SENATE

Monday, April 16, 2019

The Senate met at 10.00 p.m.

PRAYERS

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

ARRANGEMENT OF BUSINESS

Mr. Vice-President: Hon. Senators, I crave your indulgence to defer item 3 on the Order Paper as we are currently awaiting the instruments of appointment.

LEAVE OF ABSENCE

Mr. Vice-President: Hon. Senators, I wish to advise that the President of the Senate, Sen. The Hon. Christine Kangaloo, is currently acting as President of the Republic of Trinidad and Tobago.

Hon. Senators, I have granted leave of absence to Sen. Garvin Simonette who is out of the country, and as I indicated earlier I will defer this item until we have the instruments of appointment for the Senators who will be swearing in for those Senators.

PAPERS LAID

1. Ministerial Response of the Ministry of Attorney General and Legal Affairs to the Twentieth Report of the Public Accounts Committee, Third Session (2017/2018), Eleventh Parliament on the Examination of the Report of the Auditor General on the Public Accounts of the Republic of Trinidad and Tobago for the Financial Year 2017. [*The Minister of Energy and Energy Industries* (*Sen. The Hon. Franklin Khan*)]
2. The Annual Audited Financial Statements of East Port of Spain Development Company Limited (EPOS) for the financial year ended

3. September 30, 2012. [*The Minister in the Ministry of Finance* (*Sen. The Hon. Allyson West*)]
4. Annual Audited Financial Statements of the National Commission for Self Help Limited (NCSHL) for the financial year ended September 30, 2016. [*Sen. The Hon. A. West*]

JOINT SELECT COMMITTEE REPORT (Presentation)

Social Services and Public Administration (Contract Employment in the Public Service)

Sen. Paul Richards: Thank you, Mr. Vice-President. I beg to present the following report:

Ninth Report of the Joint Select Committee on Social Services and Public Administration, Fourth Session (2018/2019), Eleventh Parliament on an inquiry into the state of contract employment in the public service.

URGENT QUESTIONS

Sea Tragedy (Coast Guard Assistance in)

Sen. Wade Mark: Thank you, Mr. Vice President. To the Minister of National Security. In light of reports that several lives could have been saved had the Coast Guard conducted a proper search in the Carli Bay area, following a sea tragedy involving six men, can the Minister indicate what was done by the Coast Guard to assist the distressed seamen?

The Minister of Agriculture, Land and Fisheries (Sen. The Hon. Clarence Rambharat): Mr. Vice-President, I respond to this question on behalf of the Government, and on behalf of the Government I express condolences to the families which have lost their loved ones in this tragedy. Carli Bay is a vibrant fishing area, and anything like this causes concern in the community and to the

Government.

But I want to say, Mr. Vice-President, without disrespecting the families, I want to say this question refers to reports that several lives could have been saved. I want to say at this time, the Government has no report, official or otherwise, which points to any sort of failure by the Coast Guard or any other arm of law enforcement.

When the message was received by the Coast Guard, the Coast Guard responded. In the darkness which came upon the officers who were out there, it became difficult to continue the search. The search continued early the next morning, and even up to now Coast Guard vessels and the aircraft have been deployed in search of the other two persons who are still unaccounted for. Of the five persons, two bodies have been recovered, two persons remain unaccounted for and one person made it on shore alive.

In fairness to the families, Mr. Vice-President, we understand that they would be seeking the facts, and they want to know exactly what happened, but at this time it is quite too early for the Government to say anything until the reports have been completed by the Trinidad and Tobago Coast Guard. I thank you.

Sen. Mark: Can I ask the hon. Minister whether he is aware that this incident took place on Sunday, and the Coast Guard did not respond, even though they were informed, until Monday? Is the Minister aware that the Coast Guard was very tardy in responding to the calls for help by the family?

Sen. The Hon. C. Rambharat: Mr. Vice-President, having received the calls for assistance, the Coast Guard responded by redirecting a vessel which was available, and it was not Monday. The Coast Guard responded on the day of the incident, and as I said, even up to now, the Coast Guard, supported by other arms of law enforcement, are actively working on this matter. Thank you.

Sen. Mark: Can the Minister indicate, that vessel that responded, as he claimed, on Sunday, whether it had to return to base because of the fact that its fuel supply ran low, and as a result of that, that vessel had to return, leaving the people in the sea stranded at the material time? Can the Minister clarify that for us?

Sen. The Hon. C. Rambharat: Mr. Vice-President, insofar as there is nothing factual in that, I find it impossible to reply except to say that there is nothing in there that is factual. It is complete fiction.

Sen. Mark: Is the Minister of National Security in the country, Sir? [*Interruption*] I will raise that question because these questions are not for you. They are for the Minister of National Security.

Mr. Vice-President: Sen. Mark. Next question, Sen. Mark.

Point Fortin Bush Fire
(Measures for Immediate Control)

Sen. Wade Mark: To the Minister of National Security, not to the Point Fortin former Member: In light of ongoing bush fire in Point Fortin, resulting in scores of citizens being forced to evacuate their homes, can the Minister indicate what measures are being taken to bring this situation under immediate control?

The Minister of Agriculture, Land and Fisheries (Sen. The Hon. Clarence Rambharat): Mr. Vice-President, it is my delight to respond to this question on behalf of the Government. I thank my colleague, Sen. Mark, for two very important questions today.

Mr. Vice-President, as we all know, this has been a very intense dry season. In the initial part of the dry season up until maybe a week ago, from time to time across the country we had rain, but in the last week we have definitely had no rain, and when you go out you see the signs of absolute dryness.

In these conditions, Mr. Vice-President, as we have always said, bush fires are likely, and we continue to urge members of the public not to start it, and when

they see it, to report it.

In this case, Mr. Vice-President, there was an immediate response by the fire services to the report of this bush fire in Mahaica in Point Fortin. The fire services were supported by the Point Fortin Borough Corporation, the Disaster Management Unit.

On behalf of all of us in this country, I thank them for their quick response, and the fire was suppressed. But, Mr. Vice-President, as you would know, with bush like this and with fire like that, the wind and other factors may cause it to reignite, and there have been cases where it has reignited and the fire services continue to deal with it.

I should also mention that this particular area, there are signs of seeping oil and tar sands, and once the fire was brought under control, the fire services and the Point Fortin Borough Corporation took steps to deal with the presence of the tar sands by digging the sand and using what is recommended in order to deal with the presence of oil and tar sands in the area. But it is something that the authorities continue to work on, and I urge on behalf of all of us as citizens, people to be very careful and to remember that if you start a fire without a fire permit, you risk a fine of $20,000. I thank you.

Sen. Mark: Mr. Vice- President, I ask the hon. Minister, can you advise this Senate what role did the absence of the Petrotrin Fire Service played since its closure, with the spreading of this fire and the inability of the authorities to respond rapidly to extinguishing? Can you tell us if the absence of the Petrotrin Fire Service contributed to the spread of this thing even more than normal?

Mr. Vice-President: I will not allow that question, Sen. Mark. Next Question.

Sen. Mark: May I ask him, through you, whether he is aware that several—

Mr. Vice-President: Sen. Mark, not "him", it is the Minister of Agriculture, Land

and Fisheries.

Sen. Mark: Well, you understand what I mean.

Mr. Vice-President: No, I do not understand. Just remember that when we are addressing each other in the Chamber, there is a proper way to address each other.

Sen. Mark: It was not deliberate.

Mr. Vice-President: I understand. I am just asking you to remember.

Sen. Mark: It was not deliberate. I have the greatest respect for both the Vice-President and my colleague. So it is the hon. Minister I am referring to, of Agriculture, Land and Fisheries. So I apologize, Sir.

I am asking the hon. Minister, through you, Mr. Vice-President, whether he is aware that several citizens in that part of the country, Mahaica and its surroundings, are suffering from various respiratory problems, breathing problems as a result of the uncontrollable spread, and even though they have extinguished the fire, the smoke inhalation? Can the Minister indicate what is being done to help these citizens health wise?

