saying that there are safeguards in the due process route.

They go on importantly to say this and with your permission, Madam President, I quote:

"It is not necessary to search for the reason. It lies in the right of men and women to feel that when discharging…judicial responsibilities a judge will have no more reason to be affected by fear than he will allow himself to be subjected to influences of favour."

And, Madam President, the limits of judicial immunity also fell into their points of

consideration. They say that there should be a range of remedies available to aggrieve, reinforcing the responsibility and accountability of Judges. But, Madam President, we have got international and now regional fulminations as to the need to recognize a lacuna for Magistrates' protection being filled and the parity with Justices in the Supreme Court and High Court and Court of Appeal context.

Where else do we go? Let us come locally. Locally in Trinidad and Tobago, we have had a plethora of decisions. For the record, Civil Appeal No. P182 of 2014 from the Court of Appeal, Indar Jagroo as the Appellate and Anisha Mason, the panel of the Court of Appeal was Madam Justice Yorke-Soo Hon, Mr. Justice Ralph Narine, Justice of Appeal, Mr. Justice Mohammed, Justice of Appeal. We have the High Court version of that: CV 2012, 00129, *Anisha Mason v. Indar Jagroo* before Mr. Justice Rajkumar as he then was at the High Court. We have in the High Court, again, CV No. 2010, 2754, this is *Alistaire Manzano v the Attorney General* before Mr. Justice Ricky Rahim. We have in the Court of Appeal, Civil Appeal No. 45 of 2000 which is *Myrtle Crevelle in the Estate of Clyde Crevelle (deceased) v the Attorney General*. The panel was very distinguished Mr. Justice of Appeal Kangaloo, Mr. Justice of Appeal Mendonça , Mr Justice of Appeal Bereaux. And lastly, we have in P028, Civil Appeal of 2015, *the Attorney General and Mrs. Lisa Ramsumair-Hinds v Russell David* comprising a panel of the hon. Chief Justice, Mr. Justice Ivor Archie, Mr. Justice of Appeal Nolan Bereaux, Mr. Justice of Appeal Peter Rajkumar.

And the one that I think really takes us to the crux of this debate is the first case, Indar Jagroo and Anisha Mason in the Court of Appeal and I want to put on to the record that the Court of Appeal considered some landmark decisions, in particular three of them coming from other jurisdictions. The three jurisdictions, of course, included consideration of the following cases: *Mc C v Mullan* and

others, that is a House of Lords decision of 1984. There was the case of McCready, again, that is a case of July 13 1907 and then the last case is to be found in *Sirros v Moore* which is a 1972 case reported in 1974 and I will come to the dicta of Mr. Justice of Master of Rolls, Denning, in that particular case.

But suffice to say in our own jurisdiction, having looked at those three cases, this is the very relevant position to be found at paragraph 28 of that judgment and here is what Mr. Justice of Appeal Ralph Narine is saying to us effectively. The legislature, paragraph 28:

> "It follows that we have found no merit in this appeal. However, we must express our concern for the position in which a Magistrate is held personally liable for his actions while presiding on the bench, in a situation where he has acted without or in excess of his jurisdiction but without malice of any kind. The injustice that may arise in such a case, and the need for legislative intervention was recognised by the House of Lords in *Mc C v Mullan…*"

And I will come to that in a moment. And then they went on to quote the dicta of law Lord Templeman in that particular case.

So our own Court of Appeal tells us that in 2012 and in 2014, there is a lacuna in the law, the legislature, starting with this Senate, ought to consider filling that. And I am able to say that I have received correspondence from attorneys-at-law acting in the matter of the Jagroo case, Senior Counsel and eminent junior counsel, who wrote to me as Attorney General complaining that notwithstanding the fact that they had written my predecessor in office as Attorney General in 2012, in 2013, in 2014, that nothing was done in terms of treating with this and that the Magistrate was effectively going through an indignity of having to beg the State to give the Magistrate an indemnity for actions, and I might add that that indemnity

was never given in this particular case. So without amending the law, the Court of Appeal says that the Judiciary should tell the Legislature to have a look at this. The Executive has been approached, 2012 to 2014, under a previous Government, to do something about this. A request for an indemnity was made. The then sitting Attorney General Ramlogan did not grant the indemnity and the Magistrate had to worry about the position going forward.

So where do we come to now? I would like to put on the record the very important exhortations coming from the cases relied upon in our jurisdiction and those are the three cases that I have just referred to. That is *Mc C v. Mullan*, that is McCready and that is Sirros. And the one that I really find most emphatic is really the words coming from Lord Denning and I would like to read this into the record with your permission. This is to be found at page 136. Here is what Lord Denning had to say about the modern courts:

> "In the old days, as I have said, there was a sharp distinction between the inferior courts and the superior courts. Whatever may have been the reason for this distinction, it is no longer valid."

These are words from Denning in 1975. I was four years old at the time.

> "There has been no case on the subject for the last one hundred years at least. And during this time our judicial system has changed out of all knowledge. So great is this change that it is now appropriate for us to reconsider the principles which should be applied to judicial acts. In this new age I would like to take my stand on this: as a matter of principle the judges of superior courts have no greater claim to immunity than the judges of the lower courts. Every judge of the courts of this land - from the highest to the lowest - should be protected to the same degree, and liable to the same degree. If the reason underlying this immunity is to ensure 'that

> they may be free in thought and independent in judgment', it applies to every judge, whatever his rank. Each should be protected from liability to damages when he is acting judicially. Each should be able do his work in complete independence and free from fear. He should not have to turn the pages of his books with trembling fingers, asking himself, 'If I do this, shall I be liable in damages?' So long as he does his work in the honest belief that it is within his jurisdiction, then he is not liable to an action. He may be mistaken in fact. He may be ignorant in law. What he does may be outside his jurisdiction - in fact or in law - but so long as he honestly believes it to be within his jurisdiction, he should not be liable."

2.50 p.m.

And Madam President, I think that those words in 1975 as put in writing by none other than Lord Denning, himself. I think that these words are equally appropriate and applicable, so many years in Trinidad and Tobago later. *Sirros v Moore* was that case, Denning. There is a very interesting one which is *Mc C v Mullan* and others, and I want to refer to the last page of that, again to see the record right, and these are the words of Lord Templeman.

Lord Templeman, in going through his position says, in reflecting upon these words, he put to record this;

> "This appeal demonstrates that the time is ripe for the legislature to reconsider the liability of a magistrate and the rights of a defendant."

Again, this is a decision of the House of Lords 1984. We have our local jurisprudence relying upon the foreign jurisprudence. There is a plethora of law coming in particular out of Jamaica, which is equally persuasive. The Supreme Court of the Judicature of Jamaica, full court in their case of Brenton Henry, which is 2016, Jamaican full court, to be found there. That case again recited the law as it

appears in the three cases that I have referred to in England.

So where are we in the round right now? The Bill itself proposes in repealing and replacing clause 4 and sections 4 and 5 of the Act, we propose specifically that we have something to hold on to, which allows us an improved condition. The improved condition in the new clause inserting a new section 4 as the clause proposes, is that;

> "No action shall be brought against a Magistrate for any act done by him in the execution of his office in relation to a matter within his jurisdiction."

So we are saying here, the Magistrate must act within his jurisdiction.

We are going on in the new version of section 5, should this Senate agree to it to say, in subsection 5 (1);

> "A person may maintain an action against a Magistrate for any act done in a matter not within his jurisdiction or in excess of his jurisdiction, where it is alleged and proved that the act was done maliciously and without reasonable and probable cause."

So, the new section 4 says no action at all if you are inside of your jurisdiction. You have complied with the statute that the Magistrate is exercising consideration upon.

New section 5 says, if you are outside of your jurisdiction or in excess of your jurisdiction, but that you did not act maliciously and without reasonable and probable cause, well then you are exculpated. This is recommending a standard which judges enjoy. This is recognizing where we are in terms of our administration of justice, in having a parity between Magistrates exercising serious responsibility under the many laws that I referred to, Proceeds of Crime Act, Indictable Offences, Securities, Insurance, Copyright, Magistrates are exercising significant responsibility.

But very importantly, I ask this honourable Senate and in particular I now speak through you, Madam President, to our new Independent senators. One is obliged to take note of what this 11th Republican Parliament has purchased already. We have taken two very important pieces of law, and added one very important subsidiary law into the mix. The subsidiary law I refer to is the Criminal Procedure Rules, they actually have two versions of them, for our children in the children's criminal court arena and the Criminal Procedure Rules. And very importantly, we have the Family and Children Division Act, which created a division of the Family Court and Children's Court, where all crimes to be dealt with in respect of children, people under 18 years, are dealt within a specialist court. And in that specialist court, there is a merger of jurisdiction between a Judge and a Magistrate, a Master and a Magistrate.

And then we did something for the adults, in the Criminal Court, the Criminal Division and Traffic Division. And in that, we took for all people 18 years and above, an exact approach as we did for the children and created a division of courts. So it was a concurrence of jurisdiction running alongside, Masters and Judges and Magistrates, family and children division, criminal division, we have rules of court in effect.

It would be an absurdity, if we were not to apply a similar standard of immunity, and therefore it is not only within the meaning of the preamble of our Constitution or section 5 of our Constitution as the supreme law. It is not only within the architecture of the Constitution where we recognize the sanctity which our Judiciary ought to hold, in providing for a High Court, Court of Appeal and Privy Council.

Madam President: Attorney General, you have four minutes.

Hon. F. Al-Rawi: Thank you Madam President. But it is also in keeping with the

logistics of the reform of justice, because as we go into hyperdrive now, as we go into bringing more and more cases into the Summary Court arena, we need to make sure that our Magistrates can act without fear or favour, malice or ill will. And I ask honourable Senators would we speak the same way in this Chamber if we did not have section 55 of the Constitution? Section 55 of the Constitution gives each one of us as serving parliamentarians a privilege and immunity from criminal and civil proceedings for anything we say and do in this Parliament, including our committees.

So that we may act with a freedom of speech and privilege without fear or favour, malice or ill will in the discharge of our responsibilities. How do we apply a lesser standard to our Magistrates is the question. We have modelled our law behind a few jurisdictions, we have looked at Bermuda, we have looked at the United Kingdom, but very importantly in adjusting our law we have looked to the dicta of our own Court of Appeal in the many judgments that I have recited.

So, Madam President, I am to say now, the law is proportionate, it is rational, there is a legitimate aim, it addresses a mischief which is in need of address; it has stood on the books from 1917 to 101 years later in 2018, as it now stands. Our courts have made an exhortation echoing the type made by courts in other jurisdictions. The Commonwealth Association of Magistrates endorses this, the fora convened in New Zealand addressed this, and I think that I can also say that our own Magistrates have asked for this. And that is to be found in their own correspondence and in some of the advocates for their cause.

I look forward to submissions from hon. Senators this evening, I know that we are bringing you close to the edge of the month of December because, I know that we have another Bill yet to treat with in this Senate, but I do look forward to the contributions coming from Members so that we can together work on creating

good law for the benefit of Trinidad and Tobago. I beg to move. [*Desk thumping*]

Question proposed.

Sen. Wade Mark: [*Desk thumping*] Yes, Madam President, like our distinguished and hon. Attorney General, we too are committed to making good laws that are proportionate, legitimate and have some degree of rationality. Madam President, like diamonds, you have to dig deeply sometimes beneath the surface to really discover its real value and significance. And we on this side have done some drilling down into this piece of legislation. And I want to tell the Attorney General from the outset that we are with him in attempting to ensure that judicial officers in this instance, Magistrates can go about their business fearlessly. [*Desk thumping*] They can go about, Madam President, doing their job without any let or hindrance. But I am happy that you made reference to section 55 of our Constitution, because I can speak, as you know, in this Parliament and I do have protection within this jurisdiction. But if I accuse someone, if I libel someone and I escape your wrath, I dare not go outside of the precincts of this Chamber and repeat in the public. Because if I go on the pavement like the Prime Minister is always threatening us to go, I can tell you, Madam President, charges will be brought against me. Meaning that I have acted outside of my jurisdiction.

So let us get this thing clear, Madam President, that we are in favour and I agree with the Attorney General, Madam President, that even when he referred to Lord Denning, repeatedly, one of the things that he kept saying over and over is within one's jurisdiction, within one's jurisdiction, honestly believe that you are acting within one's jurisdiction. That is the critical point that we need to pay attention to. You cannot go outside of your jurisdiction, Madam President, either excessively or in a malicious manner without probable and reasonable cause as we are advised, and take action and not to expect consequences.

So, Madam President, we go to the 1917 law, which is 101 years of age, and the drafters and framers, the colonial persons who were in charge of the country at that time, they formulated legislation. And Madam President, they offered a right to the citizens of the colonial period, and as you know and we have always been advised under our Constitution, section 6 of our Constitution, you have saved law that is a piece of saved law that is the Magistrates Protection Act of 1917.

Madam President, I want to share with you what the 1917 law says, because no one can argue as I said, with the protection of a Magistrate from personal liability, Madam President. We want to join with the Government in seeking to give that Magistrate a protection that currently does not exist. But there are some concerns, Madam President.

Madam President, in section 4 of the Magistrates Protection Act which is being repealed by the amendments before us does provide protection for the Magistrate and if I may share with this honourable House briefly what this does and what it says, Madam President. It says that;

> "The endorsement of the writ of summons in every such action shall allege either that the act was done maliciously and without reasonable and probable cause, or that it was done in a matter"—or manner I should say—"not within the jurisdiction of the Magistrate, otherwise the writ shall be set aside…"

So, Madam President, what this section of the legislation is saying is that once the Magistrate has acted within his or her jurisdiction and not without or in excess of his or her jurisdiction and it is not malicious, or it is not without reasonable and probable cause, you cannot take action, Madam President, against a sitting Magistrate. That is clear. That is what section 4 says. So the Magistrate does enjoy that protection.

What causes the problem, Madam President, is section 5 of the Magistrates

Protection Act and what this section says is that,

"Any person injured"—Madam President, they are talking about John Public, they are talking about the ordinary man in the streets of our nation. Section 5 is stating that,

> "Any person injured by any act done by a Magistrate in a matter not within his jurisdiction, or in excess of his jurisdiction, or by any act done in any such matter under any conviction or order made or warrant issued by him, may maintain an action against the Magistrate without alleging that the act complained of was done maliciously and without an reasonable or probable cause."

Madam President, this is what section 5(1) is saying, you know the Government is seeking, Madam President, to have us today repeal this section. Madam President, we are being asked to repeal this section. So we are being asked, Madam President, to allow the Magistrate a free hand in excessive action without that person's jurisdiction and if that person is acting in a negative fashion.

So, the Government is asking us to remove that provision. So whereas now, Madam President, I can take action against a Magistrate who might act outside of her or his jurisdiction in excess of his or her jurisdiction, Madam President, and I do not have to prove malice. I do not have to prove that Madam President, or allege any act done without any reasonable or probable cause.

What the hon. Attorney General is now proposing under section 5(1) which he is repealing, Madam President, he is now saying that the ordinary poor individual, who a Magistrate has taken action against outside of his or her jurisdiction and without probable reasonable cause, we are now being told "do not take any action against the Magistrate".

Madam President, I do not have to prove at this time as an ordinary member

of the public, maliciousness on the part of the Magistrate. I do not have to prove at this time, probable or reasonable cause at this time, under section 5(1) of the Act that we have before us. Once the Magistrate, Madam President, like I, goes out of these four walls and accuse someone in a libelous way, I can be charged that is why any Member of Parliament can challenge me and say repeat outside, because you have protection inside. You know why they challenge me to repeat outside, because I do not have the protection of the law outside of this Parliament. [*Desk thumping*]

So, Madam President, why should anyone be allowed to operate outside his or her jurisdiction? Why must someone be allowed to be given the power, whimsically, arbitrarily to act outside his or her jurisdiction and then there are no penalties attached. This is what the Attorney General is asking us to do today; to allow a judicial officer, not within the law, Madam President, not within the law, if it is within the law we support that. But, Madam President, you are telling us go outside of the law and, Madam President, the hon. Attorney General has drawn reference to many cases both internationally, regionally and nationally and he spoke about Indar Jagroop and some person called Anesha, I think what is the surname? Anesha, I forgot the name of the individual, but that is the case, Madam President.

Sen. Ramdeen: Nathan.

Sen. W. Mark: Nathan, Madam President, and what happened, Madam President, as you will recall is that the Magistrate, there was a custody matter and the Magistrate was told by some individual who did not want that child who was under 17 years at the material time, to be in the home, the marriage home because the child was giving trouble. But the child did not commit an offence, and you know what happened. The Magistrate took it upon himself, even though he did not have

the power under the law to remand that child at the Golden Grove Prison for almost five months and the child did not commit an offence. Well, they took action against the Magistrate and both at the level the High Court and the Court of Appeal, the Magistrate was found to have acted outside of his jurisdiction.

So, Madam President, how can you act outside of your jurisdiction and expect a "bligh". Madam President, we will be encouraging misfeasance, malfeasance, we will be encouraging abuse of office, and we cannot as a Parliament become party to any such action or development. We cannot. How can we be called upon to do that?

Madam President, may I also advise as I understand the law, I know you are a lawyer and if I am going wrong you will advise me. Madam President, as I understand it, if currently I enjoy a right, and I can take a Magistrate, Madam President, who has acted outside his or her jurisdiction and has sent me to prison and the Magistrate has no power to do so. Madam President, I can take action against that Magistrate. [*Desk thumping*] If the Magistrate sends me or any one of us in this Parliament to prison and the Magistrate does not have the power do so. I have the power to take action against the Magistrate that is what section 5(1) allows me to do as a citizen of this Republic.

So, I now enjoy a right as a citizen it was passed in 1917, December1917, 101 years ago. We are now in 2018, Madam President, 101 years later. You want to remove my right as a member of the public, if you are removing my right as a member of the public, then you have to bring a special constitutional majority and attach a certificate to the Bill that you have before me. [*Desk thumping*] Because, Madam President, you are aware, I am no lawyer, but I have been in this Parliament for a few years, so I have been do law. [*Laughter*]

And, I am seeing in section 6 of our Constitution where it talks about

exceptions for existing law. And under that section it says, Madam President, if you are repealing or re-enacting with modification an existing law and it is held to derogate from any fundamental right guaranteed by Chapters 4 and 5 or the chapter that I am dealing with here, in a manner which or to an extent the existing law did in previously derogate from that right. Then subject to sections 13 and 54, you are subject to section 13 and 54.

So, the Attorney General, is trying to derogate, whittle down, diminish a right that we currently enjoy, Madam President, under saved legislation in section 6 of our Constitution. And if the, Attorney General, is seeking to do so, there once you are whittling down my rights or any citizen's right then you are violating sections 4 and 5 of the Constitution and you require a special constitutional majority to pass the legislation.

Madam President the hon. Attorney General has brought legislation today that says it is a simple majority, but it is taking away the citizens' rights. You cannot take away citizens' rights that they currently enjoy and do not attach a certificate that says you need a three-fifths majority. You cannot do that because this is saved legislation. So, Madam President, it is baffling me why we would want to go down that particular route.

So, Madam President I was looking at what is called Halsbury's Laws. And Halsbury's Law in the context, Madam President of what we are dealing with in terms of what is called judicial privilege and the nature of protection they identify in their publication, 1 only got one page of it. It was a bit thick, so I only took one page of it, Ma'am, and I think I better study law.

Hon. Senator: You will graduate just now.

Sen. W. Mark: So, Madam President, under Halsbury's Law, it states, and I think just for the record a very short piece, Madam President, I want to share it with you

and this honourable House, because you know it tells us what "protection" really means and when you talk about "privilege" and the nature of privilege in the context of protection, what it means in the context of a superior court of law and an inferior court of law.

So, Madam President, what it says is this, and I quote;

> Wherever protection of the exercise of judicial powers applies it does not matter that the judge was under some gross error or ignorance or was actuated by envy, hatred, or malice. The protection applies provided the judge acts in the exercise of his office and in the belief though mistaken that he has jurisdiction.