Sen. The Hon. C. Rambharat: Mr. Vice-President, thank you very much. Normally when there is a fire, a bush fire or any sort of fire, people in the vicinity will have issues with smoke and smoke inhalation, and between the fire services, the Point Fortin Borough Corporation and the health services in that particular area, relief is available. And the fire services is ensuring that those who need help, receive that help from the health services or whatever other agency of the Government needs to provide that assistance.

ORAL ANSWERS TO QUESTIONS

The Minister of Energy and Energy Industries (Sen. The Hon. Franklin Khan): Mr. Vice-President, the Government will be answering questions Nos.112, 113 and 114. We are not in a position to answer any other this morning.

Mr. Vice-President: Just repeat the questions for me, Leader of Government Business.

Sen. The Hon. F. Khan: We are doing 112, 113, and 114.

Sen. Mark: May I ask, Mr. Vice-President, it is a bit unacceptable for the Leader of Government Business to just rise and announce to you, that is, the hon. Vice-President, that he is only answering three questions and not the rest. He did not even ask the Senate through you for a deferment of one week or even two weeks. Were these questions deferred, Mr. Vice-President?

Hon. Members: Yes. [*Crosstalk*]

Sen. Mark: They were deferred?

Mr. Vice-President: Sen. Mark, these questions were deferred. It is at the bottom of the page on the Order Paper, Question No. 132, Standing Order 27(15) invoked on the 09 April, 2019, Questions No. 173, 174 and 175 were deferred for two weeks on the 2nd of April, 2019. Sen. Obika, comments?

Sen. Obika: Thank you, Mr. Vice-President. With respect to Question No. 132 and the fact that Standing Order 27(15) was already invoked, can we get some clarification as to the explanation?

Mr. Vice-President: Sen. Obika, the Leader of Government Business has asked. Leader of Government Business, I will let you respond in relation to whether you want a further deferment on this question or what is the requirement.

Sen. The Hon. F. Khan: The relevant Standing Order has been invoked, and we will respond appropriately very shortly.

The following questions stood on the Order Paper:

HYATT Regency Hotel
(Taxes and Dividends Collected)

132. Can the hon. Minister of Housing and Urban Development advise as to the amount of taxes and dividends collected from the HYATT Regency Hotel

(Trinidad and Tobago) for each year during the period 2015 to 2018? [*Sen. T. Obika*]

US Lobbyist: The Group DC LLC
(Fulfilment of Contract)

173. Can the hon. Prime Minister indicate whether the US lobbyist, 'The Group DC LLC', has met the objectives under the contract signed with the Government of Trinidad and Tobago in October 2016? [*Sen. S. Hosein*]

Special Reserve Police Officers
(Promotion of)

174. Can the hon. Minister of National Security indicate the number of Special Reserve Police Officers who have been promoted in the Trinidad and Tobago Police Service for the period September 30, 2015 to January 31, 2019? [*Sen. S. Hosein*]

Trinidad and Tobago Police Service
(Contracting of Retired Police Officers)

175. Can the hon. Minister of National Security indicate the following:

i. the current number of retired police officers engaged on contract by the Trinidad and Tobago Police Service; and

ii. the ranks of said officers? [*Sen. S. Hosein*]

Questions, by leave, deferred.

Four Roads, Tamana
(Pipe-borne Water Supply)

112. **Sen. Wade Mark** asked the hon. Minister of Energy and Energy Industries: Having regard to reports that residents of Four Roads, Tamana have not received a pipe-borne water supply for over two years, can the Minister advise as to what is being done to rectify this situation?

The Minister of Public Utilities (Sen. The Hon. Robert Le Hunte): Mr. Vice-President, the information from WASA does not support the allegations that the

Four Roads, Tamana area has been without a pipe borne supply of water for over two years. There has been intermittent supply over the years. The reason for this is the fact that the area is supplied with pipe borne water from a rural intake, which requires a high level of chlorine to be put into the water. This results in a rapid build-up of calcium in the distribution network, which causes frequent clogging of the mains and leads to a disruption of the pipe borne supply of water from time to time.

As a temporary measure, to supplement the water supply to affected customers, the authority has installed seven commercial tanks, each one of 1,000 gallon capacity at various points in the Four Roads, Tamana area, which are replenished on a regular basis. In addition, a truck borne supply of water is available to individuals on request.

Sen. Mark: Can the Minister indicate when WASA, through his Ministry, will take steps to provide the community of Four Roads, Tamana with a regular supply, 24-hour supply of water? Can you tell the Senate when that will be done?

Sen. The Hon. R. Le Hunte: Well, Mr. Vice-President, through you, as I have said before, you know, we have had a lot of clichés around this country about water for all. The reality is that coming into office, that again has been a myth, and there is not a constant supply of water for all in this country. So 24/7 water is something in which we have to work to, and based on the information, less than 50 per cent, and especially during the dry season less than 30 per cent of this country receives water for all. We in this administration are working towards achieving that goal for a more regular supply.

This area is one of the areas that at this point in time never had 24/7 water and still does not have 24/7 water. The area has grown to over 450 households, and about 1300 residents. We are now looking in addition to the intake

augmenting what we have done in that area, in addition to the intake that supplies the area to take water from the North Oropouche area to get water to that, that requires the putting down of about five to six kilometres of pipe. We are scoping that particular job, and it is engaging our attention to be looked at and find funding in the PSIP for next year for it to be executed. But again, it is the present situation that exists. It is what has existed for the past five to six, past 20 years in that particular area. We are working now in trying to augment what is there and improve the situation so that the people of that area will get an improved water supply. But I cannot guarantee that it will be 24/7.

Sen. Mark: Mr. Vice-President, the Minister did indicate that the two-year period was not accurate. Can the Minister therefore provide the Senate with the accurate period when this community has been without water? He said two years is inaccurate. Can he tell us what period?

Sen. The Hon. R. Le Hunte: Well, Mr. Vice-President, as I said it was clearly not two years. And this area has never been without water 24/7. Because as I said before the water-for-all campaigns that people have gone out on that, has never been a reality and it is been a farce. It is not that is something that is a reality.

So what I started by saying was that the two-year statement, the statement was not correct. This area has always had an intermittent supply of water and a scheduled supply of water. The area has also grown. We have evaluated the area and recognized that we need to augment the water in that area. The water also coming out of that area also has a lot of calcium in it. So we are looking to improve the area, and I am hoping that the area would be able to improve its schedule from what presently exists. But the people in the area, based on the work that we have done, they do get water on a scheduled basis. So two years consistently without water is not a true reflection, based on the information that I have from WASA.

Sen. Mark: Can I ask the hon. Minister, through you, Mr. Vice-President, what is the current schedule of supply of water for the Four Roads, Tamana community of 1,300 persons?

Sen. The Hon. R. Le Hunte: Mr. Vice-President, I apologize but I do not have that area, but WASA's schedule for all the areas in Trinidad and Tobago, including this one, is published on the website, and we also put the publications from time to time in the newspaper. If you call the appropriate numbers at WASA they will be in a position to advise as to the schedule in that particular area.

Sen. Mark: Can the Minister indicate whether an estimated cost has been put for the running of the five to six kilometres of pipe to this particular community, so that it can lead ultimately to a more increased supply of water? Is there an estimated cost of laying down this arrangement?

Sen. The Hon. R. Le Hunte: Mr. Vice-President, as I also said, this job is presently being scoped. What I could assure is that we know, and based on the trends that have been happening now in this administration in doing more with less, the cost I am sure is going to be at least 50 per cent less than it would have been based on the laying of the pipelines that we are putting down now, versus what I saw was the price of what pipelines were being put down for over the last five years. But we are presently scoping the job, and I will expect that, as I said, I will be putting it out in my new PSIP this year, as one of the areas that we will look at because we recognize that it requires some degree of attention. But I do not have that cost now, but it is going to be far less under this administration to execute it, than it was under the last administration.

Venezuela/Trinidad and Tobago Dragon Deal
(Details of)

113. Sen. Wade Mark asked the hon. Minister of Energy and Energy Industries:

Can the Minister inform the Senate whether the Dragon Deal between

Venezuela and Trinidad and Tobago needs to be ratified by the national Assembly of Venezuela?

The Minister of Energy and Energy Industries (Sen. The Hon. Franklin Khan): Thank you very much, Mr. Vice-President. The Dragon Natural Gas Supply Agreement is between the NGC, Shell and Petroleos de Venezuela, better known as PDVSA. PDVSA is required to provide contractual representation that it has obtained and will maintain in force all consents and approvals required for that entity to enter into and perform its contractual obligations. It is therefore the responsibility of PDVSA to obtain the requisite approvals under Venezuelan law, for PDVSA to enter into the Dragon gas deal.

I am advised that PDVSA has indicated to both NGC and Shell that all requisite consents and approvals have been obtained.

Sen. Mark: Mr. Vice-President, since all contractual obligations have been obtained from the Venezuelan authorities, can the Minister indicate what would be the next steps in executing this Dragon agreement, so we can have that supply of gas coming to Trinidad and Tobago? Can you advise us?

Sen. The Hon. F. Khan: Mr. Vice-President, as it is well known, the parties Shell, NGC and PDVSA signed a term sheet which covers quantity and price in particular, which are the hardest parts of an agreement to negotiate. The rest of the agreement is formalization of the other clauses, and that has been taking some time. It is no secret that it has slowed down, almost to a standstill, based on what is currently transpiring in Venezuela.

Sen. Mark: Since it is a slowdown to a standstill, can the Minister indicate whether the US sanctions against PDVSA would have played any part in the slowing down of this arrangement that needs to be executed speedily, given our challenges in the natural gas business at this time? Can the Minister help us with

that?

Sen. The Hon. F. Khan: Mr. Vice-President, I cannot speak on behalf of PDVSA. I can tell you that the US sanctions does not affect the NGC nor does it affect Shell, because Shell is a Dutch company. But the whole process has slowed down largely because of the current situation in Venezuela.

Sen. Mark: Is the Minister optimistic as to the time period for the full and final conclusion of these terms, or as he called it "term sheet". I think that is the term that was used by the hon. Minister? How optimistic is the hon. Minister for that process involving the exercise outlined by himself to be concluded given current realities in Venezuela? Can you share with us?

Sen. The Hon. F. Khan: I have gone on record to say that this deal can stand commercial scrutiny. It is in the interest of the Venezuelan people and the Venezuelan economy, as the supplier of gas at a reasonable and competitive price. It is beneficial to the people of Trinidad and Tobago to have an additional gas supply source from right next door for long-term stability of supply. So it is symbiotic. It can stand commercial scrutiny, and I think once the dust settles in Venezuela it will come to its natural conclusion and be executed.

10.30 a.m.

Mr. Vice-President: Sen. Mark.

Sen. Mark: Can I ask the hon. Minister whether he is aware as to the approval being granted for this arrangement involving NGC, Shell and PDVSA by the National Assembly of Venezuela? Is the Minister aware whether approval, formal approval, has been granted for this deal to go forward? Can the Minister advise?

Mr. Vice-President: Minister.

Sen. The Hon. F. Khan: Mr. Vice-President, it seems as though Sen. Mark is a Venezuelan constitutional lawyer. I will just read over the last sentence I said. I

am advised that PDVSA has indicated to both NGC and Shell that all requisite consents and approvals have been obtained.

Mr. Vice-President: Next question on the Order Paper, Sen. Mark.

CEO at WASA
(Investigation into Vacation Leave)

114. Sen. Wade Mark asked the hon. Minister of Public Utilities:

In light of reports that the CEO of the Water and Sewerage Authority has been ordered to proceed on vacation leave with immediate effect pending investigation into several 'sensitive matters', can the Minister indicate to the Senate the nature of said matters?

The Minister of Public Utilities (Sen. The Hon. Robert Le Hunte): Mr. Vice-President, the request for the CEO of the Water and Sewage Authority to proceed on vacation leave centres around an investigation concerning certain actions allegedly taken without the necessary approval of the board of commissioners of the Authority. As was indicated in the question, this matter is under investigation, and the rules of natural justice must prevail. Investigation is not complete, and I am thus unable at this time to further elaborate on this matter and will hope that I will not be called upon to do so.

Mr. Vice-President: Sen. Mark.

Sen. Mark: Mr. Vice-President, can the Minister indicate, in broad terms, what were some of these actions taken without compromising, [*Crosstalk*] without compromising what were the broad actions taken by this CEO that resulted in the board of directors having to send this gentleman on leave?

Mr. Vice-President: Sen. Mark, I will not allow that question simply because the answer given by the Minister was pretty decisive. Do you have a second supplemental?

Sen. Mark: Yes. Can I ask the hon. Minister whether the CEO—well first of all,

let me rephrase it: What time frame, Mr. Vice-President, is this investigation going to take to be completed. Mr. Vice-President, can the Minister advise?

Mr. Vice-President: Minister of Public Utilities.

Sen. The Hon. R. Le Hunte: Mr. Vice-President, you know as I said, the person in question has been a long-standing person in this community. He has served the public, the country for a number of years, and as I said before, I would really prefer that we do not bring this matter out in this public domain and let the work proceed.

As for time frames, we are trying to have this matter expedited as quickly as possible. It is an investigation in place, it requires information to be shared backward and forward and clarifications and therefore, it is in the interest of the company, it is in the interest of all concerned, to have this matter done expeditiously. And can I assure you, the board of commissioners at WASA is working to have it done as quickly as possible whilst recognizing that you need a process that needs to be fair and transparent to all.

Mr. Vice-President: Sen. Mark.

Sen. Mark: Can I ask the hon. Minister whether a special tribunal has been established to investigate this matter?

Mr. Vice-President: Minister of Public Utilities.

Sen. The Hon. R. Le Hunte: Mr. Vice-President, the board of commissioners of the authority is putting all systems and doing all that is necessary to ensure that the systems, that proper due process is followed in this particular matter.

Mr. Vice-President: Sen. Mark.

Sen. Mark: Can I ask the hon. Minister whether the CEO has been suspended with full pay?

Mr. Vice-President: I will not allow that question, Sen. Mark, and that was the final supplemental for this question.

Sen. S. Hosein: Mr. Vice-President—

Mr. Vice-President: Sen. Hosein.

Sen. S. Hosein: Mr. Vice-President, with respect to the questions on the Order Paper standing on my name, Nos. 173, 174 and 175, having the fact that they were deferred for 14 days and remain unanswered, I would like to invoke Standing Order 27(14)—27(15). Yes. 27(15).

Mr. Vice-President: Say again, just repeat for the—

Sen. S. Hosein: Standing Order 27(15), I would like to invoke on these three questions, please?

Mr. Vice-President: And the necessary Standing Order would be invoked in relation to questions 173, 174 and 175 standing in your name.

Hon. Senators, as I indicated earlier, I crave your indulgence to revert to item 3 on the Order Paper.

SENATORS' APPOINTMENT

Mr. Vice-President: Hon. Senators, I have received the following correspondence from Her Excellency the Acting President, Christine Kangaloo:

"THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

By Her Excellency CHRISTINE KANGALOO, Acting President of the Republic of Trinidad and Tobago and Commander-in-Chief of the Armed Forces.

/s/ Christine Kangaloo
Acting President.

TO: MR. AUGUSTUS THOMAS

WHEREAS the President of the Senate has temporarily vacated her office of Senator to act as President of the Republic of Trinidad and Tobago:

NOW, THEREFORE, I, CHRISTINE KANGALOO, acting President as aforesaid, acting in accordance with the advice of the Prime Minister, in exercise of the power vested in me by section 44 of the Constitution of the Republic of Trinidad and Tobago, do hereby appoint you, AUGUSTUS THOMAS, to be temporarily a member of the Senate, with effect from 16th April, 2019 and continuing during the acting appointment of Senator the Honourable Christine Kangaloo as President of the Republic of Trinidad and Tobago.

Given under my Hand and the Seal of the President of the Republic of Trinidad and Tobago at the Office of the President, St. Ann's, this 16th day of April, 2019"

"THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

By Her Excellency CHRISTINE KANGALOO, Acting President of the Republic of Trinidad and Tobago and Commander-in-Chief of the Armed Forces.

/s/ Christine Kangaloo
Acting President.