So, even a Judge once he has the belief that he is acting judicially and within his jurisdiction, he is covered by immunity according to this definition.

It goes on, Madam President, to say the rule applies differently to superior and inferior courts and I quote again, Madam President;

> A superior court where Judges are located is protected even though the Judge has exceeded his jurisdiction, so long as he has acted judicially.

This is what Halsbury's Law is saying. So it is not to say that the judge escapes, you know, Madam President, from liability. Once the Judge can prove—he can show that he has acted rather judicially he is in good stead and it goes on, Madam President, to say,

> An inferior court such as a Magistrates' Court which exceeds its jurisdiction is not protected unless the exercise of jurisdiction was caused by an error of fact in circumstances where the court had no knowledge of or means of knowing by the relevant facts.

3.20 p.m.

Madam President, it says, and I close by this statement, or sentence:

> A court which has jurisdiction is protected even where it proceeds irregularly within that jurisdiction.

So once you have jurisdiction and you even exceed that jurisdiction, once there is a belief, according to this definition in the case of a Judge, and the belief is that the Judge was acting judicially, then that Judge is protected and has that privilege of protection from any attempt at bringing any Motion or action against him.

That is not so, Madam President, with the lower court—how it is called?—the inferior court, which is the magistracy or the Magistrates' Court. So, Madam President, what we are saying on this side is either the Government brings a special majority this evening or they leave the law as is, and we would like to propose an appropriate amendment for the Government's consideration so that we can ensure that the Magistrate, when action is taken against that Magistrate, that Magistrate does not have to go in his personal pocket to sell his home or his property. We have to protect the Magistrate, and I support that and we support that here. We do not believe a Magistrate should be personally liable. [*Desk thumping*] So we are with the Attorney General on that, but what we have a difficulty with is the Attorney General seeking to take away, to abrogate, to violate, to breach, to remove a right currently enjoyed by the ordinary man and woman in our society. We cannot be in support of that.

Madam President, you have been in the courts like so many of our lawyers here, and I have been advised by those lawyers that the hardest thing to prove in a court is malice. Malice is a very hard thing to prove in a court, and something called, probable and reasonable cause, what is that? You are asking an ordinary man who cannot even get money to pay a lawyer, he has to go through, what is called, legal aid; you are asking him, if a Magistrate takes action in excess of her jurisdiction against him—you are telling them, listen, prove, Madam President;

right now he does not have to prove anything under (5)(1). He has nothing to prove. But you are now saying, "Listen, we are amending the law, and the law is being amended to say, ordinary man, if you want to take action against a Magistrate, forget the Magistrate as acting outside his or her jurisdiction, you know, forget that". "That does not arise. The Magistrate could do anything." In other words, Madam President, what we are being told today is that we must put the Magistrate in this country above the reach of the law. The Magistrate cannot be above the reach of the law. Everybody must be subject to scrutiny and nobody is above the law in Trinidad and Tobago, including a Magistrate.

So what we are being asked here today, Madam President, to do, is to put pressure on the small people in order to satisfy the interest—as I said, I have nothing against Magistrates. We in the Opposition have nothing against Magistrates. We believe that they should not be personally liable. We support that. They should not go in their pockets to pay, but do not remove the right of the ordinary people to take action against a Magistrate if that Magistrate exceeds his or her jurisdiction. And therefore what we are proposing, Madam President, we are proposing, for this Senate's consideration, the following amendment. We are advancing you leave the law as is at this time. Do not touch section 5(1) of the law, and we are saying, leave the law as it is. What we are saying, Madam President, we want to put a new clause 4, and the new clause 4 is going to read:

> Where in any claim brought against a Magistrate in the execution of his duties, any order is made for damages or cost, such order shall be met out of the Consolidated Fund.

We are proposing that that be a direct charge on the public purse.

So we allow the Magistrate, Madam President, not to be liable personally for any liability. [*Desk thumping*] That is what we are suggesting for the

consideration of this honourable Senate, but we refuse to support any measure that is going to diminish the rights of our citizens to take action against any Magistrate who happens to exceed his or her jurisdiction, and people end up in prison as a result of those actions on the part of the Magistrate.

Madam President, you would agree with me that there are many challenges that our Magistrates face today. Madam President, even the Attorney General has brought to our attention the amount of cases. In fact, I think the Attorney General quoted in his opening, over 165,540-something cases went before the magistracy in the year 2017/2018, according to some report he quoted from. Madam President, and he went on further to desegregate, disaggregate, those cases in terms of capital, non-capital, traffic, and a number of others, family included, and he was able to share with us the load, the backload, the backlog, 40 per cent, 30 per cent. In the case of inquest, he said, 98 per cent.

So, Madam President, what is happening is that there is a complete breakdown in the quality of the administration of justice in our country. [*Desk thumping*] So we know delays are contributing towards the administration or the challenges faced by the administration of justice in our country. We know, Madam President, that the magistracy, they are faced with all kinds of challenges. They work long hours. They get poor remuneration packages. They are underpaid. They need training. They need more security. They need better accommodation.

Madam President, if you go to some of these courts today, they are worse than pigsties. I mean, listen, you go to these courts today—

Hon. Senator: No fans.

Sen. W. Mark:—and no fans, Madam President, and we are saying, whilst the Government is bringing this measure to deal with the Magistrate, in terms of protecting the Magistrate against personal liability, the Attorney General needs to

pay attention to what is happening at the level of the administration of justice in our country, and these are issues that we have to pay attention to. So, Madam President, we are arguing on this side that the Government needs to do some homework, go back to the drawing cards or the drawing table and come up with something that is more acceptable and meaningful.

So, Madam President, if we go again go to the legislation that is before this honourable House, you would see that in clause 3 the Government is amending—section 4 is repealed and replaced, and we are being we told that, as you have been noting, and you have noted, that no action shall be brought against a Magistrate for any act done by him in the execution of his office in relation to a matter within his jurisdiction. Madam President, as I said, you cannot argue with that and I cannot argue with that, but what we cannot understand, what we could not appreciate and fathom is this attempt by the Government—maybe, as I said, they did not think it through properly.

I want to ask the Attorney General, Madam President, through you, did they consult with the Law Association on this matter? Who did they really consult on this matter? We know, Madam President, from the cases that we have looked at, that the High Court, the Court of Appeal, in particular, have been making overtures to the Legislature and to the Parliament to look at this whole question of personal liability. We know of the case in the House of Lords in which a similar appeal was made. So we know that is a matter that has been out there for some time and we are trying to see how we can rectify that situation, but we cannot really deal with it in the way that the Government is attempting for us to deal with it at this time. Madam President, we know that historically, as I said earlier, Judges have been protected because of the need to allow them to exercise their duties, and like the Magistrate as well, without fear of personal liability, and therefore we want that to

continue, Madam President.

So, Madam President, in a nutshell, we would like to submit, in summary, our concern as I wrap up. We on this side would like to work with the Attorney General and the Government to deal with the lacuna in the law as it relates to Magistrates being exposed to personal liability. We have proposed an amendment to achieve such an objective. Madam President, we object, very strongly and vehemently, to any decision or action on the part of the Government to reduce and/or diminish the rights of the ordinary citizens at this time. If the Government wishes to pursue that course of action, we are calling on the Government to insert a certificate of three-fifths majority in the current legislation. So we are therefore advising the Government, leave the law as is and just include this amendment so that when action is taken against a person—

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

Sen. W. Mark: Thank you very much, Madam President. If any action is taken against a sitting judicial officer, in this instance a Magistrate, then that right would be available to any citizen who feels aggrieved. Madam President, you would know that when you go to a court you feel intimidated, you know, because of the kind of environment you are in. You have a Magistrate there who feels she is very, very powerful, or he or she feels very powerful, and sometimes decisions can be taken in a whimsical and arbitrary fashion. And in those circumstances when you take arbitrary decisions—Madam President, there is a case which an individual won; he went before a Magistrate and he uttered some words and he walked out, and the Magistrate, apparently, was upset over the fact that he uttered words that the Magistrate did not like, he walked out, and then the Magistrate brought charges under a particular part of the Act and that person was held in contempt of court. Well, that person took the Magistrate to the High Court for violation of his

constitutional right to liberty, and, you know—Crevelle case, and he won the case.

So, Madam President, you "cannot immune", or you cannot place the Magistrate, as what we are trying to do, in a sacred chamber and say, "You can do whatever you want". "There is nothing that we are putting in the hands of the ordinary people to stop you." And this is wrong. And I think any rational, informed individual, understanding what we are dealing with here today, cannot, in good conscience, agree with the amendments [*Desk thumping*] that we are being asked to support today. We cannot support the amendments in its current form. We are with the Government to strengthen the immunity, to strengthen the protection given to the Magistrate, but we cannot do so whimsically, arbitrarily at the expense of the rights of the citizens of our republic, and this is where we part ways with the Government on this particular measure that we have before us.

In closing, Madam President, we are prepared to work with the Government to tighten the legislation, to amend where is necessary, but we cannot support the legislation in its current form. You will not get the support of the Opposition if you decide to go through the Bill as it is. With those few words, Madam President, I thank you for allowing me to speak on this matter. Thank you very much, Madam President. [*Desk thumping*]

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

Sen. Anthony Vieira: Thank you, Madam President. Madam President, I remember, vividly, the very first time I went into the court of former Magistrate, His Worship Mr. Ian Seukeran. This was in Tunapuna in the early '80s. I was a young lawyer at the time, and I recall vividly, the crowded courtroom, the murmured voices, lawyers seated at the Bar table, all queuing up to have their turn; police prosecutor at the far end of the corner, and at the centre of it all, gavel in hand, holding everything together and moving things along, the presiding

Magistrate. Now, Mr. Seukeran, like many other Magistrates, then and now, he was the sheriff of his town. He appeared to know all the characters coming up before him, and he dispensed community justice with a mixture of fairness, compassion and pragmatism. Perhaps a stern tongue-lashing and a warning, perhaps words of inspiration and some guidance, perhaps a fine, but always with the intention of achieving a fair and just result.

So, the hon. Attorney General asked, "What do Magistrates do"? Well, not much is said about them in the Summary Courts Act. The definition section says:

"'Magistrate' includes a Magistrate appointed on contract…"

Section 3 says:

> "There shall be such number of Magistrates in the public service as may be required for the purposes of this Act."

And section 3A says that:

> "No person shall be appointed a Magistrate unless he has been admitted to practise as an Attorney-at-law in Trinidad and Tobago and has practised as such for a period of not less than five years…"

But none of that really conveys the full picture. Magistrates are the foot soldiers of our Judiciary. The Attorney General said, they are full-time frontline persons. They dispense justice within their districts and their communities, as community leaders, knowing all the persons appearing before them and tailoring their orders and decisions to suit.

The Magistrates' Court is where the average citizen finds himself when he gets into trouble with the law or he has some problem that he needs to have resolved. Mothers demanding milk money; delinquent youth in need of discipline and guidance; persons charged with the possession of drugs, traffic violations, and other summary offences; cattle trespass and unclaimed animals; offences in streets

and the control of music in public places; drunk and disorderly behaviour; setting bail; preliminary enquiries; coroner's inquest; Magistrates handle most criminal cases and more. They are indeed the stewards who shape and protect our local communities, and sometimes making decisions reflective of the local community, requires a certain bending of the rules, or making a chancy judgment call with the inherent risk that you may not have gotten it quite right within the strict limits of the law.

I have come to respect and admire many Magistrates. They are critical to our legal system. In 1924, Lord Haldane, then Lord Chancellor, in his presidential address to the Magistrates Association, spoke on the attributes he felt that were essential in a good Magistrate. He said:

> What I want of a Magistrate is a God-fearing person of a just mind and fair outlook, who does not seek what are the politics or the social position of the people before him, but will try to come to a just conclusion.

In his address to the Magistrates workshop in October, 1978, His Excellency Mr. Ellis Clarke, President of the Republic of Trinidad and Tobago, said:

> On our magisterial bench we want men and women of character, men and women who command, not because of the fact that they are Magistrates, but because of themselves. The respect of the people who appear in court, so that people appear before them with confidence, knowing that there will flow from them, as from a pure fountain, the clear water of justice.

Many of our Magistrates have been elevated to high positions. Judges of the Supreme Court, President of the Industrial Court, Chairman of the Tax Appeal Board, Ombudsman, Chairman of the Integrity Commission, all were once Magistrates. So these are people of ability, and indeed our country has been blessed in having such good and faithful servants.

As we have heard, the Summary Courts Act was passed in June, 1918, over 100 years ago, and, by and large, apart from decisions being appealed to the Court of Appeal, the system pretty much functioned without challenge, but all of that changed in July this year when the Court of Appeal gave its decision in the case of *Jagroo v. Mason*. We have heard of *Jagroo v. Mason*, both the Attorney General and Sen. Mark talked about it. This case highlights a chink in the armour of the court, specifically, that a well-intentioned Magistrate, acting outside the scope of his powers, can be sued and may be personally liable. Now, obviously, this can, and it will have a chilling effect on all those who administer justice in the Summary Courts.

Our Magistrates are called upon at times to handle complex and difficult cases; complex and intricate in terms of the law and difficult in terms of the situation itself. And in Jagroo, which I am going to go into in a minute, the Magistrate found himself in a genuine conundrum. Before going to Jagroo, I just want to say, our Magistrates have little or no support. They do not earn a lot of money. They have families to provide for. The last thing they need is to find themselves as defendants in a court in civil suits for acts done by them, even when well intentioned and done in good faith, in respect of matters outside of their jurisdiction. Even if they succeed in defending the action, the potential liability and the likely cost involved will be off-putting. Our Magistrates do not deserve to find themselves in such a situation. The threat of personal liability can and will also undermine the administration of justice.

Certain interests may seek to intimidate and thereby pervert the course of justice by subtly, and sometimes not so subtly, intimating that unless the Magistrate does this or orders that, he will find himself in court having to answer claims for damages. I could hear the voices, "If yuh only do dat, we going straight

to de High Court". Now, what happened in Jagroo? In the Jagroo case the Magistrate had been ordered by the High Court to pay damages for false imprisonment. The claimant, as we have heard, having been repeatedly remanded to the women's prison at the Golden Grove in Arouca. The trial Judge found that the claimant was entitled to damages as the Magistrate had no jurisdiction to commit her to prison and that he was not immune from suit. But it was not disputed that the Magistrate was only trying to help. The situation arose under a fit and proper custody application where the Magistrate was informed, among other things, that the 17-year-old girl was beyond control. The child's conduct was disruptive and she was not wanted at home as it was damaging her father's marriage. The magistrate concluded that the child could no longer stay at home with the family, and what did he do, he made enquiries. He made enquires with respect to safe houses and children's homes, including the St. Jude's Home and other relatives of the child. All enquiries proved to be unfruitful. So, on that basis he adjourned the matter and remanded the child to the women's prison.

It was not in dispute that the child was never charged with any offence, that the Magistrate had no jurisdiction to order the detention of the child to the women's prison, and that the Magistrate acted without malice and what he thought was in the best interest of the child. Long story short, the Court of Appeal found that the Magistrate was personally liable once he acted without jurisdiction. Even in a situation where he acted without malice of any kind, he was personally liable once he acted without jurisdiction or in excess of his jurisdiction.

Now, the Court of Appeal is a court of law, and the court is going to call out the law as it sees it. It does not make the law. The court has expressed concern for the position of Magistrates and has suggested that the time is right for the Legislature to reconsider the liability of Magistrates. So, *Jagroo v. Mason* has

exposed and highlighted a serious vulnerability, one which will dampen and fetter the resolve of our Magistrates in being able to act fearlessly and impartially, and generally to do what is necessary in the interest of justice and our people.

I agree with the sentiments of the court that a Magistrate—this is the Court of Appeal, they are saying a Magistrate should not be personally liable for an innocent error of law or fact. I agree, our Magistrates deserve better. I want to suggest it makes little or no sense shoring up our crime detection, shoring up our enforcement capabilities and then having cases break down at the level of the court because the Magistrate feels enfeebled or he is intimidated—"leh we make ah joke of everything".

3.50 p.m.

Now, what does indemnity mean? Indemnity means holding harmless against claims and liabilities, and there are indemnity provisions in many other statutes and bits of legislation. Just to quote a few, section 13 of the Securities Industry Act:

> "No action or other proceeding for damages shall be instituted against a Commissioner or an employee or agent of the Commission for an act done in good faith in the performance of a duty or in the exercise of a power under this Act."

Section 2 of Public Authorities Protection Act:

> "No action shall be brought against any person for any act done in pursuance or execution or the intended execution of any act or of any public duty or authority or in respect of any neglect or default in the execution of any such act, duty or authority."

Section 26 of the Data Protection Act:

> "Proceedings shall not lie against in the Commissioner or a person acting for

or under the direction of the Commissioner for anything done, reported or said in good faith in the exercise or performance or the intended exercise or performance of a duty, power or function..."

So the Magistrates are not being given any extraordinary "bligh". They are not being given any special treatment with this amendment. No one in public office, especially where such a person is acting in a judicial or quasi-judicial capacity, should face personal liability when acting in good faith or for an innocent error of law or fact. That is a basic principle.

I want to say it is important to note that this legislation does not preclude appeals to the Court of Appeal; nothing changes there. So the Magistrate has made an error or he called it wrong, the aggrieved person can still go to the Court of Appeal and have that decision revoked or changed and challenged. It is about personal liability of the Magistrate, that is all that this is speaking to.

I also want to say, we were talking about whether this needs a majority because the rights of the citizens are being taken away. No, nobody's rights are being taken away. The aggrieved citizen still can maintain a claim for damages. He will maintain it against the State; we have a State Liability and Proceedings Act. The State will pay compensation due to any person who has been wrongfully dealt with or who is justifiably aggrieved. The State can be sued for the wrongful acts of its servants and agents.

So this is not about supporting the AG or the Government. This legislation has its source in a recommendation from the Judiciary. It is not about politics. It is about supporting and enabling the magistracy and the Magistrates profession so that they may better serve us.

I have some thoughts and suggestions about the wording of the indemnity in the Bill, which I will deal with at committee stage. But it needs to be appreciated

also that the indemnity being offered is not absolute, it is qualified. An action can still be brought against a Magistrate where he or she has acted maliciously and without reasonable and probable cause. So the legislation here is balanced, it is fair, but more than that, it is right and just.

I thank you, Madam President.

Sen. Garvin Simonette: Thank you, Madam President, for permitting me to join in this debate on a Bill to amend the Magistrates Protection Act.

Madam President, I wish to endorse and support the hon. AG's approach. What the Bill in effect is seeking to do is to address a distinction between the immunity enjoyed by Judges of what we call "superior courts" and Judges of inferior courts. Judges of our High Court enjoy absolute immunity from civil suit in respect of the work they do in the court. Whereas those Magistrates who are considered to be conducting their judicial work in the inferior court do not enjoy such immunity.

Madam President, the Bill seeks to amend the Act by permitting or limiting the scope of actions permitted to be brought against a Magistrate who is acting within jurisdiction, and accordingly, prior to this, who would have been exposed to liability personally.

Given the proliferation of cases handled in the magistracy, and given the changes being brought about in the administration of criminal justice in particular, it is in the public interest that Magistrates feel empowered to dispense justice fearlessly and without favour. Accordingly, providing a similar immunity to that enjoyed by the Judges of the High Court is desirable in the overall public interest and administration of justice.

The distinction also is a distinction of anachronism coming out of our colonial past. Whereas in the days of feudal transacting Magistrates may not have

been trained, in the modern society that we live in, Magistrates certainly are well trained and in any event required to be lawyers of some five years' qualification. So that errors that in the past may have been made by persons without training, are less likely to be made today than in earlier times out of which grew the distinction between superior and inferior courts.

In relation to the question of the jurisdiction of the Magistrate, that too is well defined by the various laws our Magistrates are asked to dispense. Accordingly, the Magistrate who acts innocently in a judicial capacity and makes an error ought not, Madam President, to be exposed to personal liability as is the case now.