TO: MR. HARVEY BORRIS

WHEREAS Senator Garvin Simonette is incapable of performing his duties as a Senator by reason of his absence from Trinidad and Tobago:

NOW, THEREFORE, I, CHRISTINE KANGALOO, Acting President as aforesaid, acting in accordance with the advice of the Prime Minister, in exercise of the power vested in me by section 44 (1) (a) and section 44 (4) (a) of the Constitution of the Republic of Trinidad and Tobago, do hereby appoint you, HARVEY BORRIS, to be temporarily a

member of the Senate, with effect from 16th April, 2019 and continuing during the absence from Trinidad and Tobago of the said Senator Garvin Simonette.

Given under my Hand and the Seal of the President of the Republic of Trinidad and Tobago at the Office of the President, St. Ann's, this 16th day of April, 2019."

OATH OF ALLEGIANCE

Senators Augustus Thomas and Harvey Borris took and subscribed the Oath of Allegiance as required by law.

CIVIL ASSET RECOVERY AND MANAGEMENT AND UNEXPLAINED WEALTH BILL, 2019

[*Second Day*]

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

[*Chairman: Mr. De Freitas*]

Mr. Chairman: Hon. Senators, we were able to, at yesterday's proceedings, complete five clauses, so we will start at clause 6 today. Just as matter of housekeeping, Sen. Hosein would have sent around some amendments. Is everybody in receipt of those amendments? Attorney General? Yes? Okay. So that would be added to the amendments received from Sen. Mark, as well as Sen. Thompson-Ahye and the hon. Attorney General.

Clause 6.

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

Mr. Al-Rawi: Mr. Chair?

Mr. Chairman: Attorney General.

Mr. Al-Rawi: May I, subject to will of all Senators of course, notice that there are no amendments until clause 9 proposed by anyone other than Sen.

Thompson-Ahye, and we agreed to her particular amendment. Is it the will of the Senate that we take these three clauses together?

Sen. Mark: No. We would like propose as we go through, Mr. Chairman, because we do not want section 34 repeating itself here. So we will want to ensure that we go through each clause independently, and I assure the Attorney General that once there are no amendments, we are not going to detain the Senate, we will rapidly move on, Sir.

Mr. Chairman: With that being said, if there are no comments on clause 6 the question is—Sen. Ramdeen.

Sen. Ramdeen: Attorney General, Mr. Chair, through you, hon. Attorney General, in relation to clause 6, both subclause (1) and subclause (2), I was wondering, having regard to the fact that the definition section encompasses "recoverable property" as "criminal property, terrorist property and instrumentalities of crime", the way in which clause 6(1) and 6(2) are framed, why is it that we do not just cover the latter part of both clauses by indicating that an order in rem against "recoverable property"?

Mr. Chairman: Attorney General.

Mr. Al-Rawi: Understood. One could have relied upon the definition of as inclusive of all three species. We specifically intended as an aide to interpretation that we specify the three categories in the manner so that there is no doubt in the "in rem" applies to the three subset species of "recoverable property".

Mr. Chairman: That is it, Attorney General?

Mr. Al-Rawi: Yes.

Question put and agreed to.

Clause 6 ordered to stand part of the Bill.

Clause 7 ordered to stand part of the Bill.

Clause 8.

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

Sen. Mark: I think that there was some amendment that was circulated.

Mr. Al-Rawi: It was clause 9.

Sen. Mark: Oh, that was 9.

Question put and agreed to.

Clause 8 ordered to stand part of the Bill.

Clause 9.

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

Delete the word "of" after the word "comprise".

Mr. Chairman: Sen. Thompson-Ahye.

Mr. Al-Rawi: We agree.

Sen. Thompson-Ahye: You agree to the—

Mr. Chairman: Sen. Thompson-Ahye, could you just give a brief explanation as to your amendment?

Sen. Thompson-Ahye: It is actually just a matter of grammar, Mr. Chairman, "comprised of" should not be written like that because it may compose "of", so we just off the "of", so it will read "shall comprise".

Mr. Al-Rawi: It is just a collision between legislative drafting manual practice which is how they usually do it. I have no objection to removing it to coincide with grammatical observations.

Mr. Chairman: Sen. Hosein.

Sen. S. Hosein: Thank you very much, Chair. AG, I cannot remember which Senator during the second reading of the Bill would have indicated that, what if the Prime Minister and the Leader of the Opposition cannot agree, whether or not a time frame is going to be stipulated for the President to appoint?

Mr. Al-Rawi: No. And I do not mean that pejoratively, just that it is in practice that they agree to these things in a comity sort of arrangement, and that they deal with it.

Sen. S. Hosein: Because I know with other appointments that there is no time limit also.

Mr. Al-Rawi: Correct.

Sen. S. Hosein: Okay.

Question put and agreed to.

Clause 9, as amended, ordered to stand part of the Bill.

Clause 10.

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

Mr. Chairman: Sen. Hosein.

Sen. S. Hosein: Yes. AG, with respect to the reappointment of the civil asset trustee and the deputy civil asset trustee, when they are going to be first appointed, they would have to undergo—the President has to undergo the consultation process. On reappointment, does this same consultation have to take place before the person is reappointed?

Mr. Al-Rawi: Yes. The process is grounded in the initiation of process at all points in time.

Sen. S. Hosein: But it does not specifically state that because if when we read—

Mr. Al-Rawi: All other laws of similar type for reappointment have the same prescriptive formula, and you must comply with the original requirements.

Sen. S. Hosein: Is there anything, any specific Acts of Parliament that guide this process in terms of the reappointment?

Mr. Al-Rawi: The public procurement Act which was passed under joint select committee. A number of pieces of legislation have the same structure for formula.

You cannot be ultra vires the original scope of the original appointment. So if the Leader of the Opposition were to, for instance, turn up and say, "Look, whereas I agreed then, I do not agree now and my approval is required from an origination point of view and ab initio point of view", then there will be the process to follow.

Sen. S. Hosein: So for the record, we are clear that the consultation process must take place before reappointment?

Mr. Al-Rawi: For the record, it is the same as has always been prescribed in all laws of similar type.

Mr. Chairman: Sen. Mark.

Sen. Mark: I wanted to ask the Attorney General whether the second deputy trustee should not be appointed by the Judicial and Legal Service Commission.

Mr. Al-Rawi: We had not gone for a mandatory requirement for law. So because we were going for the first two trustees as attorneys above 10 years, we went for the JLSC. Because the second may come from a category outside of law, we did not put the JLSC and instead we prescribed the Leader of the Opposition and Prime Minister by agreement and in default, the President in own discretion.

Sen. Mark: But because of the importance of this, because let us assume—

Mr. Al-Rawi: We did not want all lawyers, quite simply. I mean, lawyers have a very skewed perspective and there is a need sometimes to have a different point of reference in the equation.

Sen. Mark: So this person is not going to be a lawyer?

Mr. Al-Rawi: Possibly. We added in law at the Leader of Opposition's request, but it does not have to be a lawyer.

Sen. Mark: So the JLSC only appoints lawyers?

Mr. Al-Rawi: Yes. That is correct. The JLSC, until that legislation is amended, is confined to the scope of its parameters; only lawyers, chief legal officers, et

cetera.

Sen. Mark: Well, you see, what I am saying, Mr. Chair, through you to the AG, is that let us assume, and you could—once you have a disagreement, and that this is a kind of untidy situation, once you have a disagreement, then the President automatically would appoint.

Mr. Al-Rawi: Yeah.

Sen. Mark: I am suggesting that you want a little more—I am not casting any aspersions, please, but, can we not put like the Public Service Commission as a more independent body?

Mr. Al-Rawi: We understand the point of reference. There is the philosophy that public services, that service commissions provide a degree of insulation, but I think we have an equal historical experience of service commissions not functioning as well as they do.

So, I think that there being ample precedent for the President is own discretion only after a failure to achieve accord between the Prime Minister and the Leader of the Opposition, insofar as that is ample in precedent, we are quite comfortable with this mechanism.

You see, Mr. Chair, as I said, if there was a definitive position involving the Leader of the Opposition, and we were saying that the Leader of the Opposition will have the final say, but this is one that is a bit tricky because—

Mr. Al-Rawi: How could a leader of an opposition have the final say on anything?

Sen. Mark: No. No. No. I saying—no. That is why I am dealing with independence here. I am saying that you want this thing to be beyond question.

Mr. Al-Rawi: It is beyond question.

Sen. Mark: Yeah. That is why I am suggesting, if there is disagreement, then it

falls on the President to appoint, and I am suggesting that we wanted a more insulated approach on the matter and that is why I am suggesting that you consider like the Public Service Commission which is an independent body and insulated from any kind of possibility or hint of any question marks—

Mr. Chairman: Attorney General, before you answer, let me—permit me to allow Sen. Vieira to make some comments. Sen. Vieira, you had?

Sen. Vieira: No. It was—thank you, Chair. No. I just had a question, I did not really want to interrupt Sen. Mark.

Mr. Chairman: Go ahead and ask the question, because I think—

Sen. Vieira: I do not know if it is dealt with later on, but these important posts, are they going to be gazetted?

Mr. Al-Rawi: Yes. And they must, all appointments are. And to answer Sen. Mark's position, the President appoints the service commission. So if the fount of authority for the service commission, the Public Services Commission, is the President, I mean really, number one, there is ample precedent; number two, the experience in service commissions is that it is six of one, half a dozen of the other. And number three, the President appoints the service commission anyway, so there is no need to go much further than we have here.

Sen. Mark: I am just recording some justifications about this.

Sen. Vieira: And the gazetted point, just for the record, is so that the public has notice of the appointment—

Mr. Al-Rawi: Not affective until it is gazetted.

Sen. Vieira:—so it is easy proof in court as well.

Mr. Al-Rawi: Yes. It is the standing practice as a matter of law that they must be gazetted, the proof of the appointed is in the gazetting. Every instrument that the President signs is gazetted by law.

Question put.

Sen. Ramdeen: Chair, it was 9 or 10?

Mr. Chairman: 9 was disposed of, we are on 10.

Sen. Ramdeen: 10. Okay. Could I just make one comment?

Mr. Chairman: On 10?

Sen. Ramdeen: On 10. Yes. Attorney General, I just managed to pull up here because legal affairs site was a little bit slow, the Tax Appeal Board Act. You would know from all of the pieces of legislation that you have piloted, there are certain safeguards in addition to which you have properly put in 141 with respect to the Salaries Review Commission, and subsection (4) which is the standard clause with respect to them holding office and not being—their terms of office not altered to their disadvantage. Are there any of the other insulated provisions that we have in the Tax Appeal Board or in the equal opportunity legislation that we have not put in to secure the insulation for these three members? I am just looking at it now to see.

Mr. Al-Rawi: Sure.

Sen. Ramdeen: You would probably—

Mr. Al-Rawi: There are some differences between the two pieces and largely because one is a tribunal and this is not. So we have kept at the trustee level. So, terms and conditions cannot be altered to their disadvantage, the SRC application pursuant section 141 of the Constitution, the manner in which they are appointed, and very importantly a charge upon the Consolidated Fund for their remuneration.

Mr. Chairman: Sen. Ramdeen.

Sen. Ramdeen: I am prepared to accept what the Attorney General has indicated. I will just look at the other provisions. If I see anything I will probably just—

Mr. Al-Rawi: Sure.

Sen. Ramdeen: Thanks.

Question agreed to.

Clause 10 ordered to stand part of the Bill.

Cause 11.

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

Sen. Thompson-Ahye: I have a question.

Mr. Chairman: Sen. Thompson-Ahye.

Sen. Thompson-Ahye: Why would we want someone who has had a record of a criminal conviction for any indictable or summary office as a trustee or deputy civil asset trustee even if the term of imprisonment is, at least, 12 months?—having regard to the fact that this is a person who is going to be dealing with recovery management and disposal of criminal property, terrorist property or instrumentality. I just wondering, I mean, you know that there is an expression, but what is it?—"Satan correcting the sin", or something like that. I am just wondering why we would even want to think of having someone with that background there when there are so many honourable people in the society.

Mr. Chairman: Attorney General.

Mr. Al-Rawi: Well, first of all, he who is without sin does not exist on the face of this earth.

Sen. Thompson-Ahye: Yes.

Mr. Al-Rawi: Secondly—if I may—the fact is that there is a range of offences that are very low in threshold, selling rotten tomatoes under the Summary Offences Act, a misbehaviour matter which a police man may have brought you up for when you were 18 years old and you have since changed your life and you are a reformed citizen, there are multiple examples. I certainly am not without sin, and I could see in the traversing of the laws, because we are doing an exercise right now

to look at how we schedule offences in general, and there are a lot of offences in law that are extremely minor.

And if I go to the Representation of the People Act, hon. Members present, including hon. Senators on the Independent Bench, can have a conviction for a matter up to 12 months, and they are entrusted with the most supreme of tasks which is to draft the Laws of Trinidad and Tobago.

So we felt that there was good precedent in the Representation of the People Act. In fact, the term that we had proposed was a little bit higher. In the discussions in the House of Representatives we dropped it to 12 months. So it is really to try and capture the fact that there is no perfection in humanity, and that there may be justified reasons for having someone of that type.

Sen. Thompson-Ahye: I quite understand. I am just wondering, you know, having regard to, it is this Government that brought the, what one may call "the Wayne Chance elimination provision" which is now gone, you know. So to hear you say that, you know.

11.00 a.m.

Mr. Al-Rawi: If I could just put this, when we come to the Parliament, and for the record, we often come with milestones. We do not come with law that is cast in stone. That is why we have a committee stage. That is why we have discussions. And that Wayne Chance provision, if you would allow me, because you have put it on the record, that was brought to solicit the views of the Houses. We may have our personal views. We come with a point and then we say well let us gauge to see what the discussion is, because it may very well have been in the reverse. But why did you do that? For instance, we are having this discussion now, why allow this person to have any conviction at all. So had we taken that point of view, then you are "dammed if you do and dammed if you don't". That is why we have the

committee stage to have the discussion of the issues. Because I have noticed there is a tendency out there to say that the Government has taken a cast in stone position. If that was the case we would ride through the committee stage and accept no amendments, but that is not what we do.

Sen. Thompson-Ahye: Thank you, this has been very instructive, because now I understand that sometimes you put things there just to hear people's view.

Mr. Al-Rawi: Absolutely.

Sen. Thompson-Ahye: It is not of your view at all, you have a different mind-set. You just want to hear what other people have to say.

Mr. Al-Rawi: It is important to facilitate that we draw a line so that other people can say, well look, the line ought to be on the left or the line ought to be on the right, because we cannot anticipate what the views of the collective whole are going to look like. And I want to say this, very often when we settle something we know that there are going to be issues of debate on issues, and the only way to get the litmus test on the issue is to say, well, okay, let us take a position and hear what the response is, because that is what we approach the law—that is the manner in which we approach the development of law.

Sen. Thompson-Ahye: I certainly appreciate that.

Mr. Al-Rawi: Thank you, Senator.

Mr. Vice-President: Sen. Ramdeen. Sen. Ramdeen.

Sen. Ramdeen: Hon. Attorney General, I remember in the same debate about that same Wayne Chance clause, and correct me if I am wrong, when you were wrapping up the non-profit Bill, you had indicated that you sit on the mercy committee and there are a number of applications where people have brought forward applications where there are minor offences, and have been asked under section 80, I think, of the Constitution, for that power to be exercised, for those

convictions to be wiped out. If that is the position, I quite agree with you that there are a number of provisions that are very archaic that we need to get off the books. Is it not a safeguard that persons who may have a run in with the law may have been reprimanded and discharged at an early age for minor offence can facilitate the taking off of that conviction from their record and then still be able to qualify if we put, "does not have a criminal record?"

Mr. Al-Rawi: We felt it prudent because there is an exercise in the pardon, so in taking up office what we can say is that the mercy committee did sit previously. In fact, I believe, as I welcome Sen. Chote, she sat on that committee in the past. There has always been a continuous exercise of the mercy committee sitting, but there is such a backlog that things may take a time that may be adverse to the appointment for something which is quite innocent. Remember that this election by the JLSC, or by the President is not grounded solely by these things. There are a number of factors in the round that the appointor is going to consider in whether the person is appropriate for the task or not. So, I am sure that if there was a serious matter demonstrating a character flaw tendency, et cetera, that those persons would probably not likely pass this scrutiny of the Judicial and Legal Services Commission or His or Her Excellency the President.