My learned friend Sen. Mark considers that there is a right that is being abrogated by the amendments being proposed by the hon. Attorney General, and I could not disagree more with that position. Any aggrieved person has an ordinary right of appeal if a Magistrate gets the issue wrong, and that appeal lies in the Court of Appeal.

In relation to the question of the Magistrate who acts outside the remit of his jurisdiction or her jurisdiction, the aggrieved person who considers that that has also been affected or actuated by malice or without reasonable or probable cause, has still enjoyed his cause of action, albeit they must now bear the burden of proving that malice or that there was an absence of probable cause or reasonable cause. So that the proposition that a fundamental right has been abrogated and removed, contrary to the protections afforded in the Constitution, is with respect a misplaced argument.

The immunity that the Magistrate would enjoy is an immunity that will now permit Magistrates to proceed to dispense the work that they must do across a broad section of law, without favour and without fear of conducting their work.

This has been recognized in the cases cited by the Attorney General and in particular in the House of Lords case of Mc Cullan, *McC v Mullan* in the judgment of Lord Templeman.

It is important to note what the distinction to dispense the immunity requires. A Magistrate may be acting fully within his jurisdiction but he gets the law incorrect, and once he has been acting judicially in that capacity he ought not, or she ought not, to be exposed to personal liability.

Similarly, a Magistrate may be conducting a case in which he is not permitted, or he has fell into error in convicting someone, applying a sentence that he had no jurisdiction to apply but he did so innocently in error, again, he should not be, or she should not be, exposed to any personal liability.

It would be entirely different if such a Magistrate were to look upon an accused and say, "Well, Sen. Mark is wearing a Nehru suit that I do not like", and accordingly impose an arbitrary sentence on him because of some malice. Then Sen. Mark of course would have his cause of action once he can prove such malice, and no fundamental right of Sen. Mark has therefore been abrogated.

It is important I think, Madam President, that the amendment be carried, simply given the volume and weight of the work conducted and undertaken by our magistracy. The freeing up of the criminal justice system, permitting for the Magistrates to engage and transact more cases and caseload, means that there is a greater exposure to likely actions that are launched where Magistrates, though acting wholly within their judicial capacity and jurisdiction, get an item of law wrong or an aspect of the law incorrect.

So that I support the amendments to be moved by the Attorney General. I cannot agree with my learned friend, Sen. Mark, on the question of the abrogation of rights. Rights of the citizen are sufficiently protected and enshrined in the

appellate procedures, and within the preservation of the right or cause of action should a Magistrate be actuated by malice, or should he or she embark upon conduct or a sentence without reasonable or probable cause.

Madam President, I can see no reason to not approve the amendment being moved by the Attorney General and with those words I close in support of this Bill.

Sen. Sophia Chote SC: Thank you, Madam President. May I say at the start of my very brief contribution that I support the proposed amendment, and I will very briefly set out my reasons for doing so. I speak because the reasons that I rely on have not yet been mentioned, but I think they might be of interest or they may be of relevance in the consideration of this amendment.

Now, there is a group called the Commonwealth Association of Magistrates and Judges, and they meet regularly. The whole purpose of it is to ensure that the Judiciary is respected, and that member countries treat their Judiciary in accordance with the Universal Declaration of Human Rights, and their citizenry in accordance with the Universal Declaration of Human Rights. This has special significance for us, because the anniversary of that declaration was quite recent.

There was an important report in 2009 which spoke about the status of Magistrates in the Commonwealth, and the apparent disparity of treatment between Magistrates and Judges, regardless of how the Magistrates are called. Now, this is not something that is unique to our jurisdiction, even though there is a case, a recent decision from the Court of Appeal, which speaks about the apparent disparity in the legal treatment of Magistrates.

The fact is, it is wrong, because we have signed on as a country, or we have agreed as a country with what is referred to as the Latimer Principles, and that is to say that we must ensure that our Judiciary, and this includes our magistracy, that their independence is adequately safeguarded, and that is crucial, whether you are

talking from the Chief Justice, the Justices of Appeal, the High Court Judges, the Magistrates Court, the district Judges, as some of them are now going to be called. The independence of the Judiciary, and I am talking about the offices, must be adequately safeguarded. And it falls on our shoulders, as members of the Legislature, to ensure that there is that level of deep protection for the independence of the Judiciary.

A task force was set up to consider what was going on with these countries which had signed on, and Trinidad and Tobago is one of those countries to look at how the association could deal with the apparent elimination of breaches of the Latimer Principles. That is to say, where there was perpetuation of the distinction between the two arms of the Judiciary. In 2011, which was not so long ago, the member association to which I referred when I began my contribution, called upon all law Ministers, so that would mean your Attorneys General, to consider taking appropriate steps to strengthen domestic legal framework, and other measures assessing the independence and integrity of the magistracy.

So I see that this proposed amendment being brought by the hon. Attorney General is a step, a logical step, in accordance with what began a considerable time ago of the consideration of the impact that this disparity in treatment has on a system of justice.

I must say that I do not quite get the point about there being any constitutional issue. It could be that I missed the point; it could be that I do not know enough about constitutional law. But to me if it is that that would be a concern, then we would see the citizen losing something. Now, the citizen in my respectful view, if a Magistrate oversteps—and judicial officers, whether they are Judges or Magistrates, sometimes overstep, they are human beings. But if it is that we were taking away some sort of recourse that the citizen had, from the citizen,

then I think perhaps that then a constitutional issue may have arisen, but we are not doing so.

Somebody who is wronged, let us say, by a Magistrate who has overstepped or acted ultra vires or acted improperly, still has the recourse that he or she had before. First of all if the person is convicted the person can go to the Court of Appeal, as with every other person who is convicted. If the person is not convicted, but there is some other wrong done such as false imprisonment, as occurred in that case to which Sen. Vieira has referred in some detail, then the person sues the State. So the remedies remain.

So with these few words, I say that I see this advancement as a logical step in our progression of protection for the independence of the Judiciary, which is an important institution in any democratic nation, and I support the amendment.

Thank you, Madam President.

Sen. Saddam Hosein: Thank you very much, Madam President, for allowing me the opportunity to join in this debate, which is a Bill to amend the Magistrates Protection Act, a very old Act of 1917.

Madam President, a lot has been said. I had a prepared a very long speech, but while I was sitting here going along with this debate, I had to keep cutting down my notes because a lot has been said already in the debate.

I will just like to start off with a quote, and that quote is from the case of Sirros and Moore 1979, Queen's Bench 118, at page 136, where Lord Denning, Master of Rules said, and I quote:

> "Each should be protected from liability to damages when he is acting judicially. Each should be able to do his work in complete independence and free from fear. He should not have to turn the pages of his books with trembling fingers asking himself, 'If I do this shall I be liable in damages?'"

When I read the Bill, Madam President, the two substantive clauses of the Bill, which are clauses 3 and 4, attempted to remove this fear of a Magistrate in terms of adjudicating upon matters. So that it removes a level of judicial pressure being placed upon a Magistrate, because in any democracy what is required is a free, fair and independent Judiciary, without any pressures or external factors operating on the mind of a Magistrate, because what that can do is cloud the judgment of the judicial officer.

When you look at the oath that the Magistrate took, the oath said that he must, when executing his duties, do so conscientiously, impartially. Those are the two important words, and that he will discharge the functions of his office without fear or favour, affection or ill will. This Bill is an attempt to do so.

But when you look and you read the Bill itself, it does not afford the Magistrate complete indemnity or complete immunity or absolute immunity from any suit. Because the first substantive clause of the Bill deals with firstly section 4 of the Act. It says that:

> "No action shall be brought against a Magistrate for any act done by him in the execution of his office in relation to a matter within his jurisdiction."

That is the amendment. So the existing law would have allowed a person to bring a claim or a suit against a Magistrate on two grounds, and this is my understanding on the reading of the original Act.

The first ground is that a person must prove that the Magistrate acted maliciously and without reasonable and probable cause. So the Magistrate acted maliciously, he acted without reasonable and probable cause, I can bring an action there. Then the second ground which section 4 speaks of is that the Magistrate must have done something not within his jurisdiction. From my interpretation of section 4, it seems as though there are two brackets: a Magistrate acting within his

jurisdiction, a Magistrate acting without. So if a Magistrate acts without jurisdiction, when you read it together with section 5 you do not have to prove that he acted maliciously or without probable cause. But when you look at when a Magistrate acts within his jurisdiction, you have to also prove that the Magistrate would have acted maliciously and without reasonable and probable cause. That is my reading.

Now, when I look at another jurisdiction, and that jurisdiction is Antigua and Barbuda, my interpretation of section 4 and 5 of the original Act was in line with what was stated in their legislation, so I thought I may be correct in my interpretation of the law. Madam President, when you look at the amendment now, so let us measure what existed, so two grounds: malicious and reasonable and probable cause within the jurisdiction, or the Magistrate acted without, or he does not have jurisdiction. So those are the two grounds.

When you look at the amendment now, what does the amendment do? The amendment removes any suit against the Magistrate acting within his jurisdiction. So when this Bill is passed, all a person can bring a claim now for is a Magistrate acting where he does not have jurisdiction or a Magistrate acting in excess of his jurisdiction. So there is no question about whether or not he acted within his jurisdiction. But we must look at whether or not we have created an unintended injustice. Because there is a case, Re C (A Minor) 1984, 3 WLR 1227, and that case gave some examples of certain applications of the immunity provisions, which are found in the English equivalent.

It says what you would be protecting a Magistrate now is that there is a balancing exercise. I know many Senators spoke of protecting the Magistrates, but we must also look at the users of the court. So in one instance they were saying that, okay, you are removing any ground to sue a Magistrate acting within his

jurisdiction, but what if a Magistrate behaved unlawfully? What if he behaves maliciously? What if he breaches your right to a fair trial or natural justice, but acting within his jurisdiction? It shows that they may have created an unintended injustice. That was the example given in that case of Re C (A minor). Those are things we must do at this stage of the Bill in terms of examining the policies with respect to what the Government intends to do and what it can actually do. Those are just some flags I wish to raise in terms of section 4 of the Act, and that is clause 3 of the Bill.

4.20 p.m.

Now, when we look here now at matters where the Magistrate acts outside of his jurisdiction—so the Magistrate acts outside of his jurisdiction, existing law; that is all you have to prove, the Magistrate acted outside of his jurisdiction. This happened in the case of *Jagroo v. Mason*.

Now, when we look at the amendment, you have to go one step further. You have to prove, one, that the Magistrate had no jurisdiction or he acted in excess of his jurisdiction, but he did so maliciously and without reasonable and probable cause.

Now, it is very difficult, Madam President, to prove malice on the part of, especially, a judicial officer. I mean, there may be examples, I am probably too young to know, but there may have been examples in which judicial officers may have acted maliciously. But I think, in my humble view, that it will be a very heavy or a very lengthy threshold in order for a person to cross, to bring a claim personally against a Magistrate. Now, this will be achieving the policy decision of the Government that it makes it very difficult for someone to sue a Magistrate personally.

Now, when I was in law school, Madam President, and I was doing the

course Civil Practice and Procedure 1, the first—probably the first class we had—the lecturer would have told us that, when you are suing someone and you are naming defendants, you always sue the person with the deeper pockets.

So one example is that in an insurance matter, you do not just sue the driver, but you sue the insurance company for indemnity, and you always go after the person with the deeper pockets. And there are probably many examples in the jurisdiction where persons may not go after the Magistrate personally, but go after the State in order to seek redress and damages for whatever wrong that they may have suffered. So that is, in terms of the analysis that I have with respect to sections 4, 5, of the Magistrates Protection Act.

Now, I want to look also, Madam President, the Attorney General made a fleeting comment on this which is with respect to the applicability of the immunity. We are absolutely certain that the immunity applies to a Magistrate, but when you read section 2 of the Act, it also applies to a Justice.

When you look at the Interpretation Act, a Justice is interpreted as a Justice of the Peace. I take the Attorney General's point that it is not all of the Justices of the Peace, but that would be the Clerk of the Court and the Clerk of the Peace who at certain times may sit in a Magistrates' Court to adjourn matters, to fix and grant bail, and this power is taken from section 6(3) of the Summary Courts Act.

But importantly, Madam President, right in this Senate we recently passed a very important piece of legislation called the Criminal Division and District Criminal and Traffic Courts Bill, 2018. And two offices were set up in that Act, the Senior Magistracy Registrar and Clerk of the Court which is formerly the Clerk of the Court, and the Magistracy Registrar and Clerk of the Court who is formerly the Clerk of the Peace.

And I looked at the proclamation whether or not this Act was proclaimed.

And as at the 1st of December, 2018, these positions exist in Trinidad and Tobago as they were proclaimed by Legal Notice 156 dated, the 19th of November, 2018. So right now we have these positions, Senior Magistracy Registrar and Clerk of the Court—

Hon. Al-Rawi: Senator, would you give way?

Sen. S. Hosein: Yes.

Hon. Al-Rawi: Thank you for giving way. Just quickly, those two positions were not proclaimed. They come into effect on the 1st of February, the rest of it was; it is in the second part of the Proclamation Notice.

Sen. S. Hosein: Okay, Attorney General. I read the proclamation to say that the 1st day of December is the date on which the provisions of the Act other than 3(2)(f) and (g) shall come into operation.

Hon. Al-Rawi: That is it.

Sen. S. Hosein: So everything else is in operation. So the entire criminal division Act is enforced, and just those two provisions are not.

Hon. Al-Rawi: 1st of February.

Sen. S. Hosein: Yes. Well, I take your point.

But you will know, Madam President, that these two positions, this Bill that we are going to pass in this Senate will affect these two positions because they can sit in the magistracy, again, as I mentioned, to adjourn matters, grant and fix bail. But I would just want to consider, Attorney General, should we extend the immunity to these persons simply because I read a lot of material on these things and it says that these persons are not legally trained, first. They may have a lot of institutional knowledge, but are we going to allow persons who are not legally qualified, the same immunity as a Judge of the High Court, a Court of Appeal Judge of the Court of Appeal and a Magistrate of the magistracy? And that is one

point I would just ask you to consider in your wind-up.

Again, there are other cases in the jurisdiction that speak of the indemnity, the *Ramsumair-Hinds v. David Russell* case, and the Crevelle case that Sen. Mark spoke of. But these cases, Madam President, the point I am going to make is that—a very short and simple point—these two cases did not—there was no judicial determination per se upon sections 4 and 5 that we are trying to amend. It was actually an immunity granted by section 6 of the Magistrates Protection Act, where if a Magistrate issues a warrant for a person, but an order or a conviction has not yet been made, the Magistrate is protected under the Magistrates Protection Act. And those two cases would not be so helpful in terms of how we move forward with this Bill, but the Indar Jagroo case is a case on point with respect to what we are dealing with.

And, Madam President, I saw two amendments being circulated, and I promised that I would not be long, and hopefully in committee stage, that we can continue the bipartisan approach that we have offered amendments, very noble amendments, I saw. And we hope that the Government can seriously take into consideration what we have proposed, because at the end of the day we have to protect our Judiciary, because if our Executive and our Legislature are not doing the work, the population must have confidence in an independent impartial Judiciary for our democracy to flourish. And I thank you very much, Madam President. [*Desk thumping*]

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

4.26 p.m.: *Sitting suspended.*

5.00 p.m.: *Sitting resumed.*

Mr. Vice-President: Sen. Seepersad.

Sen. Charrise Seepersad: [*Desk thumping*] Thank you, Mr. Vice-President. In reviewing the proposed amendments to the Magistrates Protection Act, I am of the view that what is being proposed should be no less than what Judges in the High Court and the Court of Appeal enjoy. [*Desk thumping*]

The Attorney General already gave all the information on the number of matters that go before the Magistrates' Courts and so on, I am not going to bore you with that, even though I did all the research. So, we should offer protection to our Magistrates whom Sen. Vieira eloquently described as the "engine room" of the legal profession—well, the Judiciary, so we really must give the Magistrates protection, and I am going to support that.

But there is something else that I want to raise. I am just looking at this thing from a business point of view, that when claims are made, what the Government really should do, is set up a self-managed fund to cover the cost of claims made against the Judiciary. I am just going to briefly go into it, this is not the how-to-do-it, but it is just, I am making a suggestion that could be taken up.

The fund would require an initial cash injection, and needs to be managed effectively and eventually it will grow to be able to cover the cost of claims awarded against the Judiciary. Of course, the fund will have to be managed in a similar manner to a pension fund, and in that way instead of relying on the State's resources, you have a fund that is self-managed and self-generating.

I did look at professional indemnity insurance but that is prohibitively expensive, so I would really like to recommend that somebody in the Government take this on and look at it from a business point of view to mitigate against losses and costs. Thank you very much. [*Desk thumping*]

Mr. Vice-President: Sen. Ahye. [*Desk thumping*]

Sen. Hazel Thompson-Ahye: Thank you. [*Desk thumping*] Thompson-Ahye is

my name. I am in support of this Bill to amend the Magistrates Protection Act. Some years ago, a woman came to me in my office and she brought with her a Notice of Appeal. I looked at the Notice of Appeal; subsequently I was able to look at documents that came with it.

Now, when a Notice of Appeal is filed from the Magistrates' Court, the Magistrate is supposed to write reasons for the decision. Instead of a reason for the decision, what was included with the documents is a statement which I will call a mea culpa. What the Magistrate said is that, "I accept responsibility, I did not follow the correct procedure". "Instead of taking evidence from the witness box, I questioned the defendant from behind the Bar."

Now, this was a case of maintenance of a child, and I must say, it was pre-the Single Fathers Association, otherwise you would have heard the gentleman on the issue.

So there was the father and he was appealing to the Court of Appeal because he said, well, I suppose the maintenance was too high. But once the Magistrate had put on record that she had followed the wrong procedure—she now holds high office—she was very candid, she did not hide or make up any stories, she said "This is what happened".

So, I explained to my client, "what is going to happen is that the Court of Appeal is going to try the matter de novo". And I explained to her the matter will have to go back downstairs. And worse yet, there was a Guyanese case I had found that was "right on all fours" as we lawyers say, right on point, so there is no way we could have succeeded.

So, I went to the Court of Appeal to say, I cannot resist the appeal. But something strange happened in the Court of Appeal, things went a little funny for a bit, and finally, finally after—I do not want to go into details because of ethical

issues—but, finally, the matter was sent back downstairs.

So the Magistrate fell into error, and that showed me that people can make mistakes, people can be honest about making mistakes, there was absolutely no malice. And I thought, if the Court of Appeal had fallen into error, the Judges would have been fully protected. If this man had decided to do, you know, or take another course, the Magistrate might have been in trouble, because many times, Magistrates are subjected to a lot of negative things, and all they are trying to do is to do the best they can.

Now, I heard about the independence of the Judiciary and one might ask: What is the link between liability and independence? And I want to quote, if I may, Sir, "The civil liability of magistrates. International standards. New legislative tendencies" by Cristi Danilet, a Judge, and the rubric, "The compatibility between the civil liability and the independence of the magistrates". And she says:

> "It is questioned to what extent the existence of some regulations in the matter of the liability of magistrates for judicial errors affect the principle of the independence of judges. This is because the independence is a legal act of carrying out justice impartially, but the possibility of a civil liability of the judge in a certain moment can be a pressure factor on him, that might negatively influence his solutions, resulting from his desire not to become responsible for any errors."

So, we do not want any pressure to be brought to bear on any judicial officer.

So, I fully support the amendment that is being put forward today. And, again, in terms of the independence of the Judiciary, I want to quote from the "Statement of Principles of the Independence of the Judiciary" drawn up by the Conference of Chief Justices of Central and Eastern Europe, published in October

2015, and it states in part:

> "The maintenance of the independence of the judiciary is essential to the attainment of its objectives and the proper performance of its functions in a free society observing the rule of law."

And it continues:

> "Judges shall exhibit and promote high standards of legal knowledge and judicial conduct in order to reinforce public confidence in the judiciary, which is fundamental to the maintenance of judicial independence."