Mr. Vice-President: Sen. Obika. One second Sen. Mark. Sen. Obika.

Sen. Obika: No.

Mr. Vice-President: No? Sen. Vieira.

Sen. Vieira: No, I think the provision is proportionate. I was thinking immediately when I saw it, most people can have a traffic offence, and that should not really be a cause for excluding you from the office. So I think it is a measured provision.

Mr. Vice-President: Sen. Mark.

Sen. Mark: Yeah. Mr. Chairman, we are opposed. We do not support this provision in the legislation. It is our view that persons who are going to be appointed to these sensitive offices should have no criminal record whatsoever. If as Sen. Ramdeen has said, the AG wants to, through the mercy committee, wipe the slate clean, the person could come back in, but I do not support this provision whatsoever.

Mr. Vice-President: Attorney General.

Mr. Al-Rawi: Yes, well, I would accept the company of the Leader of the Opposition who proposed this clause, so clearly Sen. Mark and the Leader of the Opposition have opposing points of view. So, the Government is quite comfortable with the Leader of the Opposition's recommendations, the 12 months.

Sen. Mark: The Leader of the Opposition did not—

Mr. Vice-President: Sen. Mark, allow the Attorney General to complete his point.

Mr. Al-Rawi: Mr. Chairman, the record of the *Hansard* in the House—

Sen. Mark: I have no—

Mr. Vice-President: Sen. Mark.

Mr. Al-Rawi: The record of the *Hansard* in the House will demonstrate that the Leader of the Opposition proposed the insertion of 12 months for conviction. The Government accepted that recommendation. So, I will take no comfort in someone attempting to re-correct that record in a manner that is impossible. So, respectfully, I answer Sen. Mark's original intervention on this, to say the Government believes that this is a proportionate clause. Secondly, there is no circulated written recommendation from the Opposition on any of these clauses up until we get to clause 22. Thirdly, this was passed at the recommendation of the Leader of the Opposition in the House of Representatives, and I think I have

answered the position.

Mr. Vice-President: Sen. Hosein.

Sen. S. Hosein: Just for the record, Mr. Chair. I looked at the *Hansard*, it was the Attorney General who proposed the 12 months. It was not the Leader of the Opposition. I have the *Hansard* in front of me, so I would just like to correct the record. [*Interruption*]

Mr. Vice-President: Sen. Mark. [*Interruption*] Sen. Mark. [*Interruption*] Sen. Mark.

Sen. Mark: Sorry, Sir. You see that is why—

Mr. Vice-President: Sen. Mark, it is okay. [*Interruption*] Sen. Mark. [*Interruption*] Sen. Mark. [*Interruption*] Hon. Senators, the question is that clause 11 now stand—

Sen. Mark: Chair, before you go on.

Sen. Ramdeen: I just wanted to ask the Attorney General one question.

Mr. Vice-President: You are asking a question?

Sen. Ramdeen: Yes.

Mr. Vice-President: Sen. Ramdeen.

Sen. Ramdeen: Hon.—

Mr. Vice-President: He is listening.

Sen. Ramdeen: Hon. AG, having regard to the role that has to be performed by these trustees, I just pulled up the Central Bank fit and proper guidelines, and do you not think, having regard to the persons who are caught by the fit and proper guidelines, one of them are trustees and management committees of pension funds, controllers of financial institutions, controlling shareholders that the requirements or disqualification requirements in the negative should really fall within the same category of persons that the Central Bank would regard as fit and proper because

of the type of role and function that the trustees, I mean, that have to perform under this Act.

Mr. Al-Rawi: So, there is still room in the regulations for further refinement of these aspects. But from a proportionality point of view, knowing that driving offences may trip the 12 months, knowing that selling rotten tomatoes may trip the 12 months, knowing that a record exists in perpetuity until it is removed, it is proportionate that we have these issues. Regulations which are yet to be promulgated can speak to issues of honesty and propriety in the circumstances suggested and contained in the fitness and propriety recommendations for the Central Bank. So I do not think that they are mutually exclusive. There still is room for those aspects, but we believe in the round that this clause is a sensible clause.

Sen. Mark: Mr. Chairman. Mr. Chairman.

Mr. Vice-President: Sen. Mark, is this a new point?

Sen. Mark: No, no. I just want to—Mr. Chairman, you would allow me. I have the *Hansard* record. I am on page 79 of the *Hansard* record. The Attorney General proposed the 12 months, and he should not mislead the Parliament—

Mr. Al-Rawi: Mr. Chair. Mr. Chairman.

Sen. Mark:—or this committee, by bringing the Leader of the Opposition into his—

Mr. Vice-President: Sen. Mark.

Sen. Mark:—mouth when it is coming to this information.

Mr. Vice-President: Sen. Mark, you have made your point.

Sen. Mark: So, I just wanted to record, it was the Attorney General on page 79 of the *Hansard* that proposed 12 months, not the Leader of the Opposition. I just wanted to record that.

Mr. Vice-President: Mr. Attorney General, final comment on this and I would put the question after.

Mr. Al-Rawi: Yes, I am compelled, as the person that was in the chair, sitting in that House, which is why we do not conflate the two Houses, because it causes a debate as to he say she say, he said she said. The Leader of the Opposition across the floor, sitting where Sen Haynes' tag is, made this recommendation, and it is on the video of the Parliament. It was not a circulated recommendation. It came by way of her conversation, coming to the Government, and therefore I reject what Sen. Mark has to say.

Mr. Vice-President: Okay, and that would be the end of that back and forth in relation to that issue. I would not put the question.

Question put and agreed to.

Clause 11 ordered to stand part of the Bill.

Clause 12.

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

Sen. Hosein: Thank you very much, Mr. Chairman. Now, the powers given to the President here to revoke the appointment of a trustee.

Mr. Vice-President: No, that is 12.

Sen. Hosein: Sorry, 12. Oh sorry I am on 13, sorry.

Question put and agreed to.

Clause 12 ordered to stand part of the Bill.

Clause 13.

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

Sen. Thompson-Ahye: Well, it is the same sort of principle as you eloquently spoke of earlier, Mr. Attorney General, so it falls into the same category. The objection is the same.

Mr. Al-Rawi: Does the objection still stand in light of the accession given in the previous manner?

Sen. Thompson-Ahye: I learn my lessons well, Sir.

Mr. Al-Rawi: Well, I am soliciting your view, not a lesson. We have given the rationale that we have put in this because of the imperfection of humanity. If you had noticed that we have put the term of imprisonment at six months or more, and we have lowered that threshold bar. And we included the President in own discretion in this particular clause. We do think it is a proportionate clause in light of what our laws prescribe as offences from time to time.

Sen. Mark: May I?

Mr. Vice-President: Sen. Mark, do you have comments based on this proposed amendment or you have something else for 13?

Sen. Mark: No, I am on 13, Sir.

Mr. Vice-President: I know you are on 13, is it your comments in relation to all of 13, or is it comments in relation to Sen. Thompson-Ahye's amendment?

Sen. Mark: No, I am dealing with another matter.

Mr. Vice-President: Okay. Sen. Thompson-Ahye, let me just ask, so are you withdrawing?

Sen. Thompson-Ahye: Yes, I am.

Amendment withdrawn.

Mr. Vice-President: Okay. Sen. Mark.

Sen. Mark: Attorney General, through the Chair, I would like to advise that for consistency we have indictable or summary offence, and that 11(c) would when we come to 13(d), we have only indictable offence. So, I would want to suggest that if you want to been consistent, you go with both summary or indictable, so you have consistency.

Mr. Vice-President: Attorney General.

Mr. Al-Rawi: We recommended the indictable route because it is a more serious aspect for the process of removal, and then we note that in subclause (g) you may be removed for any other reasonable cause. You may be misbehaving in office, or bring your office into disrepute. So when you look at the combination between (f) and (g), we think that that ought to take care of it.

Mr. Vice-President: Sen. Hosein.

Sen. S. Hosein: And another point, Chair, through you to the Attorney General, now the President has the power to revoke an appointment. I am comfortable with (a), (b), (c), (e), (f), but (g), it seems that the President will be given a power to revoke for any other reasonable cause. Now, when you look at the method of appointment of the Civil Asset Trustee, that person is appointed on the advice of the JLSC by the President. Now, as I understand it, that any person who, for example, falls under the remit of a service commission should be disciplined or their appointments be recommended to be revoked by that service commission. Now, this seems as though that the President has the power to revoke an appointment of a person who was recommended by the JLSC. Now, I am comfortable with the Deputy Civil Asset Trustee, because the President appoints based on consultation for that position. But why not have the JLSC involved with respect to the revocation of an appointment for the Civil Asset Trustee who it may make a recommendation to the President for?

Mr. Al-Rawi: The fact is that the usually prescription is that the President usually does this. But "President" is to be read as "Cabinet". So, we have insulated the Cabinet away from that, in this instance put "President in own discretion". The President is reviewable as case law now demonstrates quite properly, so judicial review proceedings for removal can ensue, and therefore the President in the fact

of being reviewable in these types of proceedings will have to have a rational position, which I am sure the President under the Constitution parameters of Trinidad and Tobago can have by way of discussions with the JLSC. It is just a simpler exercise to have the President have this function. Our Constitution preserves and carves out, carves out and preserves a role for the President which fits within these parameters.

Mr. Vice-President: Sen. Vieira.

Sen. Vieira: Thank you, Chair. I think this is an important and necessary safeguard. If the President gets wind that somebody has been behaving in a way that is less than probative, you cannot afford to have all the lengthy due process requirements. You need to have a summary jurisdiction to be able to take immediate and effective action, because the trustee is just too powerful a figure, too important a figure to have any funny business allowed.

Mr. Al-Rawi: Thank you.

Sen. Mark: You see, Mr. Chairman, the problem that you have with this is that you could have external influences being brought to bear in an office. And when you give any office holder—I am not dealing with the present office holder—that power to dismiss someone for what is called "any other reasonable cause", suppose, Mr. Chair, something is not going good with the political directorate and they want to get rid of me as the trustee. What I am saying "and thing", it is not farfetched. He who appoints can disappoint. So we have to be very careful that indirectly the Government is not running this operation. So this is dangerous to put this kind of power into the hands of the President knowing fully well that the President on many occasions—and I am not talking about the President here, any president—acts on the advice, takes instructions from the Government on many parts of the laws and Constitution. So, I think we should eliminate this completely

from the legislation for, because you see, Mr. Chairman, this—remember the AG has been saying over and over, this thing has no political influence, this thing is above the politics. But when you put this kind of power into the hands of that office holder, we do not know what is possibly behind the scenes.

Mr. Vice-President: Attorney General.

Mr. Al-Rawi: Mr. Chairman, power must reside somewhere. The framers of our Constitution established how power is to be regulated in this country. That is the first point. Secondly, the President's role is established in the Constitution. Thirdly, the President's exercise of discretion is reviewable in the courts of law. It is also a point that, yes, he who appoints can disappoint. That is under the Interpretation Act. It has been tested in our courts, et cetera. The question is, in the hypothetical circumstances raised by Sen. Mark, the question is: Is there a proportionate balance in the exercise of that function? So, as law makers, of course, that is the focus we ought to have, and there is in the reasons that I have advanced previously, obviously a proportionate measure to that. Nobody is there stuck holding a stick without a remedy. You can approach the court, you can be vindicated in terms of reputation and damages and compensation, and therefore that is an appropriate remedy to any one of the hypothetical sets that can exist in life.

Mr. Vice-President: Sen. Chote.

Sen. Chote SC: Thank you. I just want us to appreciate that by putting in that clause it means, one, that the President in coming to a decision will have to justify the fact that it is reasonable, and also, in my respectful view it insulates the President from political persuasion, because it is a discretion that the President himself or herself is going to have to exercise, and is going to have to justify as being reasonable. So, I actually think that this clause is more protective of the

person who may be dismissed by the President for any reason at all.

Mr. Al-Rawi: Thank you.

Question put and agreed to.

Clause 13 ordered to stand part of the Bill.

Clause 14 ordered to stand part of the Bill.

Clause 15.

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

Sen. Mark: I think there was this question of—it is 15 right, Sir?

Mr. Vice-President: Yes, 15.

Sen. Mark: Yes, recklessly and knowingly, I think that we have some reservations about the language here. I will ask—

Mr. Vice-President: You want to be more specific Sen. Mark? You said you had reservation about language, you want to point out exactly where for the Attorney General?

Sen. Mark: Yes.

Mr. Al-Rawi: Mr. Chair, while my friend is formulating his thought, which I welcome, may I just note that in the course of the debate that Sen. Teemal raised a very important question about the provisions of conflict of interest with respect to the property manager? This would perhaps be, as I have looked at the clause, an appropriate juncture to add in the creature on the property manager. So, if in clause 15(1) we were to add that post, not only a trustee, but "trustee or property manager" who has any actual, we would take care of the observation that Sen. Teemal very commendably brought to the attention of the House.

Mr. Vice-President: So that is a "trustee or property manager"?

Mr. Al-Rawi: Yes, sir. I am assuming that Sen. Teemal has a view on this.

Mr. Vice-President: Sen. Teemal.

Sen. Teemal: Yes. Thank you very much, Attorney General. I did raise it in my contribution to the debate, and I maintained that that conflict of interest clause and the resulting penalty for failure should also apply to the property manager.

Mr. Al-Rawi: Thank you Senator, we agree.

Mr. Vice-President: Sen. Mark, you were—

Sen. Mark: I am not comfortable with this term here.

Mr. Vice-President: Sen. Mark, you have to be specific. What term?

Sen. Mark: "Recklessly", the expression, and "knowingly". Because I think somewhere later on in the legislation there is another similar used expression, Mr. Chairman, and we had some reservations about it as well. I do not want to anticipate, but I think it dealt with 59 dealing with the form. Yes, 59. There is a form that—right, if you go to 60, Mr. Chairman, just to anticipate, this is where we had some reservation, and we are having it here as well. Because sometimes people can—in fact, I think the Government is aware of it because they know that decisions can be taken by the trustee, and they are saying that the trustee could act maybe arbitrarily, maybe at times without proper facts before him or her, but yet still that person is immune from action, because it is said they were acting in good faith. So, this is connected with clause 60, which we would come to as we go forward.

Sen. Chote SC: Thank you, Mr. Chairman. We are on 15, yes?

Mr. Vice-President: Yes.

Sen. Chote SC: Okay. 15(2), I think I have a little difficulty with that, because mens rea, when you talk about "knowingly" it usually means something along the lines of intentionally; and "recklessly" is a different formula entirely for mens rea. So, for us to say "recklessly and "knowingly" is sort of confusing the mens rea for the offence. So, if we want to put it in the alternative, certainly that is possible, but

I think we need to be a little more specific.

Mr. Al-Rawi: Mr. Chair, I thank Sen. Chote for her intervention, she being an expert in this area. It may be that the word "or" could suffice, but if I could just state, the reason why we inserted the mens rea qualification came out of the most recent case on conflict of interest at the Privy Council. It is the case of *Director of Public Prosecutions vs Jaggernauth and another.* It is from the Supreme Court of Mauritius. It was heard at the Privy Council. It is in the Hilary term 2019 UK PC Eighth, and it was published on the 25th of February 2019, and they specifically said in the context where the Mauritius law had no qualification of mens rea, they just said, the left it out clean. It implied almost a strict liability offence. They read it into the law, the concepts of recklessness and/or knowingly. So, perhaps we could take Sen. Chote's caution and change the word "and" to "or", and therefore there would be two species of mens rea which would apply.

Mr. Vice-President: Okay. Sen. Hosein.