So, I tie up the question of independence with legal knowledge. And we must not forget that this case which has been the impetus for the amendment that is now before us, arose out of a case which dealt with juvenile justice or the preferred term now "child justice".

It is important for the independence that the same alacrity with which we brought this amendment, must also be used in making sure that Judges and Magistrates are fully au courant with the law, that they are trained in all of the principles, and when we are talking about juvenile justice, there are certain principles, certain international umbrella principles with which they should be familiar. And the one that would have been operating in this case is the fact that one must always bear in mind that detention is a matter of last resort and for the shortest appropriate period of time.

So that when the Magistrates, or whoever, are adjudicating a juvenile justice matter or child justice matter, they must be fully au courant with all of these principles so that they will know how they should act in each particular case.

So, I make a case here for the education and continued training and that question of continued training of the Judiciary in juvenile justice principles is one that was recommended to us when the committee on the rights of the child sat and

looked at the report that we submitted to them in their concluding observations, they made sure to mention that our personnel must be trained in these principles.

So, I am asking that, in addition to what we are doing here today, that the Attorney General be cognizant of the fact that the lower Judiciary must be fully supported in their quest for training and their quest for continuing education. We do not have a system of continuing education like they do in Jamaica. You do not get a practising certificate in Jamaica unless you have shown that in the preceding year you have followed a system of continuing legal education. So all of these things bring together, bring them together when we are talking about the independence of the Judiciary.

So, I support the amendment, but I would also like to see further training and continuous education of all the members of the Judiciary, especially those who are dealing with these matters which impact the rights of the child to the justice which this child is supposed to have and the rights that they must have, that we promised to give to them. Thank you. [*Desk thumping*]

Mr. Vice-President: The Minister of Agriculture, Land and Fisheries.

The Minister of Agriculture, Land and Fisheries (Sen. The Hon. Clarence Rambharat): Thank you, Mr. Vice-President for the opportunity to speak on this Bill to amend the Magistrates Protection Act, Chap. 6:03.

Mr. Vice-President, I have been keeping score. The first thing I will say is that there is no dispute amongst the speakers on the need for immunity; I think we have agreed on that. There is no dispute amongst the speakers on the need for parity. We recognize that Magistrates do not currently enjoy the protection that is afforded to other judicial officers.

Third point I would make is that the discussion really resides on the issue of, how far do we go today? On one hand we have the Opposition who believes that

there should be full immunity, and that the Consolidated Fund should bear the cost directly. And in pursuance of that view they have put forward, my colleagues have put forward, the new section 4.

The Government's view is different, not that we believe, Mr. Vice-President, that we offer perfection, but we believe that what we offer today is sufficient to deal with the mischief that is before us.

And maybe on another occasion, Mr. Vice-President, we would come back to this House to do something more with this piece of legislation. But what we believe today, Mr. Vice-President, is that there should be absolute immunity in relation to matters within a Magistrate's jurisdiction; so that is the first order of business.

We believe that there should be absolute immunity, and for that purpose we have offered a new section 4, repealing the existing section 4 and replacing it with a new provision which provides absolute immunity when a Magistrate is acting within his or her jurisdiction.

The second area of debate is this area of absolute or non-absolute immunity when a Magistrate is acting without jurisdiction or in excess of jurisdiction, which brings me to a purely academic point that I want to make just so that we understand that this debate is not new.

I did not have to go far, I did not have to work hard to pull an article from 1943, it is titled "Personal Tort Liability of Administrative Officials". The writer is Eugene J. Keefe and it is from the *Fordham Law Review*, Volume 12, Issue No. 2, (1943). And the article deals with this very issue, this issue of absolute and non-absolute immunity. And I want to read and put on the record just a short paragraph, and I quote:

"The courts have established certain principles which seem simple when

> applied to ordinary factual set-ups which come to mind immediately upon the statement of the principles themselves. But when life itself casts up situations less tailor-made for enclosure within these principles, difficult problems are presented and the application of the principles seems to have been dictated by unstated realistic considerations."

What they are saying simply is that the work of a judicial officer sometimes relates to matters for which there are predetermined outcomes.

But, there are occasions when a judicial officer will be dealing with something that is novel, complex or where the law or the legal principles have not made provision. And my colleague, the Attorney General, recited some of the more recent legislation that will throw up some new or complex or ground that we have not traversed before, and the purpose of the absolute immunity is to ensure that our judicial officers enjoy some level protection.

And there was a time, Mr. Vice-President, when absolute immunity was actually the law, the norm. In fact, it was referred to in the 1800s in North America and even in Europe as the sacred principle being so deep-rooted in the common law. But, of course, the reality of jurisprudence stepped in, and the need to balance between the judicial interest and the public interest stepped in. And out of that came a series of provisions which took away absolute immunity in some cases, particularly where a judicial officer was shown to be malicious, capricious or acting fraudulently or acting in a very corrupt manner.

So that what we have before us is an amendment to the existing section 5(1) which allows someone who wishes to bring a claim against a Magistrate for acting outside of his or her jurisdiction or in excess of that jurisdiction, to bring a claim. But that claim requires that the thing that is complained about must be something that was done maliciously and without reasonable and probable cause.

5.20 p.m.

So it is not simple, and I believe that that is where my friends in the Opposition are going, perhaps, and I understand their view that even in giving an opportunity to somebody who has something to complain about, we have given them an opportunity that contains a few hurdles, the first of which is to establish that the Magistrate has acted without jurisdiction or in excess of jurisdiction; the second of which is to establish that what has been done was malicious; and the third area is to establish that it was done without reasonable and probable cause.

And, Mr. Vice-President, it is not something—it is not an area, and it is not a provision that is without companion across jurisdictions even this region, in Bermuda for example. It is not something, it is not a clause that is new or novel for us. It is a clause that finds company across jurisdictions. And I understand, I understand that the Opposition wants us to go the furthest point, but I believe that this Bill brings us to a point that Magistrates can feel comfortable, and the public can be feel comfortable. I think it strikes the right balance. It provides absolute immunity with the introduction of a new section 4, and it gives someone who has something to complain about an opportunity to do so again, providing a level of protection to the Magistrate by putting three hurdles over which they must go. But if they get over the hurdles then they will be compensated or they will have their remedy.

In addition to which, Mr. Vice-President, the tendency may be or the desire may be to put into statutory form some of the remedies which currently exist in the common law, but again I would say that it is not a place that the Government wishes to go today. We have well-established common law which deals with the remedies that are available, and I think that those will continue to serve us well.

Thank you very much. [*Desk thumping*]

Sen. Gerald Ramdeen: Good afternoon, Mr. Vice-President. Mr. Vice-President, as I stand to contribute to this debate on the amendment to the Magistrates Protection Act, I find it very strange to listen to everybody contributing to this debate and talking about how important it is to protect Magistrates, how important the magistracy is, how important a job the magistracy does, how we must protect them against all these things that can happen, and at the end of the day if the Government wants to do that, the only Senator that I have heard thus far who was, in addition to the Opposition, that has really said what the position should be is Sen. Seepersad.

Because, let me put it this way, Mr. Vice-President, I know a little bit about this thing called the practice of law. So I have heard over and over that people have said that if you have a problem with the Magistrate, you are not taking away anything so just sue the State. That is the answer. Sue the State. But I know a little bit about suing the State too, so let me explain something. A Magistrate performs many different functions in a judicial capacity. It is a very strange creature of statute. It performs purely judicial functions and a Magistrate performs administrative functions as well in the capacity as a Magistrate. So, let us take this argument about suing the State, under the Indictable Offences (Preliminary Enquiry) Act, there is a provision called section 25. It says:

> "After the preliminary enquiry has been concluded and the warrant of commitment for trial has been made out, the Magistrate"—hear who, the Magistrate—"shall, without delay, transmit to the Director of Public Prosecutions the complaint, the depositions of the witnesses"—the documents, the evidence, the exhibits—"the warrant of commitment for trial, and the recognisances entered into."

So let me ask this, when the Magistrate does not do that, when the Magistrate does

not do it and somebody has to sue the Magistrate in judicial review proceedings, and an order for cost is made against the Magistrate, "who paying that?" Not the Magistrate? "How you going to sue the State for that? Who you going to bring the action against?" You are going to bring a constitutional Motion for what is properly a judicial review? This law is a 101 years old. The Attorney General said so, a 101 years ago they did not have judicial review, they had something called the Prerogative Orders.

So, when the Magistrate does not do what they are supposed to do, and I have done it before, that is why I am telling you, you bring judicial review against the Magistrate, you cannot bring it against the Attorney General, you cannot bring it against the State because the Magistrate is not vicariously liable. The duty is upon the Magistrate to do it. You find judicial review proceedings, the Magistrate must come to court and defend it, an Order for costs is made, 250,000 to pay. Who paying? Who is paying it? All of the people who are saying sue the State, how you are going to sue the State for that? Let me give you another example. Under the Summary Courts Act there is a provision here:

> "Where notice of appeal has been given in accordance with section 130, the Magistrate or Justice shall within sixty days of…such notice draw up and sign a statement of the reasons for his decisions."

For those who practise law, everybody knows, it is very, very rare that a Magistrate produces reasons within 60 days. Having not produced the reasons within 60 days, what do you do?

What does the ordinary man that Sen. Mark is talking about, who is convicted in the Magistrates Court, files an appeal, so that remedy is out for those people who say you must just appeal. No big thing, just appeal. Right? So when the appeal comes up five years later and there are no reasons before the Court of

Appeal, during that time and a litigant wants to get their reasons so the lawyer will know what they are going to argue before the Court of Appeal, how do they get the reasons? They sue the State. For all the people who are saying just sue the State.

So, what do you do? How you going to sue the State for that? The only way you can compel the Magistrate to do what the law requires him to do is to bring judicial review proceedings against the Magistrate. When you bring the judicial review proceedings, you know what happens? The Magistrate will come and produce the reasons. You know what is going to happen after that? The Magistrate has to pay cost of those proceedings. "Who going to pay the cost?" Who is going to pay the cost? "The Magistrate would lose he house or he car." Right? So, let us do this. Let all of us talk real good about how good Magistrates are. The magistracy, that is what we come here to protect, but when the time comes you talk the talk but you "cyar" walk the walk to do the right thing.

Sen. Seepersad said it. I know I could read English. When Lord Denning said in this case, *Sirros v Moore*. *Sirros v Moore* came because of *Maharaj v the Attorney General*. He said in the old days—the Attorney General said it—whatever may have been the reason for the distinction it is no longer valid. What does that mean? Does that mean—well it is not valid. The distinction between inferior tribunals and judges is no longer valid, but you know what we must do? The immunity, we must give them three quarters of our immunity. That is what we must do.

So, we allow people to sue Magistrates, but you must prove that you have malice or reasonable and probable cause. How could that ever make sense? How could that justify us coming here today and say well, we are prepared, you know, what we should do. We should give them the same immunity. So what does the same mean? The same means, does a Judge of the High Court, like Sen. Seepersad

said. She said we must give them the same immunity. Does that mean that when we pass this legislation—it is a very simple thing, you know. Are Magistrates going to have the same protection that is afforded to Judges? The answer is no. And if the answer is no, what is the justification for coming here and saying, let us give them protection? Well, what kind of protection are you giving them?

I have not heard anybody stand up and explain how it is that the Magistrate who is faced with a cost order is going to pay it. Is going to be at the mercy—the same thing that we are trying to prevent—of the State. Right? The Attorney General said in the case that was before the court, the Jagroo case, it leaves open the opportunity, Attorney General, for an Attorney General to be able to say, "I am not paying it." And when they say I am not paying it then who is going to pay it?

Why I am giving you these real life examples—I am giving everyone these real life examples—is because we would make a fool of ourselves to sit down here, have a debate, talk about protecting Magistrates, and tomorrow morning Ramdeen will sue a Magistrate, get an order for cost, and the Magistrate has to pay it. I have the Chief Magistrate before the court now. The former Chief Magistrate, the Attorney General will tell you, confirm with a judgment on damages for 300,000 in one case. That is one. It have about 18 behind coming. You know why? Because the law was set up where just like Sen. Vieira said, the Magistrate was doing the best she could have done in the circumstances, there was no place to put young people who were subject to the provisions of the Children's Act. The Magistrate was sued, the Attorney General was sued, it is up to me to decide whether I want to go after my damages from the Attorney General, or I could go and take that Magistrate's house. It is as simple as that. It is as simple as that. And the law, as all of us, everybody who has spoken, the Opposition, the Independents, the Government, we are all here to try and provide protection for the Magistrate, so

why are we giving them a half-baked piece of protection? [*Desk thumping*]

Mr. Vice-President, let me give you an example and an experience of mine. Everybody does talk about their experience, let me tell you what happened in this country. About eight years ago the Magistrates in this country did not pick up on the fact that they could have—when you pass a consecutive sentence, so you hear people charged with four offences, they get three years, by three years, by three years, by three years, and they say all to run concurrently. You know what the Magistrates in this country did not realize, that there was a limit on how much jail you could give people if you run sentences concurrently.

You know what happened after that? Every Tom, Dick and Harry who had a consecutive sentence started to go to court and sue the State, habeas corpus, false imprisonment. You know what happened after that? The State had to pay out for all those orders that had been made. You know what happened? People were incarcerated. The same people that Sen. Mark talking about. People who could have only been sentenced to three years were serving sentences for eight years, nine years, 10 years, and you know how bad it was? It was so bad that the President, for the first time in this jurisdiction, had to exercise powers under the Constitution and do a Presidential Order to remit all of the sentences. It was about 200 people, you know. About 200 people in jail serving unlawful sentences because the Magistrate did not pick up. Honestly. Did not honestly believe, made a pure innocent mistake to jail people. A purely innocent. No malice, no lack of reasonable and probable cause. You know what they had to do? The President had to issue a Presidential Order for about 200 people, remit all the sentences that were ordered to run concurrently, sorry, consecutively to run concurrently.

So the person "who siddong and make innocent jail" for two years, three years, four years, "doh worry with dem". No big thing. "Doh study that". Protect

the Magistrate. This is about striking a balance between providing protection to a judicial officer who is entitled to that protection. Nobody is denying that the Magistrates are entitled to that protection, but you have to understand that if we are going to do that, why go halfway and do it? I sat down and studied this thing and I understand, and what is the policy of the Government? The policy of the Government is obviously a noble one, which is that they have come here, they have looked at the legislation, watch, let me give you a simple example of this, eh, Mr. Vice-President.

Everybody talked about this case, Jagroo, Jagroo. You know what the Court of Appeal was saying in Jagroo? Why the Court of Appeal in Jagroo did not say we should amend the legislation? Why the Court of Appeal did not say that? The Court of Appeal was expressing the view that what they had a problem with was not the legislation, you know. What they had a problem with was the fact that Magistrates were being held personally liable in a case where there was no malice, they were acting outside of their jurisdiction and they made an error. So how do you correct that? Do you take away the right of someone, as the law presently stands—and I want to get to that in a minute—or do you provide the protection that the Court of Appeal was focusing on? Justice of Appeal Narine in Jagroo said, we must express our concern for the position in which a Magistrate is held personally liable for his actions while presiding on the bench.

So, Mr. Vice-President, let me ask you this, let us ask the rhetorical question: When we pass this piece of legislation, can a Magistrate be held personally liable for something he has done while acting in a judicial capacity? Well, those who want to vote for the legislation will obviously say yes—sorry, no, which is obviously wrong, because a Magistrate can still be held personally liable in these circumstances, and if you bring judicial review proceedings against the

Magistrate, he can still be held personally liable. You know, the Court of Appeal—what the Court of Appeal was talking about is that they do not want these officers, these judicial officers, who are performing a judicial function, who are doing public duty on behalf of the State for all of the citizens of Trinidad and Tobago, to be held personally liable for something they are doing in the performance of their duty.

So, are we satisfied here with what is presented, to be able to say that a Magistrate will not be held personally liable? So after we pass this legislation we are not going to find any Jagroo judgment again? Correct? We are not going to find any Court of Appeal Judge saying this is the position? Correct? The answer is no. Because tomorrow I could sue a Magistrate, he would come before the court, if he is lucky, the Attorney General will give him representation, if he loses, he has to pay. That is what this is about. It is about who is going to pay. That is what this legislation is about. The hon. Minister of Agriculture, Land and Fisheries just talked about, what is the mischief? Well ask yourself what is the mischief? Is the mischief that we will let them pay in some circumstances? That is what the legislation is doing.

So, the Opposition is not here to oppose the Government on this. I understand what the position of the Government is. I think, like I said before, it is a noble intention to provide the protection, but why has the Attorney General said to us, let us provide the protection? They are entitled to the same protection that Judges of the High Court are entitled to. A Judge of the High Court, by virtue of public policy, by virtue of the common law, I have to disagree with the Minister of Agriculture, Land and Fisheries because it is clear from *Sirros v Moore*, that the Minister of Agriculture, Land and Fisheries for this one time was incorrect. The common law never provided absolute, never provided absolute immunity to a

Justice, or whereas we call them, a Magistrate. Never! It never happened. That was never the law.

Since 1613, in the judgment of Lord Denning in *Sirros v Moore*, the law has always been a common law that Justices do not have that protection. They do not. Marshall Seals case, 1603, and therefore what the law sought to do is to incrementally provide that protection by statute. And when you look at the principal Act that we are being asked to amend, Mr. Vice-President, you will understand how that came about. The principal Act that we are asked to amend, which is the Magistrates Protection Act, is littered with provisions that provide protection to the Magistrate in every single clause.

So, let me, with the little bit of knowledge that I have, let me explain how this thing operates. Section 4, like Sen. Hosein says, I think he was quite correct in what he said, section 4 tells you if you are going to sue a Magistrate the basis upon which you have to advance to sue the Magistrate. So, there are three things that you can do:

- You can allege he acted without jurisdiction.
- He acted maliciously.
- Or he acted without reasonable or probable cause.

The big debate that we are having here is really what happened in relation to section 5. As the law presently stands in section 5:

> Where you alleged one of the grounds in section 4, the law provides that if you alleged the Magistrate has acted without jurisdiction you do not have to prove that it was done maliciously, or without reasonable and probable cause.

It is very clear that is what it said, maintain an action "without". That is what

"without" means—you do not have to do it—without alleging that the act complained of was done maliciously and without reasonable—

So how can you possibly say that as the law stands you can bring an action? An action is something in property, you know. The right to bring an action is called a chosen action. It is a right of property. So, you have the right now to bring an action, and the elements of that action do not require you to prove malice or the absence of reasonable and probable cause. You come now with legislation that says, if you want to sue the Magistrate you must prove those things. So how can you possibly say that I am not taking away the fact that you have to—you do not have to prove those elements now, and if this law passes and you want to sue the Magistrate you must prove malice and you must prove reasonable and probable cause.

It is either something is wrong with me in not being able to read it properly. But I am sure I am right. Now, why do we want to do that? Why do you want to place the burden? Everybody talks about Jagroo. Right? So, while we are concentrating on protecting the Magistrate in Jagroo, which is what the Justice of Appeal Narine said we should do, from personal liability, what happens to the person who gets locked up without any jurisdiction, go and sit down in the women's prison for five months, he sue the State, how?

How come nobody—everybody does say sue the State. But sue the State how? You know there is a way these thing are done. You "doh" just go to court and say I want to sue the State. You have to bring a claim. If you come in judicial review you must not have an alternative remedy. "You doh just pick it up and decide, ah going to sue the State just so, you know. It doh operate like that." It does not operate like—you just cannot come and say, well, you "cyar" sue the Magistrate so just sue the State. The whole purpose since 1977 to now, what has

remained the law from 1977, the most famous case in public law, *Maharaj v the Attorney General* says, not every error of a judicial officer you can bring an action for.

So, there will be cases where a Magistrate will commit an error which you cannot bring an action. Because despite what we are being told, you know vicarious liability does not apply in the case of a Magistrate. A Magistrate is not a servant or agent of the State. So this concept that you could just sue, just sue, just like that. You just pick up yourself and sue. Well, for those who know a little bit more about how you bring an action against the State, you have to establish liability first. And a Magistrate is not a servant and/or agent of the State, so the Attorney General will tell you that the State Liability and Proceedings Act does not apply, so that is why you cannot sue the State for everything that a Magistrate does.

So, for those who are prepared to allow the Magistrate to lose their house, lose their car, lose their savings in the bank, you can all well be happy, go merrily, go lucky and support this legislation as it presently stands. The Opposition has not come here today to oppose the Government. We have proposed a clause that will capture any claim that is brought against any Magistrate, whether it be in private law for false imprisonment, whether it be in public law for judicial review, whatever claim is brought. You can bring an action and ask for a declaration that a Magistrate acted unlawfully. That does not mean that the Magistrate is going to get—that you are going to get damages against the Magistrate. But what about the order for costs? When the Magistrate is saddled with a bill for 200,000 or 250,000, who is going to pay that?

We had a Magistrate who went all the way to the Privy Council, the Chief Magistrate went all the way to the Privy Council, the Attorney General will tell

you that, Sherman Mc Nichols, Lord rest his soul, he went all the way to the Privy Council to challenge disciplinary proceedings by way of judicial review; when he reached the Privy Council and he lost, who saddling the bill, the State? When he lost in the High Court, the Court of Appeal and the Privy Council, and the bill is almost 1.5 or 2 million, who is going to pay that bill? This does not protect him, I can tell you that. So with something to happen to a Magistrate tomorrow and somebody brings an action against them in judicial review, this does not protect them.

So, we can all be comfortable and happy. All of us, and support the legislation because we think it sounds good, but when you actually have to put it into action and see how it is going to work. When orders are made against Magistrates, and a Magistrate who is working, like all of us have said, Magistrates could never be paid enough for the work that they do. If you go to the San Fernando Magistrates' Court now, in the old Magistrates' Court building, you have a senior Magistrate sitting in a court without air condition, in 2018. With the fan working sometimes, not working sometimes. They do not even have a proper office to work from, and when they are saddled with that burden to carry, what we do? We sue them. And what we do? They pay—let us put it a different way. Let us put it in a more honourable way, they will rely upon the Attorney General, whether it be the hon. Faris Al-Rawi, or anyone else, at their discretion, to decide whether they will foot that bill or they would not.

You think that is right, Mr. Vice-President? You really think that is where we should be heading? Does that compromise the independence of the Judiciary? Of course it does. And why? All of us are speaking about these international treaties and Latimer Principles, and independence of the Judiciary, and the Constitution. At the end of the day the simple fact is, if these things are so

important, and the independence of the Judiciary lies at the core of upholding the rule of law, section 1 of the Constitution says, Trinidad and Tobago is a sovereign democratic State. An essential element of being a sovereign democratic State is an independent Judiciary.

The Attorney General has told us, the magistracy is the lower arm of the Judiciary. So, since it is so important, and its independence of the Judiciary is so critical to upholding the rule of law and the Constitution, it is so important for us all, we give them it a little three-quarters of the way. No problem. We must uphold the rule of law three-quarters of the way. We must uphold the Constitution three-quarters of the way. That is good. That is what we are prepared to do. As the Minister of Agriculture, Land and Fisheries said today, we are prepared to go so far today. So, I do not know, it is probably that is the way we would run a democracy. We have 90 per cent rule of law, 80 per cent upholding the fundamental rights.

I mean, really? Really? If the independence of the Judiciary is the core of the Constitution for every single one of us, for every citizen of Trinidad and Tobago, 1.3 million of them, when we come to decide whether we should put things in place to ensure the protection of the Judiciary, we say, well, they had a politician in this country used to say, well, you will hear all tonight. So, as we are here today "we go do so much today, and we go leave the rest for tomorrow. We go complete the independence of the Judiciary completely some other time. We go start. We go do something. We doing something about it." So, while we are here, I hear 75 per cent, we good to go.

Mr. Vice-President, this is not how a democracy operates. This is not how a serious Government operates. What the Government is doing, we are supporting them, but let us do it the right way. Let us make sure that when we leave here

tonight, if you meet a Magistrate tomorrow they will be able to say thank you for what you have done for us. We understand what you all have done. You all have protected us. And like Lord Denning said, when they sit down to write their reasons tomorrow or to find somebody guilty, or to find somebody not guilty their fingers would not be shaking. They would not have to worry about, a man represented by Ramdeen might sue me, you know, "better I leh he go, you know." It just does not operate like that.

We cannot have a sword hanging over the head of any of our judicial officers. They have taken an oath to dispense justice without fear or favour, affection or ill will. Let us put the circumstances in place to ensure that when they dispense justice in those circumstances that they can be free from any influence, fear or favour, to be able to do that.

I still stand here to contribute, and do not understand why we are saying, they must have the same protection as the upper Judiciary, the Court of Appeal, the High Court, and yet still anybody who votes for this legislation this afternoon, if they are honest with themselves will be able to say, yes, they support the legislation, but will also say, no, the Magistrate does not have the same protection as a High Court Judge. Why? Why did the Attorney General read out what Lord Denning said? That was not the only thing. We are going to go down this road now about what is within jurisdiction and what is outside jurisdiction. Whether you are acting—whether you have deprived yourself of jurisdiction for one thing or another. One of the cases that the Attorney General cited, one of these Court of Appeal judgments, they referred exactly to that, about how do you get to the point where you exercise your jurisdiction and you deprive yourself of jurisdiction.

So, I do not think, Mr. Vice-President, that we are being fair to the Magistrates that we have come here to proclaim that we have come to do

something that gives them the protection that they are entitled to. No that anybody is doing a favour for them. They are entitled to that protection, and we should do our duty and be able to give them the protection that they are entitled to. And if we are prepared to do that then we would support the amendments that has been proposed by the Opposition with respect to this matter. Mr. Vice-President, all of the cases that the Attorney General has spoken about that have been decided in this jurisdiction, all of them, what happens to those persons who are on the wrong side of the order of the Magistrate? What happens to them?

5.50 p.m.

They will now have to climb an insurmountable hurdle to be able to bring an action against a Magistrate when the law for 101 years, the law was that you do not have to do that. We have decided today, after 101 years, to make it more difficult for those persons. Well, I do not know that I want to support that positon, Mr. Vice-President. I want to support a position that does what everybody here seems to say we should be doing, which is, that we should provide the most protection that we can. We have an opportunity here today to do what the law has not done for 101 years. Why we do not grab that opportunity with two hands and take full advantage of it, Government, Opposition, and Independent, [*Desk thumping*] and be able to say, that yes, Magistrates are entitled to that protection.

Mr. Vice-President, every single case that the Attorney General has cited, the Attorney General referred to this House of Lords decision in re *McC (A Minor)*. And you know what Lord Templeman had to say?

> "This appeal demonstrates that the time is ripe for the legislature to reconsider the liability of a magistrate and the rights of a defendant if an unlawful sentence results in imprisonment. There is no liability on a judge of the High Court acting as such and no right for a defendant to damages for

> an unlawful sentence imposed by a High Court judge; harm may be prevented or cut short by bail and an appeal procedure which results in the sentence being quashed. On the other hand a magistrate is personally liable where an innocent error of law or fact results in an unlawful sentence of imprisonment imposed without jurisdiction."

So we are fighting up with this idea of what is within jurisdiction and what is outside of jurisdiction. But, because the law is 101 years old and at that point in time when the law was passed in 1917 there were certain things that you could not do in law then that you can do now that affects the liability of a Magistrate. And my main concern in propounding and supporting and putting forward the amendment is that the Magistrates Protection Act did not, at the time it was conceptualized, or could have at the time it was conceptualized, foresee all of the liabilities that could have resulted in a Magistrate being personally liable. It could not foresee what could happen in judicial review proceedings. And therefore while we have the advantage, 101 years later, to be able to foresee things that could not be seen in 1917, why should we not take the advantage of curing the defects that are there now?

Section 5, section 6, section 7, you know nobody has referred to the fact that—section 13 of the principal Act, that we asked to amend, provides protection to the Magistrate to the point where—if you can prove. And you know, in one of these cases, the case that Justice Bereaux decided, the Crevelle case, you know what was the problem in that case, Mr. Vice-President? No, not Crevelle, sorry. There is a case called Ricky Sagram and Magistrate Marcia Ayers-Caesar, an old case, the H.C. No. is 299 of 1997, a very, very, very, good judgment of Justice Jamadar as he held at first instance. You know why the then—the woman who was to become the Chief Magistrate was held liable here for?—because in the

action that was brought against her, by virtue by a technicality, she did not prove that the person who she sentenced was convicted for the offence. Pure technicality. She was held liable, damages to flow.

So do you want a repeat of that? Will the magistracy be satisfied when we leave here tonight to be able to say we have done justice to them? If we pass the legislation as it presently stands, as proposed by the Government, the answer—there will be a cry of no by the magistracy, [*Desk thumping*] the most important people we are here to protect this afternoon.

If we pass the legislation as presently constituted there will be a cry by the people who are affected by orders made without jurisdiction because the door is virtually shut on them to have resort to the court. So they would be crying no. But if you do what we ask, which is, to cover all orders made by a Magistrate, make them immune from any order with respect to damages or with respect to cost, you have a yea from the Government, the Opposition, the Independent, the Magistrate and the population. [*Desk thumping*]

What is difficult about that? Why would anybody have an argument against doing that? Why not allow those people who have the right of access constitutionally guaranteed by section 4(b) of the Constitution to go to court and sue anyone who they consider has infringed their right, whether it be in thought, whether it be in contract, whether it be under the Constitution, whether it be in judicial review. Why do you want to hinder that right by placing a legal burden that is virtually insurmountable when you can allow those persons to have that right made effective, given to them under the Constitution—

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

Sen. G. Ramdeen: I am obliged, Mr. Vice-President—given to them under the Constitution, allow them to continue to exercise the right that they had for 101

years. This was a very carefully drafted piece of legislation, because it took into consideration the fact that you can bring an action if a Magistrate is acting outside of their jurisdiction and you can bring an action if a Magistrate is acting intra vires as well. And therefore, why not take the opportunity to leave the law as it presently is? Where in any of this has there been any criticism of the Act, not the result of the Act you know, the Act? What has been criticized is the result of the Act? So we can cater for that. We can cater for that by letting the State take up the bill where someone has been wronged.

It is not like you are opening the floodgates. Someone has been wronged, they are entitled for that to be put right. Whether it be put right by a declaration of the court, whether it be put right by an order for damages, whatever it may be, it may be that right that that person simply wants to exercise, to hear that they were either right or wrong. The protection of the law that allows access to the court—is not about going to court to win, you know. It is about the confidence that you have in the administration of justice to be able to access the court, whether you are successful or not. It is that that is preserved under section 4(b). [*Desk thumping*]

And therefore in those circumstances, Mr. Vice-President, I feel very strongly about this and I call upon all the Senators here, Independent, Opposition and Government to do justice to those people who go out every day in the far-out regions of our country, Trinidad and Tobago, whether it be in Scarborough, whether it be in Point Fortin, whether it be in Rio Claro, whether it be in Princes Town, whether it be in Arima, it does not matter. They do public service to an extent that we cannot comprehend. The sacrifice that they make, the Attorney General, if you divide the number of cases he says by the number of courts that they have, Mr. Vice-President, it is almost 10,000 cases per year. Their job is an unenviable one. They do just—sometimes they do more than a High Court Judge

in terms of the discharge of their duty to the public. And why they should be given any less protection?

We are here. We are prepared to support legislation that provides an absolute immunity, which is what the law calls for in relation to officers of the magistracy and bring them on equal footing with officers of the superior Judiciary of the High Court and the Court of Appeal. For those who are prepared not to go to that extent you are doing an injustice to the magistracy. We have proposed an amendment, perhaps the Attorney General might want to tweak, but we are proposing an amendment that provides an absolute immunity that, as this legislation is passed, proclaimed and assented, no Magistrate will ever have the fear when they exercise their judicial function that it will ever be at an unfair cost to them. They deserve no less, the members of the magistracy, and today I ask the Parliament to not give them less than they deserve. I thank you, Mr. Vice-President. [*Desk thumping*]

The Attorney General (Hon. Faris Al-Rawi): Thank you, Mr. Vice-President. [*Desk thumping*] Mr. Vice-President, I thank hon. Senators for truly deep and reflective submissions. I thank Sen. Ramdeen for his very stirring fulminations, because I share a lot of his concern. Indeed we have been speaking about this during the course of this afternoon.

We have a few issues in essence before us this afternoon. The Opposition says, commendably, let us go the whole distance. Why not now? Why not put two hands upon the protection to Magistrates. Indeed, that is a very genuine question which can be addressed by considering where we are right now. So we stand here on the 11th of December 2018, 101 years away from the 1917 law, the Magistrates Protection Act.

We know, as Sen. Chote reflected, as I gave in contribution, as others have, that

international bodies, in particular, the Commonwealth Association, has given us exhortations as to what we really ought to consider. And we do know that our court has in fact reflected in the Jagroo matter a little bit further than Sen. Ramdeen asked us to reflect. I do not think that Sen. Ramdeen was deceiving us in any way at all when he read the dicta of Mr. Justice Narine at paragraph 28 of that judgment. But the qualifying words that were left out I think are material in answer to his submissions today. Not that I disagree with the substance of the submission, but I want to explain why it is I respectfully think that we cannot agree to it at this point.

You see, it was not as Sen. Ramdeen put it that the Judge said:

> "However, we must express our concern for the position in which a Magistrate is held personally liable for his actions while presiding on the bench…"

—which is where Sen. Ramdeen stopped in the quotation.

The Judge went on to say this:

> "…in a situation where he has acted without or in excess of jurisdiction but without malice of any kind."

And Sen. Ramdeen's position was that it was not that the Judge was asking the Judiciary to have a view of this. That is what he said. He said the Judge was reflecting, Mr. Justice Narine, Justice of Appeal was reflecting upon the odium which we ought to have in the Magistrates being unprotected as he put it simpliciter which I have gone further by quoting the text correctly to add:

> "…where he has acted without or in excess of jurisdiction but without any malice of any kind."

But it is not correct to say that the Judiciary did not ask us to have a view of that situation, because this is what the Judge says further. And I quote:

> "The injustice that may arise in such a case"—and that is the specific case—"and the need for legislative intervention was recognized by the House of Lords…"—and they go on to look at the case of—"*Mc C v. Mullan*".

You see, the Judge then went on to quote that the appeal demonstrates, and he is using the language of Lord Templeman, and I think specifically so as an invitation to the Legislature to take note. Because he quoted, and this is Mr. Justice Narine as follows at paragraph 28 at page 11:

> "This appeal demonstrates that the time is ripe for the legislature to reconsider the liability of a magistrate…"

And the Judge ends there.

So I do not think that there was not a specific invitation to treat with the exact case of the limitations of sections 4 and 5. I think this is exactly what our Court of Appeal was telling us to do, an invitation to the Legislature.

In trying to agree with the substance of what Sen. Ramdeen has offered, but in drawing a distinction as I do now, I am compelled to say this. The Opposition says to us today 75 per cent of the law should be upheld, 80 per cent of due process should be upheld, the Opposition is willing to this 100 per cent. I have in my hand a letter from Allum Chambers, Monday, 19 February, 2018, addressed to me. It is written by Rajiv Persad, attorney-at-law. And the attorney-at-law is writing me specifically in relation to the case of *Mason v Magistrate Indar Jagroo*. And hear the words:

> Senior Counsel, Mr. Seenath Jairam and I had been briefed by your good office—that is, the Attorney General's Office—to represent his Worship Mr. Indar Jagroo, the defendant in the caption matter. Magistrate Jagroo has been sued in his capacity as Presiding Magistrate for the Arima Magistrates' Court for having committed the claimant to prison in circumstances where

> the claimant is contending that the Magistrate had no jurisdiction under the Children Act. The matter is now before the Court of Appeal after Justice Rajkumar found against the learned Magistrate.

Hear these words:

> We had written to your predecessor seeking to have a decision made in relation to the provisions of an indemnity to protect the learned Magistrate. To date—that is February 2018—we have not had a response and we have been advised by those instructing us that another letter should be prepared and directed to your office renewing our request on behalf of the client.

So the UNC's exhortation today, 75 per cent is not good enough, 80 per cent is not good enough, but they clean skip over the fact that for the full time that they were in possession of the Legislature and driving agenda as a Government, not a thing was done to even go from zero per cent.

Now, that is a bit churlish to stop the argument just there if it is coming from me in answer to my learned colleague who has made a good submission. So let us go a little bit further, because that point really says, do not come and tell me "the Government" that this is not good enough when you could not do anything about it at all, but let us explain why we have come in this fashion at this time.

The indemnity, the sanctity and the privilege against suit that the Judiciary in its higher echelon enjoys—that is, the High Court and Court of Appeal—is not to be found in any Magistrates Protection Act in a similar word for the Judges. It is to be found in the common law of Trinidad and Tobago. And I ask the question now: What is there to stop a Judge at law from being sued for exactly the circumstances Sen. Ramdeen just offered? Where the Magistrate's "house jumping up, car jumping up and personal liability jumping up". Where is there a single codified statutory provision that grants immunity for the Judiciary in its

higher branch; the Superior Court? We have the legislation for the inferior court, which we are now dealing with today, but what stops, most respectfully, the Judiciary from being subjected in the Superior Court to the privileges in section 14 of our Constitution? Let me remind hon. Members what section 14 of the Constitution is, because Sen. Ramdeen is right. The Judicial review Act did not exist in 1917 and there is exposure there.

[MADAM PRESIDENT *in the Chair*]

But when we look at section 14 of our Constitution, which did not exist in 1917 either, let us look to what that says. Section 14 of the Constitution says this. It is under Part V:

"(1) For the removal of doubts it is hereby declared that if any person alleges that any of the provisions of this Chapter has been, is being, or is likely to be contravened in relation to him, then without prejudice to any other action with respect to the same matter which is lawfully available, that person may apply to the High Court for redress by way of originating motion.

Subclause (2):

"The High Court shall have original jurisdiction—

(a) to hear and determine any application made by any person in pursuance of subsection (1); and

(b) to determine any question arising in the case of any person which is referred to it in pursuance of subsection (4),

and may, subject to subsection (3), make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing, or securing the enforcement of, any of the provisions of this Chapter to the protection of which the person concerned is entitled."

Subclause (3):

> "The State Liability and Proceedings Act shall have effect for the purpose of any proceedings under this section."

Let me translate that for non-lawyers. Section 14 of the Constitution allows the High Court the privilege to fashion any order or remedy against anybody, including Judges of the superior court and inferior court, such that "their house jumping up, their car jumping up", and there is personal liability. That is the law. That is supreme law of the Republic of Trinidad and Tobago right now.

Let us go further. What does the State Liability and Proceedings Act say?—which is what I just read from the Constitution that says that that fashioning of remedy that the High Court could come up with, anything to fix a constitutional wrong, any remedy it wants, and I dare say including the type of prejudice that Sen. Ramdeen so vividly described. What does it say? It says the State Liability and Proceedings Act shall apply. So let us go to that.

Section 2 of the State Liability and Proceedings Act, Chap. 8:02, an Act 17 of 1966 says this, subsection 2(2):

> "'servant', in relation to the State, includes an officer who is a member of the public service and any servant of the State and accordingly (but without prejudice to the generality of the foregoing) includes—
>
> (a) a Minister of the State;
>
> (b) a member of the armed forces of the State;
>
> (c) a member of the Trinidad and Tobago Police Service"—hear these words—
>
> "but does not include—
>
> (d) the President;
>
> (e) any Judge, Magistrate, Justice of the Peace or other judicial

officer;…

What does that mean? The prejudice and risk from an intellectual point of view, wearing a veil of justice as we do now as legislatures is that the risk of the Magistrate, described so vividly by my learned colleague and so capably by him, Sen. Ramdeen, is the same as a Judge save for the application of the common law.

Now, what did we do as a country in our legislative history to treat with this? Let us use the example of the immunity from suit for barristers. Lawyers are permitted, or have been and now it is subject to some evolution, a privilege against suit whilst you are at the Bar. You could sue the solicitor for negligence but the barrister on his legs at court was given a privilege and immunity against suit. England is sort of tweaking with that right now. Where did that exist prior to the Legal Profession Act when we fused our profession? Strictly in the common law. What did the country do? In coming up with the Legal Profession Act we took some elements of the common law and we codified it in the Legal Profession Act to grant that immunity and privilege.

So let us go a step further. What is the Government doing? Why not take advantage of the procedures recommended by Sen. Ramdeen? Let me explain why most respectfully, Madam President. Because there is a genuine need for us to take a whole of judicial officer perspective and codify the position. And respectfully after five years and three months of governing this country I am not comforted to hear from the UNC today to say "Do it now on the back of an amendment we propose now". Why? It is the same bench that says, "please consult, show us evidence of consultation, make sure people agree". Whilst I like the idea, as the Prime Minister says to me all the time, "You, Sir, as Attorney General do not legislate for yourself, you legislate for the country".

And therefore I did step outside, called the consultative arms of the Judiciary

that I could reach, speak to the President of the Law Association, speak to Mr. Jairam Senior Counsel who did the Jagroo case, et cetera, and suffice it to say there are conflicting points of view as to how far we ought to go right now which requires us to make sure we get it right. And in doing that this Government has taken an approach. We are prepared to move the Parliament any day, any time and continuously to come back to issues that we cannot do in one haul. In other words we just start.

For 101 years, these Magistrates have been left unprotected. But this Attorney General who pushed this particular amendment, went out to get the amendment done, did the consultation to get it done, we made sure to do this because how could we, in pushing the Magistrates into a criminal division, and traffic division, in putting Magistrates into the Children's Court, in putting in the criminal proceeding rules, how could we leave that level in such an unsatisfactory state? What we can say as a Government is that the whole position is being looked at, because you know what has not been said today? There are anomalies with respect to Masters as well. So I am going to do Magistrates today, ad hoc, Judges tomorrow in codified legislation and Masters otherwise. Let me explain why we are going further.

The Cabinet is considering right now recommendations from the Attorney General to enlargen the sphere of operation of the magistracy in particular, by adding on judicial support officers, judicial research assistants and having the JLSC make these appointments so that the work in the magistracy can be improved. Those of us that have practiced in the Civil Courts know the Civil Courts work well because they have the administrative structures to work well. But a Magistrate cannot function where it is just the Chief Magistrate and the Clerk of the Peace running the administration of the magistracy. No administrative

officers, no qualified legal personnel as Sen. Hosein recognized. You see what we have done is to take the management of the Judiciary into active consideration.

So we say respectfully today, there are models of law that are very appealing to the Government and I will read one. I find that the Bermuda law to be particularly interesting. This is there Magistrates Act, 1948mind you, and hear this:

"Scope of magistrate's immunity:

10A (1) Subject to this section, a magistrate shall be immune from any personal civil liability in respect of his judicial acts whether within or without jurisdiction."

End of it. Blanket civil immunity, the mischief being a tort, where you could pay out of your pocket personally. Subsection (2):

"Nothing in subsection (1) shall in any way impair the availability of other forms of relief in respect of decisions of courts of summary jurisdiction, including appeals, applications for judicial review and applications for redress under section 15 of the Bermuda Constitution."

Read that as section 14 of the Trinidad Constitution. Subsection (3):

"The common law rules governing the criminal liability of superior court judges in the exercise of their judicial functions shall henceforth apply to any magistrate when acting in a judicial capacity."

Meaning, take what prevails in the High Court jurisdiction as it relates to criminal liability and apply it here.

For the purpose of this section, Magistrate includes Justice of the Peace and any person appointed to sit as member of a special court or required by law to carry out any other judicial function. This is the model of the law that is appealing to the Government. Are we in a position today to legislate that? No. We are not.

Because I have yet to map out the special courts, as section 24 of the criminal division is now enforced and allows.

6.20 p.m.

I have yet to figure out the incongruities in a short space of time with the space of the Masters, as they come to case-manage, in particular, as we are recommending that the Masters do sufficiency hearings and initial hearings when we propose the abolition of preliminary enquiries. We also have to look at the codification for the Judiciary itself in the Superior Courts, meaning High Court and Court of Appeal.

So where are we today? Perhaps we are, indeed, at the position where we are saying 75 per cent is a good start, or 80 per cent is a good start. Because it is more important that we do something now whilst we map that out and do not wait. And let me give you an example of the Government's commitment to this. Sen. Ramdeen has made, in the course of several of our debates, some very important discussions that we undertook to come back to. You will see in legislation to come, this week and next week, those commitments and undertakings fulfilled. In other words, then, we are prepared to do the work whilst we do what we can do now.

I come back to my exhortations last week in recommending to the Senate, as Prime Minister Mottley said, "Stake and claim the ground you have now", and what I am humbly recommending to hon. Members is that, bearing in mind the limitations that the Government has expressed today as to why we cannot go the proverbial full distance, the position that we are having right now is this is what we can do immediately, and we are going within the parameters of the Jagroo decision. Because it was not just that the Judges said, in the Court of Appeal, go the whole distance, they were speaking specifically about exactly the type of

formula that we have applied here today in this Bill.

Sen. Vieira has circulated a very interesting—let me call it good-looking amendment, proposing a similar formulation of words as we have in other laws where we have protection: public procurement, was it, Sen. Vieira? There were two other models: data protection, was it? Data Protection Commissioner, where Sen. Vieira has proposed that there be the good faith formula as opposed to the bad faith formula, and that it include the permutations and not just the acts; the steps taken in preparation; the other elements that can come into effect.

I think it is a laudable position but there is a marked difference right now between good faith and bad faith, and who has the burden at what point in time in the progress of the matter. The recommendation for bad faith is because the bad faith, without probable cause or reasonable cause, is a higher standard than the good faith standard. So we have erred on the side of the higher standard.

I accept what Sen. Ramdeen is saying. I think that Sen. Ramdeen is on the point of genuine acknowledgment of risk. Sen. Ramdeen is correct. The Magistrates do have, under the JR aspect and the exposure for cost aspects in the individual application of laws. Be it preliminary enquiries or committals, et cetera, there is that risk. But there is also the same risk for the Judges right now. And what we say is, give us the room to come back to this issue, because there are other parts that are moving in this machinery: Masters, Judges, equally so, Magistrates and specialist courts. Do we not have an obligation to courts of superior record, like the Industrial Court, to think about what they are doing? Do we not have an equal poise to hold for superior courts, such as the Environmental Commission, Equal Opportunity Commission?

So the point is that, in the round it makes sense to legislate one law that treats with all of this. It is something that we certainly intend to advance as we

move along. But most importantly, whilst that grass is growing, we could not have the horse, that is the magistracy, bearing the load of Trinidad and Tobago for the 140,000 cases per year that they do, bearing that load without at least levelling up the protection to the rest of the Judiciary. Because all that the superior courts of record rely upon is the inherent jurisdiction, the common law.

So, hon. Senators, it is a fighting chance. It is certainly a far cry better than having done nothing for the period 2010 to 2015. It is an ability to at least take us part of the way. I want to thank Sen. Ramdeen for putting on record in this Parliament his thoughts and positions, because there is merit in his submission. I most respectfully cannot recommend that the Government accept the invitation to today make this amendment, because I still have—the Government still has some homework to do to get it right. But I want to thank Sen. Ramdeen for putting the observations on the record and I take it from a genuine position of trying to better the position, that Sen. Ramdeen has, in fact, made those submissions.

Sen. Chote has correctly observed the Latimer Principles and the facts that we need to observe in getting here. In fact, it is part of the material that I digested and referred to in piloting this Bill. I ask hon. Members for the opportunity to continue the work of protection, partly today in committee stage and then partly when we propose to return to this issue in what I think really ought to be an omnibus provision of protection.

Madam President, I look forward to the committee stage of this Bill and I beg to move.

Question put and agreed to.

Bill accordingly read a second time.

Bill committed to a committee of the whole Senate.

Senate in committee.

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

Clause 3.

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

Madam Chairman: Senator Vieira has circulated an amendment to clause 3.

Sen. Vieira: Yes. I spoke with the Attorney General earlier and he had repeated what he told me, that Government's intention is to have one law that treats with all: Equal Opportunity, EMA, Judges, Industrial Court, Masters. That would be ideal. My amendment was borne out of the concern that the clause as drafted covered sins of commission, any act done by the Magistrate, but it might not have covered the Magistrate's refusal or failure to act in a certain way or to make a particular order.

Having said that, while the ideal is to have absolute protection for the Magistrates—and that was the potential gap I was trying to close—I would not like to see this Bill derailed or delayed unduly, because any amendment would mean going back to the other House and then coming back here. So I really do think in terms of the need to shore up this potential vulnerability on the part of Magistrates, I am prepared to take the Attorney General's representation—the Government's representation—that further legislation is coming that will close it off. And on that basis, given the urgency to protect our Magistrates, I withdraw my amended proposal.

Sen. Obika: Madam Chair—

Madam Chairman: Just one second. So Sen. Vieira, you are withdrawing your proposed amendment to clause 3?

Sen. Vieira: In the circumstances, yes.

Amendment (Sen. Vieira) withdrawn.

Sen. Obika: Madam Chair, I wished to raise something before Sen. Vieira

withdrew.

Madam Chairman: Well, he has withdrawn it, Sen. Obika.

Sen. Obika: No, but if you allow me to just state it, then, just for his consideration. Sen. Vieira said that the Bill has to go to the other place for amendments. It has not as yet arrived at the other place, so therefore that does not apply. So that fear that he has of it having to go to the other place does not arise at all. So to ask him if he is still strong in his convictions—

Madam Chairman: Attorney General.

Mr. Al-Rawi: Madam Chair, I thank Sen. Obika. I was actually just going to say that myself, but I do not think that that cures the mischief. I would just like to say, first of all, that from the Interpretation Act perspective, the commission includes the omission. So we find some comfort at least in that point. One would be hard-pressed, therefore, to explain why other laws describe it differently, and what I can say is that the formulae used between drafter to drafter sometimes vary, especially when they are pulling from jurisdictions with comparative laws and they are modelling up. So that could explain why the information commissioner or the data protection commissioner had a different formula of protection. But coming from the Judiciary's perspective, it certainly is—what we took was what was in keeping with the other. So we went in pari materia to other jurisdictions.

But I want to just, again, say that we are certainly looking at this issue because it is a very live issue right now for the Judiciary. And because we are crossing the several hurdles all at the same time, because we have become a very litigious society, and litigation is even more fuel for trouble, depending upon how wealthy the litigant is—I do not say that pejoratively or churlishly—the fact is, if somebody wants to commit enough money to causing pain and anxiety to someone, they can. So for that reason, as we have, as a Government, furthered the

courts of superior record, we really are looking at this in an holistic approach, and I thank Sen. Vieira for allowing that opportunity. I certainly will be reporting on this as quickly as I can.

Madam Chairman: Sen. Ramdeen.

Sen. Ramdeen: Madam Chair, to the hon. Attorney General. Attorney General, would you consider, having regard to the fact that a unique characteristic of our jurisdiction is that Magistrates perform judicial functions as well as administrative functions, that you add after the words, "within his jurisdiction", "in the exercise of his judicial function", so that the administrative aspects of the performance of his duty can still be compelled by a litigant and the protection that you are seeking to give to him will remain?

Madam Chairman: Attorney General.

Mr. Al-Rawi: May I ask whether, "in the execution of his office" captures that?

Sen. Ramdeen: No, because what will happen is that the gamut of powers that he would have, or duties that he would have, would all be encapsulated in his office. But you do not want to take away from a citizen the right to compel him to do something that is non-judicial. I think your policy is to protect the Magistrate in the exercise of his judicial functions. For example, like the example I raised under the Indictable Offences (Preliminary Enquiry) Act where he has to do something administrative, that you can compel. You would not want to take away the right of someone to be able to compel him to do something, not in the exercise of his judicial function, which would be caught by your—which would satisfy your policy at this point in time, not extend anything that you are doing but preserve that aspect of it.

Mr. Al-Rawi: I respectfully did not see it. If I may, Madam Chair, I respectfully did not see it as actually excluding out the compellability on the administrative

side. The Government views any act done by him, which includes things which he did not do as well, in the execution of his office in relation to a matter within his jurisdiction. His jurisdiction is both judicial and administrative.

Sen. Ramdeen: No, Sir. For example, if he does not do something—for example he does not forward the notes to the DPP, this would prevent someone from bringing an action to compel him to do that. That is the mischief that I am looking at.

Mr. Al-Rawi: No, the action, as you put quite squarely in your argument, there still is a mandamus availability there. The thing is that we are exculpating him from the personal liability of paying for it. So that stands on its own. We can still compel or go for a declaration. You yourself raised it spot-on in your contribution.

Sen. Ramdeen: No, but, you see, the problem with this thing is this word "action". We should not be using the word "action" because, as I indicated to you, we should—because you cannot bring an action. You can only bring a claim. Right? And if you bring a claim—if you read the legislation and you have to bring a claim—let us take the example of the Magistrate who does not do his reasons and you have 60 days to do it, you have to bring a claim for judicial review. You go for leave. You get leave. Then you have to bring a claim, whether it be by fixed date—well, in judicial review it is by fixed date. So you bring a fixed-date claim form, ask for the relief. When you ask for that relief, there is the risk that this provision, as drafted as widely as it is here, will prevent that person from bringing that claim. Because the only person you can bring that claim against is the Magistrate. So the effect of what we are doing is to deny that person the right to bring that claim, because he cannot bring it against anybody but the Magistrate.

Mr. Al-Rawi: We are not barring the bringing of the claim. We are barring the personal liability in respect of the claim.

Sen. Ramdeen: No—

Sen. Vieira: Well, AG, I want to agree with Sen. Ramdeen on this, because when you say "no action shall be brought", that means no proceedings, and that would block judicial review and other things. And if, as you say, the mischief you are trying to cure is no personal liability, maybe that is what we should say here: "no personal liability shall attach to a Magistrate for any act done by him in the execution…" Now, that might be a neater and cleaner choice of words, respectfully.

Mr. Al-Rawi: Could you repeat it?

Sen. Vieira: Instead of "no action shall be brought", simply say "no personal liability shall attach to a Magistrate", partly the wording of my proposed amendment, because I thought that was what we were gearing at. It was all about personal liability rather than proceedings.

Madam Chairman: Just one second, Sen. Vieira.

Mr. Al-Rawi: I do not know if I interrupted. Have you concluded the point? May I reply?

Madam Chairman: Yes.

Mr. Al-Rawi: Yes? If I look to the wording of 4 itself—and I catch what we are holding on to, which is the potential mischief that someone may not bring an action at all. So first, in the Act itself, section 3 starts really:

> "Every action to be brought against any Magistrate for any act purporting to have been done by him in the execution of his office shall be brought in the High Court."

So bring it in the High Court.

> 4.—taking away what was there before, which is essentially:

> "…the writ…in every…action shall allege…the act was done maliciously

> and without reasonable and probable cause, or…done…not within the jurisdiction…otherwise the writ shall be set aside…"

So you must come outside of jurisdiction or in excess of jurisdiction, and you must come maliciously. And if you fail to prove that, the Magistrate wins. That is what the old 4 said. What we are saying here is:

> "No action shall be brought against a Magistrate for any act done by him in the execution of his office in relation to a matter within his jurisdiction."

Now, the submission that I understand—and please correct me if I have got it wrong—is that this action could somehow be interpreted as Parliament in its wisdom saying, "You no longer have the right of judicial review or some form of ancillary claim because there is now a blanket exculpation." Right? But 4 is qualified by 5, because subsection (5) is that you can bring an action provided that you cross the hurdle of "maliciously and without reasonable and probable cause."

Sen. Vieira: AG, on the plain meaning of the language—well, first of all, 3 says:

> "Every action to be brought against any Magistrate for any act purporting to have been done by him in the execution of his office shall be brought in the High Court."

This is not only action seeking damages.

Mr. Al-Rawi: Yeah.

Sen. Vieira: So if we go with: "No action shall be brought against a Magistrate", when you are going for judicial review, it is against the Magistrate. When you are going for mandamus, it is against the Magistrate. Inadvertently, we are blocking out the possibility of bringing actions.

What 5 is talking about is where the act was done maliciously and without reasonable and probable cause. But then you are burdening my opportunity to go for JR and mandamus.

[*Short pause*]

Mr. Al-Rawi: Madam Chair, so I have crystallized the argument to a potential risk of an implied repeal of other routes and remedies. One of the aims is, in fact, to discourage action per se, and more particularly, personal liability on the civil side. I was just looking at the Bermuda formula which, after describing its first purpose, went on to say:

> "Nothing in subsection (1) shall in any way impair the availability of other forms of relief in respect of decisions of courts of summary jurisdiction, including appeals, applications for judicial review and applications for redress under section 15 of the Bermuda…"

That could probably solve what we are thinking about because it is effectively a "notwithstanding provision".

So, Madam Chair, as opposed to causing an amendment to section 3 in the formula raised—

Madam Chairman: You will just add something.

Mr. Al-Rawi:—we have the potential to bifurcate 3 into a subclause (1) and subclause (2). And subclause (1) would be the language proposed in the Bill. It will be a section 4(1) and we can add in a section 4(2) which would read as follows, Madam Chair:

> "Nothing in subsection (1) shall in any way impair the availability of other forms of relief in respect of decisions of courts of summary jurisdiction, including appeals, applications for judicial review and applications for redress under section 14 of the Constitution."

Madam Chairman: That is it?

Mr. Al-Rawi: Yes, please.

Madam Chairman: All right. So let me just re-read the proposed amendments.

Clause 3 will now be:

"Section 4 of the Act is repealed and the following subsection is substituted:

4(1) No action shall be brought against a Magistrate for any act done by him in the execution of his office in relation to a matter within his jurisdiction.

4(2) Nothing in subsection (1) shall in any way impair the availability of other forms of relief in respect of decisions of courts of summary jurisdiction, including appeals, applications for judicial review and applications for redress under section 14 of the Constitution."

Yes?

Mr. Al-Rawi: Yes, please.

Question put.

Sen. Vieira: Thank you, Chair. Through you, if we are going to follow the subsection (2) of the Bermuda legislation, I was just curious why we did not follow the subsection (1).

Madam Chairman: Okay. So let me just do a little housekeeping here, please. I took pains to write it down and to read it and propose the amendment. So we are now at the stage of going through finally whether we accept the amendment. But Sen. Vieira, I will just allow that question to be put to the Attorney General, and I will suspend my proposal. Attorney General?

Mr. Al-Rawi: Sure. The answer is we are hybridizing the approach. I am not yet into the personal liability on the civil versus criminal side, because if I do one, then I have to kick in the criminal consequences in pari materia to what prevails in the Judiciary, and I do not have that yet. So the mischief that we are looking at for the (1) is we at least shunt an action, but allow for other forms of action. Because there is a cost to the action in and of itself if you are acting within jurisdiction, and

without jurisdiction, but not maliciously. So I think that it makes sense in the round.

6.50 p.m.

Mr. Vieira: Thank you. Thank you, Chair.

Madam Chairman: Hon. Senators, the question is that clause 3 be amended, as I had previously read.

Question put and agreed to.

Clause 3, as amended, ordered to stand part of the Bill.

Clause 4 ordered to stand part of the Bill.

New clause 4.

Where in any claim brought against a Magistrate in the execution of his duties, any order is made for damages or cost, such order shall be met out of the Consolidated Fund.

New clause 4 read the first time.

Question proposed: That the new clause 4 be read a second time.

Sen. Mark: Madam, I think I got a bit confused a short while ago.

Madam Chairman: You are confused?

Sen. Mark: Yes. We have a strong objection to 4 and I really thought we were still on 3.

Madam Chairman: No, Sen. Mark.

Sen. Mark: No, I am telling you. I am honest with you.

Madam Chairman: But Sen. Mark—but in any event, we are now dealing with your new clause 4 as proposed by you.

Sen. Mark: But remember you are going ahead with 4, not so?

Madam Chairman: All right. Sen. Mark, I think you know that there has to be some sort of order in the committee process and, therefore, I am going to revisit

clause 4. I am going to revisit it, but I would ask that having done all that we have done, I would ask you to be brief in your comments and the Attorney General will respond.

Clause 4 recommitted.

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

Sen. Mark: Madam Chair, we have indicated that this particular provision compromises a right that currently is enjoyed by ordinary citizens, and the standard that is set, the bar that is set, is somewhat elevated in the amendment that is being suggested in this Bill and we do not support the proposed amendment in its current form and, therefore, we would like to ask the Attorney General whether he would consider removing this completely in favour of the new clause that we are proposing to come. Madam Chair, we have a problem with—

Sen. Ramdeen: Madam Chair, could I just make one comment?

Madam Chairman: Just one comment, Sen. Ramdeen?

Sen. Ramdeen: Yes. Would you consider [*Inaudible*] and replacing it with "or"?

Mr. Al-Rawi: Forgive me, Madam Chair. I was first fixed upon what Sen. Mark was saying because what has been circulated as a new clause 4 is nothing about what Sen. Mark just suggested. So I was little bit confused because I saw clause 4 as really just to say where the money is coming from.

Madam Chairman: No, the new clause 4.

Sen. Ramdeen: No, he is dealing with your amendment. The old one.

Mr. Al-Rawi: So what I have is a list of amendments to be proposed, moved by Sen. Ramdeen but signed by Sen. Mark, is it that one?

Sen. Ramdeen: No, no. He is dealing with your amendment. He went back to your amendment as proposed by you in the Bill.

Madam Chairman: So, Attorney General, Sen. Mark has just made

representation based on the clause as set out in the Bill.

Mr. Al-Rawi: I see, because the new clause 4 I have is what is tabled here as new clause. So it is not this?

Madam Chairman: No.

Mr. Al-Rawi: I see. So it is not new clause 4.

Madam Chairman: No. I have allowed the committee to revisit clause 4 in the Bill, and Sen. Mark has made his representation.

Mr. Al-Rawi: So is it—sorry. So now to jump in there—thank you for the clarification, Madam Chairman—the word "or" that appears in the fourth line, is it that?

Sen. Ramdeen: No, no, no. You want to deal with Sen. Mark, first? I just have one little suggestion, that is all. If you want to deal with Sen. Mark—

Mr. Al-Rawi: I am in the hands of the President of the Chair.

Madam Chairman: Sen. Mark, can you just very briefly restate your position on clause 4 for the Attorney General?

Sen. Mark: Yeah. Attorney General, as it relates to clause 4, what we are saying is that this clause takes away or removes a right that currently exists in the original Act, whereby an ordinary citizen can take action against a Magistrate who has acted outside of her or his jurisdiction without having to prove maliciousness, or the action being malicious and without reasonable and probable cause, and we are saying that the standard, or the bar, has been lifted and it is very difficult for people to prove malice and this concept of "without reasonable and probable cause". So I am asking you whether you would want to delete this provision seeing that you are removing a right that is currently in the existing law.

Mr. Al-Rawi: Madam Chair, that would be to not take cognizance of the very dicta of our own Court of Appeal and elsewhere that say that Magistrates really

ought to be protected where they have acted in excess or without their jurisdiction, but have not been malicious in the course. So I would think that we would very much want to take the observations coming from as way back as 1907 in England, straight up to 2016 in Trinidad and Tobago, 2018 in Trinidad and Tobago, which would say that this is the formula to be used.

Sen. Mark: No, but Madam Chair if I may? All that you have referred to, they have always guided us by, one, it must be within jurisdiction, it must be within their jurisdiction, and even if it is based on malice or with reasonable or probable cause but it is within their jurisdiction, there is justification for their action. What I am saying is in terms of 5(1) of the original Act, the ordinary man has the right—

Mr. Al-Rawi: I understand.

Sen. Mark:—to take action, but you are now imposing on him a level where he has to prove malice or probable and reasonable cause which I am saying you are really putting him out of the picture, and I am saying that is objectionable.

Mr. Al-Rawi: What we are doing, Madam Chair, is we are not putting him out, the litigant. We are really bringing him to a standard that is perhaps just a little bit less than the Judiciary itself in the superior courts, High Court and the Court of Appeal. So what we are really doing—because Sen. Ramdeen observed deficiencies in his contribution—is harmonizing this approach a little bit closer to what prevails in the High Court and in the Court of Appeal. So we very much want to do it that way. What we need to do, as Senators Vieira and Ramdeen have noted, is we perhaps need to go even further to treat with the whole of picture perspective, which is what we want to do by way of our statements that we are going to deal with that in the other courts of superior record.

Sen. Ramdeen: Attorney General, have you considered changing the "and" to "or" in the second to last line?

Mr. Al-Rawi: You mean to link subclause (1) and (2)?

Sen. Ramdeen: To disjunct the reasonable and probable cause from the malice, and I will tell you why. As it presently stands, you virtually have to prove that a Magistrate was—you would virtually have to satisfy the same conditions that you have to satisfy in a malicious prosecution against a Magistrate if it is conjunctive, meaning that person has acted maliciously and without reasonable and probable cause.

Now, if your policy is not to go all the way and, therefore, you are still leaving the door ajar in relation to somebody who does something outrageous, meaning you act maliciously out of pure spite. If a Magistrates does something out of pure spite, Attorney General, there should be no requirement for that person who has been the subject of that action being purely spiteful or in bad faith—let us use those legal terms—to have to go and satisfy an additional requirement of acting without reasonable and probable cause because you can have a situation like in the anti-gang. What had happened in the anti-gang matters is that Justice Bereaux found that there was reasonable and probable cause, but no malice. Sorry, there was an absence of reasonable and probable cause but no malice and, therefore, they cut it down in the Court of Appeal.

So that if you have a situation where a Magistrate has acted purely maliciously in bad faith, I see the rationale for allowing someone—if you are going to say we are going to still allow people to go against a Magistrate, to say a Magistrate who has acted maliciously, why should they have that protection. Just as though a Magistrate who has acted without reasonable and probable cause, then it would be more difficult for somebody who is exercising a judicial function.

When a police officer is exercising an executive function in carrying out his duties, it is even more difficult for somebody who is excising a judicial function to

prove lack of reasonable and probable cause because over 99.9 per cent is that he would acting with reasonable and probable cause in the execution of his duty. So that I see there is a high degree of merit in disjuncting both of them and still achieving your policy which is that somebody who acts in this type of manner should not be give the protection you do not want to give them.

Mr. Al-Rawi: May I? The difficulty with disjuncting is that the higher of the two standards is the malice, the lack of good faith, the bad faith if I want to use that, maliciously. So malice has a fairly high standard attached to it. If we went to "or without reasonable or probable cause" we are really diluting that position.

Sen. Ramdeen: Let me just comment on this as you say that, not to have an argument. Just to say that the law as it presently stands recognizes that an absence of reasonable and probable cause may be a basis upon which you can imply malice.

Mr. Al-Rawi: Yes. But the point is that it may be and there are cases that go in all sorts of directions with respect to reasonable and probable cause. If the recommendation was—my own view of this is that without reasonable and probable cause is the first step, and then the malice is the second because it is easier to climb the step of reasonable and probable cause, if the submission was that you remove "and without reasonable and probable cause," well then you are still left with the malice. But I will think it dangerous to have reasonable and probable cause on that lower footing than the malice because then we are back to Templeman's position about the hand and Diplock's position about the handshaking whilst you are looking over your shoulder in terms of you are within and without jurisdiction sort of approach. Because the reasonable and probable cause also attracts to jurisdiction issues itself even though we have exculpated them in the clause before.

So I was happy with the qualification being associative, malice and reasonable and probable cause, because it fine-tunes the argument there. So I did not see that the "reasonable or probable cause" was anything other than a lesser standard of malice, but I would think it dangerous if we use the disjunctive "or" as opposed to "and".

Sen. Chote SC: Thank you. Madam Chairman, hon. Attorney General, I just have a query—"action" and "cause" are already defined in the Supreme Court of Judicature Act in a particular way. We are now using a different definition for "action", should we try in some way to harmonize the reading of the two pieces of legislation?

Mr. Al-Rawi: The reason why we stuck—it is a good invitation—with "action" is because of the wording in subclause (2) which we maintained, which kept it within the realm of action. Because we are not repealing and replacing the law yet in an omnibus sort of way, we try to keep with the architecture and the wording of the law as it was passed then. So we were slaved, if I could use that expression, to subclause (2) which is used throughout the legislation.

Sen. Chote SC: Thank you.

Sen. Vieira: Thank you. I tend to agree with Sen. Ramdeen on using "or" instead of "and". What we have at present is a person who is injured by an act done can bring an action without having to allege that act was done maliciously and without any reasonable and probable cause, but now we are reversing it. You are saying, "Look, you have an indemnity saved that I can show that you did something, that you had a particular state of mind", and I think that is where we are going now.

And so, saying that the only way you can maintain your action now—and we are bringing a serious thing. You have to go both with "maliciously and without reasonable and probable cause". I tend to think you may want to say it

was done maliciously, dishonestly or without reasonable and probable cause. At least that way there is a little more flexibility and give without such a high threshold being put.

Mr. Al-Rawi: So we kept to the high threshold of malice because all the dicta for 1907 come forward, including our own Court of Appeal, have held on to the issue of malice largely because of the treatment with which superior courts are managed. So it really is when you get to a Judge being malicious that you have in the High Courts, and in the Court of Appeal that you have, a similar form of remedy albeit at the common law.

The "reasonable or probable cause" is to literally throw the baby out with the bathwater if we use the disjunctive, because anybody could raise that argument at any point in time. As anybody in the criminal law, far be it for me to say that because I am not a practitioner in that realm, would be able to testify. So I will be very uncomfortable from a pure policy point of view in using the disjunctive.

Sen. Vieira: A "reasonable and probable cause" is a very vague and an easy bar to cross. What about maliciously, dishonestly or without lawful justification?

Mr. Al-Rawi: Again, in doing the research on the Income Tax Act actually, I came across all those standards in detail. I went for reasonable grounds, mere submission, arguable case, dishonest, and in doing the research for that particular law in seeing what the threshold ought to look like, it was acres of landmines that play because there are so widely different from each other in certain circumstances. What we felt comfortable with at this stage was sticking with what the dicta of our Court of Appeal, the Privy Council, the House of Lords, the Supreme Court of Jamaica, all had to say which was go for malicious. It is not too far off of section 44D of the Central Bank Act, which is bad faith because bad faith is as high a standard as maliciousness is, but respectfully we are still at the stage of passing

through. There must be a harmonization of standards for all courts of superior record.

As one could properly argue the magistracy is, one might even argue that say for the tenure that the magistracy really ought to be in the Constitution because the whole security of tenure argument is at sea from a whole of Government perspective, whole of Constitution perspective. I can—and I am saying this now as an individual—see no reason why a Magistrate ought not to have that form of protection which we have effectively given via the JLSC incorporation in implied and in expressed terms depending on what statute you look at.

So this really does involve a little bit more weight because if we take the Industrial Court we have two JLSC appointments, if we take the Land Tribunal, we take the Property Tax Tribunal, the Adjudication Tribunal, we take the Equal Opportunities, Environmental Commission, we have now so much traverse the boundaries of what was a court in 1917 versus what was an out court or inferior court in another point, that the times at least give that protection is now, security of tenure, service commission backing as well as the prerequisite for immunity.

So I am respectfully asking that we leave it the way it is specifically because "maliciously" is followed by the words "and without reasonable and probable cause". "And without reasonable and probable cause" is a low standard. You would have to traverse that anyway to get to malice because malice can be inferred from the very things that Sen. Ramdeen referred us to and this is the stepping stone to get there.

Madam Chairman: Sen. Mark, I think that we have had ample discussion on this clause. So I will now ask, the question is that clause 4 now stand part of the Bill.

Question put and agreed to.

Clause 4 again ordered to stand part of the Bill.

New clause 4.

Where in any claim brought against a Magistrate in the execution of his duties, any order is made for damages or cost, such order shall be met out of the Consolidated Fund.

Madam Chairman: Sen. Mark, shall we be proceeding with new clause 4? Do you want to proceed with it?

Sen. Mark: Of course, Ma'am.

Question proposed: That the new clause 4 be read a second time.

Sen. Mark: Madam Chair, again, we have argued on this side that the issue is that the provision in the Act per se and the judgment coming out from the courts, but more in the context of the consequences of the provision which is seeking to exonerate or protect the Magistrate from personal liability, and the amendment that we have put forward is to ensure that the Magistrate is protected, like a Judge, and in those circumstances let all costs or damages be a direct charge on the Consolidated Fund, and we believe that would go a long way in bringing about genuine immunity for the Magistrates.

Mr. Al-Rawi: I thank Sen. Mark for this recommendation. It is laudable and it is noble. The difficulty that I have with it at present is that it would cross into a realm of inequality because I do not have an—this is effectively an indemnity clause. It is saying, "Look, you will pick up the bill, taxpayers will pick up the bill". It is a charge on the Consolidated Fund, like judicial pensions, like judicial salaries, et cetera. But the Judges do not have an equivalent clause, the Industrial Court does not have it, and specifically the State Liability and Proceedings Act, section 2(2), excludes Judges, Magistrates and other judicial officers.

So for me to pluck out of the State Liability and Proceedings Act, section 2(2), exculpation for section 4, I find myself treating people potentially in similar

circumstances, dissimilarly, which is an intrusion into our constitutional rights. Secondly, I run into an implied repeal argument. Thirdly, I run into the fact that we have not yet factored the effect on the whole of immunity conversation that we need to have. The other thing that troubles me is that Magistrates have a different level of qualification to become Magistrates. So under the Summary Courts Act, when we introduce Magistrates as creatures of statute in sections 3, 3A, 3B, 3C, if I remember the numbering correct.

Sen. S. Hosein: 3 and 3A

Mr. Al-Rawi: 3 and 3A. There is a 3C too, which says immunity. I cannot remember. I do not have it with me. Thank you, Sen. Hosein.

So if we look to that particular Act it is 3, 3A and there is a 3B. So 3A:

"No person shall be appointed as a Magistrate"—must be—"admitted to…Trinidad and Tobago…practice for a period not less than five years."

When I go to Judges I have a slightly different standard, if I go to the Industrial Court I have a different standard, and even though the JLSC does the recommendations and they do it so on contract, which is 3B, my problem with introducing the indemnity provision, that the new clause 4 suggest, is that we do not yet have an opportunity to do the consultation with the other stakeholders that really ought to be caught in this basket.

So I think it is a noble suggestion. I think it really ought to be something that is applied across the board, but then again one has to balance the question is there a mischief to be had and just saying, "Go ahead and do whatever you do because I will pick up your tab". Because the complete indemnification and exculpation of even a judicial officer is to allow them to do anything they want regardless because the taxpayers pick up the burden. Right now, there is in the balancing act, the need for some sort of sword if you have acted maliciously,

without good faith, bad faith, whatever you want to call it. So one could argue on the other side of the coin in legislation, and being judicious in the approach, that perhaps you really ought to have a circumstance where civil liability does attract in some form or fashion.

So I respectfully recommend that we do not proceed with the new clause 4A because (a) we are not complete with the discussions; and (b), because the balancing act of complete exculpation and indemnification could be potentially dangerous.

Sen. Ramdeen: Thank you, Madam Chair. Madam Chair, I do not want to be said to be sitting here and not putting forward what I think is the proper position, which is that courts of superior record, which is the commissions that the Attorney General speaks about, the Industrial Court, the Integrity Commission, the Equal Opportunity Commission, because they are courts of superior record that is the reason why they cannot be sued.

The State Liability and Proceedings Act, the definition of "judicial officers" as not being present as a servant or agent of the State, is only limited to proceedings for contract and tort which is the old—what we considered the 1947 Crown Proceedings Act. So that that is not a good reason to saying that there is a difference in treatment because any superior courts of record cannot be sued in judicial review proceedings for the simple reason that the characteristics of that tribunal as such that it is a superior court of record. It has inherent jurisdiction, it has the power to hold people for contempt.

And therefore, that is why if we are saying that we want to give Magistrates the same protection that they are afforded, as Judges of the High Court, or members of Upper Judiciary, the fact that there is a difference in qualification just simply limits the jurisdiction that is exercised by the judicial officers and,

therefore, respectfully, there is no issue of discrimination arising and different treatment because the different treatment does not trigger the discrimination clause in the Constitution. It is whether the different treatment can be justified having regard to the circumstances of each person that is subject to the treatment and, therefore, in those circumstances, I think that there is still a strong case for advancing the amendment as put by Sen. Mark.

Mr. Al-Rawi: Madam Chair, it is precisely the tortious point that I was on. Because it certainly is something—I mean, Sen. Ramdeen's reflections may or may not be true. The truth is that I cannot decide that here right now in the vacuum that I am in, but I am on the point of tort in particular because the State Liability and Proceedings Act provides the explicit opening for the realm of tort and that is what we are talking about. So when we look to the Bermuda law we are talking about civil tortious liability and we preserved the fact that Magistrates who act in criminal purpose can in fact be brought to bear, so too Judges, so too others, but the point is that again in summary the fulminations are not complete in the whole of structured position.

I cannot say now, from this position today, that I accept or reject wholeheartedly Sen. Ramdeen's submissions. Perhaps he is right. I just have not been able to do the devilled work, the material of digging behind the hard law to come up with that, and very importantly we are talking about the tort and the exculpation of, well the exception for application of the State Liability and Proceedings Act within the meaning of sections 2 and 4.

Question put and agreed to.

Question proposed: That the new clause 4 be added to the Bill.

Question put and negatived.

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

Senate.

7.20 p.m.

Senate resumed.

Question put: That the Bill be reported with amendment.

Sen. Mark: No, we want to have a division on that.

The Senate divided: Ayes 24

AYES

Khan, Hon. F.

Gopee-Scoon, Hon. P.

Baptiste-Primus, Hon. J.

Rambharat, Hon. C.

Sinanan, Hon. R.

Moses, Hon. D.

Hosein, Hon. K.

West, Hon. A.

Le Hunte, Hon. R.

Lester, Dr. H.

Singh, A.

Cummings, F.

De Freitas, N.

Dookie, D.

Simonette, G.

Richards, P.

Chote, SC, Ms. S.

Vieira, A.

Deyalsingh, Dr. V.

Deonarine, Ms. A.

Seepersad, Ms. C.

Teemal, D.

Thompson-Ahye, Mrs. H.

Dillon-Remy, Dr. M.

The following Senators abstained: Mr. W. Mark, Ms. A. Haynes, Ms. K. Ameen, Mr. S. Hosein, Mr. T. Obika, Mr. G. Ramdeen.

Question agreed to.

Sen. Thompson-Ahye: The explanatory note does not form part of the Bill but there is an interloper there that should be put out.

Madam President: Sen. Thompson-Ahye, I think we have passed that now because we are now, having accepted the report, we are actually going through the procedural motions. Okay? The Attorney General, though, will take note of your comment.

Question agreed to.

Bill reported, with amendment.

Question put and agreed to.

Bill accordingly read the third time and passed.

ADJOURNMENT

The Minister of Energy and Energy Industries (Sen. The Hon. Franklin Khan): Thank you very much, Madam President. I beg to move that this Senate do now adjourn to Tuesday the 18th of December, 2018, at 10.30 a.m. in the morning. On that day, we will be debating the Finance Bill. [*Interruption*] Tuesday the 18th of December, the Finance Bill which should be debated in the House tomorrow.

I just want to put Members on notice that very likely we will also be meeting on

Wednesday the 19th which will be the last session for the year where we will be doing a Miscellaneous Provisions Bill that is related to the Income Tax (Amdt.) Bill and FATF. [*Crosstalk*] Wednesday, very likely, 1.30.

Madam President: Hon. Senators, we will deal with that as we move on. Okay? Yes.

Sen. The Hon. F. Khan: Yeah, but I am just giving you a heads-up.

Madam President: Hon. Senators, before I put the question on the adjournment, leave has been granted for two matters to be raised. Sen. Obika.

Public Transport Service Corporation

(Improvements in Operations and Service)

Sen. Taharqa Obika: Thank you very much, Madam President. I rise at this opportune time to highlight the need for the Government to effect improvements in the PTSC operations and service in south-west Trinidad.

Now, Madam President, before today's Parliament sitting began, I solicited the views of persons from Point Fortin, La Brea and Cedros regarding the quality of service that they have achieved. And I wish to state on the record the first person: "Point to Sando not so reliable". The second responder: "Poor service. Service from Granville to POS, stopped. Sando service to Icacos runs on weekends but not reliable." The third responder: "Buses from Point Fortin to POS along the Southern Main Road, the buses regularly shut down. Oftentimes, only one bus works".

This information, however, is only conveyed to travellers just at the time when the bus would not come after waiting for several hours. That responder proposed a solution, that a bus probably should be held in reserve when one can. One would have expected that that would be the normal order of business. And the person also said, to make matters worse, the road from San Fernando to Point Fortin has

not been paved since this Government has gotten into office. [*Desk thumping and crosstalk*] And I am hearing Members from the Government's side saying that "ah gone back" dealing with what they believe is not the Motion before them. But I want to remind them what the Motion is:

> The need for the Government to effect improvements in the PTSC operations and service in the south-west peninsula of Trinidad.

Now, if the complaint is that the bus always breaks down, clearly, if the bus traverses a roadway and if the roadway is impassable, that probably will be one of the main reasons why the buses are breaking down. [*Crosstalk*]

And the sad part about it, Madam President, is that the line Minister may wish to be seen as a troubleshooter, but in the case of PTSC, all the interventions, since this Government has come into office, have amounted to—all the interventions have amounted to simply trouble, no troubleshooting. Just as the case with the collapsed sea bridge, they have collapsed transportation in the south-west peninsula of Trinidad and Tobago. [*Desk thumping*] So that is one. In terms of benevolence because, of course, the Government came on a platform of "we love you so we will care for you". Clearly, they were not considering the persons in the south-west peninsula of Trinidad and Tobago.

The second point is competence, but if you cannot even provide the buses to ply the routes, then clearly, you have to ask the hard question: Is this Government— is this Minister competent in utilizing the resources at his disposal? Now, of course, the hon. Minister may complain that there was a precursor to him but there is a reason why the prior Minister was removed. It is because of incompetence, Madam President, so you cannot say that after one incompetent Minister, another one comes and the same thing. It cannot be the road march of

incompetence in their fourth year of office is the order of the day. And the last part that you use to judge someone, if they are not benevolent—so they do not take care of you, they are incompetent. The last thing that you would at least hope for is some level of dominance. But, Madam President, in terms of the management of the transportation and of PTSC, weakness is really what you see.

Now, the PTSC came before Parliament. I would have you know, Madam President, that in the second session of Parliament, they came before Parliament and in the Executive Summary of the JSC; there were some issues that were raised. You know, Madam President, one of the main issues was that the PTSC's performance was not being monitored nor evaluated by the Ministry, that the number of passengers transported was continuously falling and the bus fleet is succumbing to many maintenance challenges.

Now, if you have raised the price of super, diesel and premium since you have come into office, Madam President, you are in your fourth year, one would expect that the public would have gotten some level of reprieve by an efficient transportation network. So that, okay, if they cannot now afford—and they have been suffering massive layoffs—so they cannot even afford to utilize their personal vehicles, at least one would expect that the Public Transport Service Corporation would have been equipped with the proper buses, would have been staffed with sufficient drivers and would have been given the tools to ensure that the people of the south-west peninsula get value for money.

However, Madam President, I wish to remind the hon. Minister of Works and Transport that one of the main recommendations from this JSC was that PTSC must develop and set out to implement a clear strategy for increasing ridership. But as I began my contribution today, I reminded the Minister that the public is not

seeing any improvement and he needs to work on those three things we have pointed out. He needs to take care of the persons, be more benevolent, be more kind, take care of the people, be competent and if you cannot do so, step aside because we are ready to take care of the people of south-west [*Desk thumping*] and the whole of Trinidad and Tobago when we return to office. I thank you very much.

The Minister of Works and Transport (Sen. The Hon. Rohan Sinanan): "Yuh finish ahready?" Oh my God. Thank you, Madam President. Let me thank the hon. Senator for bringing such a Motion because I am really happy that the Senator would have brought this Motion because I think the Motion is very important, it is public transportation and it is important to take the debate to a much higher level than he had it at, and that I can actually give the population that assurance.

Madam President, based on the Motion before us today which seeks to establish the need of the Government to effect immediate improvement to the PTSC operations and serve the south-west Trinidad, I take the opportunity to show this honourable Senate and to ensure the population that there is a strategic plan for public bus transportation service as raised in this matter.

Madam President, I too agree that an efficient public transportation service is one of the main answers to our traffic problems in Trinidad and Tobago. And, Madam President, the Ministry of Works and Transport, in collaboration with the board and management of the Public Transport Service Corporation, will continue to focus their resources to deliver and improve public bus transport service to the national commuters who depend on the bus service as their primary mode of transport.

Madam President, in order to improve the PTSC operations and services the

process of business transformation commenced at the corporation. After thorough review sessions with the board and the management team, the corporation delivered a strategic plan for the period 2018 to 2021. During this review exercise, strategic goals and objectives were established, business processes were examined and re-engineered, all with the view to alleviate deficiencies and strengthening the Corporation's core service delivery mechanisms. The strategic plan is intended to serve as a road map to guide the successful modernization of the Corporation's operations to improve the quality and reliability of service delivery to the population. The plan highlights the following strategic goals for their stated period:

- Operationally efficiencies.
- Employee satisfaction and engagement.
- Customer service and satisfactory improvement.
- Operational transformation, revenue growth and diversification.
- Establishment of a monitoring and evaluation framework.
- Environmentally friendly PTSC.

The corporation also developed PTSC's Development Plan 2017—2022 with the intention to improve the quality of service provided to commuters. The corporation plans to achieve its new vision for its operations by placing emphasis on the following:

- Upgrading and modernizing the corporation's infrastructure.
- Modernizing of the corporation's operations.
- Improving revenue flow and reducing the dependency on government subsidies.

The corporation strives in its decisions to be in line with the Theme III of the

Vision 2030 National Development Strategy 2016—2030 which is as follows:

- Improving productivity through quality infrastructure and transportation
- Improve access to public transportation services.
- Enhance the efficiencies and effectiveness of the national transportation system.

Some of the strategic initiatives outlined in Theme III of the *Vision 2030* are as follows:

- The Corporation is acquiring 300 new buses to its fleet.
- Increase bus stop signs along the north-south corridor, Priority Bus Routes and other routes.
- Development of a new productive service through its East-West Corridor pilot project.
- The mall shuttle service.
- Construction of a first line and repair facility in PTSC Arima depot.
- Development of a passenger facility in Rio Claro.
- Relocation of the San Fernando garage.
- And the installation and commissioning of standby generators at all areas.

The corporation has embraced the use of information technology with the implementation of a fleet management system, the installation of surveillance cameras at all locations and a biometric team for attendance system. [*Desk thumping*]

Madam President, the Motion speaks about the south-west peninsula and I can give you the assurance that in 2017/2018 the facilities at Point Fortin have

been upgraded. However, there is a challenge with the fleet of buses. Most of the buses in the PTSC fleet are over 10 years old. The industry's standard should be about seven. And this is why the Government took a decision to buy 300 new buses and when these 300 new buses come on stream, it will not be the same old—[*Crosstalk*] It will be coming in 2019 and this decision of 300 new buses, Madam President—[*Continuous crosstalk*]

Madam President: Minister, please. Members, please. Minister, continue.

Sen. The Hon. R. Sinanan: Madam President, when these 300 new buses come, it just will not be going into the system just like that because we have had experiences in the past. We buy new buses and they do not last too long before we see them on the side of the road crashed or not being properly maintained. This Government, unlike the previous Government, went with a government-to-government agreement. What that means, there will be no middlemen. In other words, no contract to be awarded. You wanted to find out how much Devant bought? This Government is buying 300 buses with a direct arrangement, a government-to-government arrangement where it will be in the contract that no commission is to be paid to anybody, [*Desk thumping and crosstalk*] locally or internationally.

The company that we are buying these buses from will have to put a proposal for proper maintenance, proper training and will also assist us in a modern public transportation system, [*Desk thumping*] meaning we will be using technology to monitor the buses. The commuters can use their phone or any form of device that has Internet connection, you can track the buses wherever they are; you can track how late the buses, you will get on an app the time the buses will be there, and if they are not on time, give you an average of time that it will be there.

What we are hoping for, Madam President, with what we put in place is to have a modern public transportation system [*Desk thumping*], not only for the south-west peninsula but for the entire country, and I give you the assurance, Madam President, that the country can look forward to a much more modern and organized public transportation in the near future under this Government.

I thank you. [*Desk thumping and crosstalk*]

Madam President: Leader of Government Business.

PROCEDURAL MOTION

The Minister of Energy and Energy Industries (Sen. The Hon. Franklin Khan): Madam President, in accordance with Standing Order 14(5), I beg to move that the Senate continues to sit until the completion of the business at hand. [*Continuous crosstalk*]

Question put and agreed to.

Reform of the Labour Laws of Trinidad and Tobago (Failure of the Government)

Sen. Wade Mark: Thank you very much, Madam President. Sorry about that interruption just now there, Ma'am. Since the arrival on the compound of Trinidad and Tobago by the PNM on September the 7th, 2015, [*Interruption*] the people of Trinidad and Tobago, particularly the working people, have continued to reel under the hammer blows of one of the most incompetent, oppressive, evil Government that this country has ever witnessed and experienced.

Madam President: Sen. Mark, this is your Motion and I normally allow Senators some leeway in presenting the Motion but please, could you dial back a little bit on the rhetoric? Okay?

Sen. W. Mark: Madam, this is not rhetoric. This is a fact.

Madam President: Senator.

Sen. Mark: Sorry, Ma'am.

Madam President: All right.

Sen. W. Mark: Madam President, over the last three years, this Government has inflicted unprecedented brutal and harsh conditions on the working people manifested in rising prices; deteriorating working and living conditions; unprecedented increases in the cost of living; exponential growth in crime and criminality; the imposition of an oppressive and repressive property tax regime, and Madam President, the worsening distribution of income and wealth between the haves and the have-nots in our country.

Madam President, this country has experienced what can only be described as joblessness over the last three and a half years [*Desk thumping*] where workers' purchasing power has declined along with a sustained assault on their wages and salary packages. Madam President, would you believe that over the last 36 months we have had thousands—in fact, we have estimated close to 50,000 workers who have been placed and who have been dumped on the unemployment garbage heap by this Government led by the Prime Minister. Madam President, underemployment has worsen under this regime and they speak about labour reform but it continues to elude this intellectually, bankrupt Rowley administration. [*Desk thumping*]

Madam President, would you believe that they made promises to the working class, the trade union movement, that they will introduce and bring about reforms to the labour regime in the context of Retrenchment and Severance Benefits Act, they would revise and they would repeal. They would establish a severance benefit fund. These things have never appeared on the horizon and I

give you the undertaking tonight, this evening, they will never arrive on the political horizon. [*Desk thumping*]

Madam President, you know what has arrived? Massive retrenchment, over 10,000 workers gone at Petrotrin. That is what has arrived, Madam President.

Madam President: Sen. Mark, please.

Sen. W. Mark: Sorry, Madam President.

Madam President: There is absolutely no need to be shouting. Okay?

Sen. W. Mark: Yes. That is because I am trying to breathe. You know when "ah breathing", Madam President, but allow me. But I understand. Madam President, in terms of retrenchment, right, over 10,000 workers gone at Petrotrin. They want to bring something called the TTRA, in that regard, 2,000 and more will be going. WASA, the Minister of Public Utilities has indicated that it is overstaffed by over 2,000 workers. We anticipate trouble at WASA. We anticipate more trouble for workers at T&TEC. Madam President, already TSTT has retrenched over 500, and 300 more workers are to go.

So, Madam President, what the Government has been doing over the last few years in office is making life more difficult and challenging for the working class of our country. They have betrayed all the promises that they have made to the working class. They have undermined collective bargaining in the country. They have sought to decertify trade unions in this country. So this Government has offered no real hope for this nation.

Madam President, would you believe that we have been told by the Government that they will introduce comprehensive reform to the Industrial Relations Act? Madam President, the Government is on its way out, as you know, this Government is on its way out [*Desk thumping*] and it is a few more months

again before we sound the funeral drums. [*Laughter*] But the Government promised workers a new Industrial Relations Act; no Industrial Relations Act. They promised the workers of our country a Retrenchment and Severance Benefits Act, a revised one; none has appeared on the horizon. They promised the workers a modernized and reformed new Occupational Safety and Health Act; it has not arrived. What about sexual harassment legislation? Workmen's compensation? They promised the working class; that has not materialized. Madam President, they promised also a basic conditions of work legislation; that, too, is yet to arrive.

Instead, Madam President, what we have witnessed over the last 38 to 40 months is union busting at its best. [*Desk thumping*] Nobody ever could have contemplated that the Dr. Rowley—the hon. Prime Minister led Government, would have been so vicious against the organized trade union movement. When you take into account that they signed a memorandum of understanding with the trade union movement before they took office in 2015, and today, one of the leading lights that were at their side, the Oilfields Workers Trade Union, is now fighting for its very survival in south Trinidad and in the oil industry today. So what the Government has done, Madam President, they have almost decertified the trade union movement, that is the OWTU, from Petrotrin, so the union movement has disappeared literally at Petrotrin.

And I want the Government to indicate tonight, when they rise to speak, whether the OWTU will continue to represent workers at Heritage, at Paria, at Guaracara, and at the Petroleum Holding Company in Trinidad and Tobago. [*Desk thumping*] Tell us, Madam President, if they are really serious about successorship and continued union representation.

So, Madam President, what is going on in Trinidad and Tobago is that we

have a Government that is anti-worker, anti-trade union, anti-people and I give you an undertaking this evening that the working class and the ordinary people are only waiting for the election bell [*Desk thumping*] to be rung in this country to send the PNM packing once and for all.

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

7.50 p.m

The Minister of Labour and Small Enterprise Development (Sen. The Hon. Jennifer Baptiste-Primus): Madam President, I rise to address the Motion filed by Sen. Wade Mark through your good self, which reads, "the failure of the Government to actively pursue reform of the labour laws of Trinidad and Tobago". And I want to thank Sen. Mark for moving this Motion, because it affords me the opportunity to report to this nation, not only to this House, but to this nation what we at the Ministry of Labour and Small Enterprise Development, we have been engaged in.

Madam President, the Government and by extension the Ministry of Labour and Small Enterprise Development, appreciates that in some instances the existing legislation could be considered archaic and possibly irrelevant to the current socioeconomic realities and the way that work is done generally. The Government of Trinidad and Tobago, through the Ministry of Labour and Small Enterprise Development has concretely and consistently demonstrated its commitment to the reform of labour laws of Trinidad and Tobago early into our term.

The Government has pursued labour reform legislation, Madam President, and to my good friend, Sen. Wade Mark, in keeping with several keys aspects of the national policy framework. The realization of which, with respect to labour, is inextricably linked to the success of our labour legislative reform project, and will

result in labour issues and labour legislation emerging as a positive force in the economic development of Trinidad and Tobago.

Madam President, in fact, the very first labour legislation reform consultation took place in respect of the Industrial Relations Act, Chapter 88:01, on February22 and 23, 2016, in Trinidad, and on the 8th of April, 2016 in Tobago. Whereby the Ministry conducted a national tripartite stakeholder consultation on the Industrial Relations Act over the course of three days. As a matter of fact, Madam President, just today the National Tripartite Advisory Council held its meeting, where we concluded consultation with NTAC on the Retrenchment and Severance Benefit Act and the comments of the Council will go back to Cabinet week after next.

Hon. Senator: Good work.

Sen. The Hon. J. Baptiste-Primus: Madam President, thereafter the Ministry of Labour and Small Enterprise Development has sustained its commitment to engage in tripartite stakeholder consultation. And I want to record the following; from 2016 to date, stakeholder consultations were conducted as part of our labour legislative reform project in respect of the following pieces of legislation:

- The Co-operative Societies Act, we had one in Trinidad, one in Tobago;
- The Retrenchment and Severance Benefits Act, one in Trinidad, one in Tobago;
- The basic terms and conditions of employment code, one in Trinidad;
- Occupational Safety and Health Act, one in Trinidad, on in Tobago.
- The Workmen's Compensation Act, every one of these consultations we held a similar one in Tobago;

- The Cipriani College of Labour and Co-operative Studies Act;
- The Friendly Societies Act;
- Private security legislation;
- The draft national workplace policy on sexual harassment in Trinidad, in Tobago;
- The Trade Unions Act; and
- The employment standards code, one in Trinidad, one in Tobago.

As a consequence, Madam President, of all these consultations, Sen. Wade Mark, unprecedented. Your former administration never held so many consultations—

Hon. Senator: "Oooh."

Sen. The Hon. J. Baptiste-Primus:—Not one amendment, they attempted to have an amendment—[*Crosstalk*]—Madam President, I demand that when I speak, the Opposition listen. I sit here and I say nothing when they are speaking. I request your protection, Madam President.

Madam President: Hon. Senators, please. The Standing Order requires everyone to be silent while someone is making her contribution. Continue Minister. [*Desk thumping*]

Sen. The Hon. J. Baptiste-Primus: Thank you very much, Madam President. Arising out of the unprecedented number of consultations held—[*Desk thumping*] I did not do it, Madam President. I have an excellent team of public officers working with me. They work beyond what is necessary and I am very proud to lead that team, Madam President.

Arising out of these consultations, several draft policy papers have been prepared, including a draft policy paper for the amendment of the Co-operative Societies

Act, a draft policy paper for the amendment of the Retrenchment and Severance Benefits Act, submitted to Cabinet I said a short while, sent to NTAC and NTAC has now completed its consideration of that draft policy and it goes back to Cabinet.

A draft policy paper for the amendment of the IRA, today NTAC took a decision that we will meet on the 22nd of January and devote our time to the amendment to the Industrial Relations Act. A draft policy paper for the amendment of the Cipriani College of Labour and Co-operative Studies Act, that went to Cabinet and it is engaging Cabinet's attention. A draft policy paper for the amendment of the Friendly Societies Act, a draft policy position paper for the employment standards Bill, a draft policy paper for the national workplace policy on sexual harassment—and I dare say, right now as I speak, there is a draft Cabinet Note forwarding this draft national workplace sexual harassment policy for the consideration of Cabinet.

Hon. Senator: That is right.

Sen. The Hon. J. Baptiste-Primus: And also Madam President, [*Desk thumping*] a draft policy paper for the amendment of the Occupational Safety and Health Act. Madam President, us at the Ministry of Labour and Small Enterprise Development, we do not go on the roof-top and shout about what we are doing. We have been working quietly but diligently and in a sustained way [*Desk thumping*] to ensure, Sen. Wade Mark, labour legislation. I was the chief architect of that memorandum of understanding between the joint trade union movement and the People's National Movement. Not everything we do in life, not everything that happens in life, Sen. Wade Mark, we are comfortable with, but such are the vicissitudes of life. [*Desk thumping*]

Madam President, the Ministry of Labour and Small Enterprise Development's team has been working diligently and consistently on the reform labour legislation. Since, 2015 such a high level of performance in this Ministry is simply unprecedented and we will continue to be focused and we will get the job done. I thank you, Madam President.

Question put and agreed to.

Senate adjourned accordingly.

Adjourned at 7.58 p.m.