Sen. S. Hosein: Chair, just one point, through you, for the Attorney General. AG, I looked at section 29 of the Integrity in Public Life Act, to define what a conflict of interest is, because it is not defined here in clause 15, and it gave a very wide and expansive definition of an interest. I do not know if you would want to transpose something similar to what is found there in the Integrity in Public Life Act as a new subclause (3). If you would allow me to read it, it says:

> (1) "For purposes of this Act, a conflict of interest is deemed to arise if a person in public life"—which we can change to trustee—"or any person exercising a public function were to make or participate in the making of a decision in the execution of his office and at the same time knows or ought reasonably to have known, that in the making of the decision, there is an opportunity either directly or indirectly to further his private interests or that

of a member of his family or of any other person.

(2) Where there is a possible or perceived conflict of interest"—he—"shall disclose"—and recuse—"himself from the decision-making process."

I do not know if you would like to put something like that here so that we can catch what exactly is an interest pertaining to this piece of legislation.

Mr. Al-Rawi: Mr. Chair—

Mr. Vice-President: Sen. Ramdeen.

Sen. Ramdeen: AG, in the fifth line, fourth to fifth line of this clause, subclause (1), you say that where the person has reasonably:

"…actual, apparent or reasonably foreseeable conflict of a direct or indirect interest in a matter under consideration by the Agency shall disclose the fact of his interest in writing to the President…"

Should we not also—would you have a difficulty if they also disclose it to the other members of the—the other members who would comprise the trustee or the other members of the agency, because I understand that the President is perhaps the head as the person appointing, but when you disclose it to the President, I mean, what will the President do? I mean I would like to think that the members who are actually involved in the decision making or in the "consideration of the matter", what you have here, they would be the persons who would most or want to know whether one of their fellow members has a conflict of interest. They might render some advice as to what they might do or whatever is in relation to it. It is similar to how we operate in a committee here, you disclose it to the members and they would decide what the position is, even though you have the protective safeguard of sending it to the President and you have the safeguard of saying, "shall not participate in the consideration of the matter."

Mr. Al-Rawi: So, it is latter one that I held on to, because it is—well, first of all if

I may on Sen. Hosein, and I did look at the Integrity in Public Life Act, there are all kinds of mischiefs that people can invent in relation to conflicts of interest, and when the facts actually come out you understand that they are not. But then there is public perception and we are entitled to those aspects, especially when we are looking at this category of person, the trustee. The broad sense of the drafting in subclause (1) does capture direct or indirect interest, and it is well-known that that extends to any way in which you may prosper. Because, obviously the category of personalities described in section 29(3) of the Integrity in Public Life Act captures people to whom you have a direct relationship.

The other factor inside of here, and this is to deal with Sen. Ramdeen's caution, and I thank him for the advice. We are putting an absolute restriction. If you have a direct or indirect benefit or conflict, you not only tell the President but you cannot participate. So, your members will be made aware by the fact that you have recused yourself. And if you do not tell the person to whom that record is kept then you are in trouble under law. So, we are putting a prescription against participation in the fullest sense, because you must do the conjunctive effects. You must disclose it in writing to the person who records it, and that person who appointed you or supervises your appointment. And secondly, you shall not participate. So, we felt that the clause as drafted is in keeping with the public disposal, public procurement and disposal legislation. It is not in pari materia with the Integrity in Public Life Act, but we feel that this is robust formula in its use.

Mr. Vice-President: Sen. Vieira.

11.30 a.m.

Sen. Vieira: Thank you. And while Sen. Ramdeen's point looks very attractive, the difference here is that you are not dealing with a board where there is collective responsibility, it is the Trustee. And I do not really think that he should have to

disclose to anybody else because he is the one that is making the primary decision. So I think as cast is correct.

Mr. Al-Rawi: And very importantly, there is no exception to this. Your colleagues cannot say, "Well, no, you are not a conflict of interest". It is just a matter of fact.

Sen. S. Hosein: Before we vote on this clause, AG, the way in which it is drafted here, "President" is to be read as "President of the Republic" or "Cabinet"?

Mr. Al-Rawi: President of the Republic. You see the concept of Cabinet, is if the Cabinet is making a decision labeled as President. So the Constitution is clear as to what "President" means in the exercise of functions. It could never be as the subject of a clause that "the President" could mean "the Cabinet". It is only to be applied that way as matter of law if there is an exercise of function.

Mr. Chairman: Hon. Senators, the question is that clause 15 be amended as follows:

At subclause (1), after the word "Trustee" insert the words "or Property Manager" and at subclause (2), after the word "recklessly" delete the word "and" and insert the word "or".

Question put and agreed to.

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

Clause 16 ordered to stand part of the Bill.

Clause 17.

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

"Delete subclause (8) and renumber subclause (9) as subclause (8)."

Mr. Al-Rawi: Mr. Chair, we propose a deletion of subclause (8) because it would trip a three-fifths right. Subclause (8) provided or provides:

"Notwithstanding the secrecy provisions under any written law relative to

> the functions of an authority, the Property Manager may request information from and receive information from relevant authorities in exercising his functions under this Act."

It would be inappropriate to maintain this clause under a simple majority Bill. It ought to be deleted because if this is required you go and do the usual processes of going to court and getting a production order for the information. So we respectfully believe that clause 8 should be deleted. And then of course, there is a consequential renumbering, (9) becomes (8).

Sen. Ramdeen: AG, in the previous clause 13 we had inserted "the President in his own discretion" and this is in relation to the Property Manager with respect to subclause (4). Do you wish to consider putting in, "in his own discretion" so it takes it out of the power of the Cabinet?

Mr. Al-Rawi: Yeah. So, subclause (2):

> "The Property Manager under subsection (1) shall be appointed by the President in his own discretion for a period of time as determined in his instrument of appointment."

The President may at any time revoke.

Yes, we could out of caution put the language there, "in own discretion". It would be much clearer than relying upon he who appoints ought to disappoint and yes, you can probably read "President" as "Cabinet". So we could clarify that. So perhaps if we used the same language that we used earlier, "in his own discretion" after the words "the President".

Mr. Chairman: Subclause (4)?

Mr. Al-Rawi: Yes, Sir.

Sen. Vieira: AG, I was wondering. I understand the logic in taking out (8), but I was wondering if you just deleted from "notwithstanding" to "authority", whether

it offends. If you simply make it clear that the Property Manager may request information from and receive information.

Mr. Al-Rawi: Well, there is nothing to stop—I appreciate the surgery. So you are giving the positive power or expression of it. But there is nothing to stop the property manager from applying in any event via existing mechanisms, in particular, the Proceeds of Crime Act or a request for information from the court itself. I did not want to run the risk when we looked at how to treat with that issue of having an implied repeal or an implied amendment of other laws, particularly in today's world where the secrecy provisions become even more important. So it was safer to delete it entirely and allow the articulating laws outside of this Bill to just go to work

Sen. S. Hosein: Thank you very much, Chair. I am looking at subclause (7) AG, with respect of the powers of the property manager to take possession, preserve store, manage property for any length—

> "…and may do so for the length of time and on the terms that he considers proper".

I think this is a very overreaching power we are giving to the property manager. I do not know if you might want to contemplate whether or not the court should be the one who orders the Property Manager to detain the property for whatever length of time.

Mr. Al-Rawi: The court does that. The court vests the property exactly in the same circumstances as a receiver would receive the vesting, in a different provision, different clause and then the receiver, a quo; a qua, property manager exercises functions as this. Remember the supervision of the court is there at all points in time. It is then met with the prescriptions that the property manager must account for those things. There is IFRS standards; there is the laying of the

reports; there is the laying of the accounts; there is the supervision of the auditor general pursuant to section 116 of the Constitution. So there are umpteen safeguards on this mechanism.

Sen. S. Hosein: So when the court makes, for example, a property restriction order, the property—or let us just say a civil asset forfeiture order, because property restriction has its deadlines. The property manager can hold this property as a receiver—in the function as a receiver?

Mr. Al-Rawi: Yes.

Sen. S. Hosein: For however long he wants?

Mr. Al-Rawi: Well, it is subject to the terms—

Sen. S. Hosein: Of the order?

Mr. Al-Rawi: —of the receipt of the order. Because none of these things are done without the supervision of the court and the invocation of the court, because the court must vest that via law into the hands of the receiver acting as property manager.

Sen. S. Hosein: Okay

Sen. Mark: Mr. Chair, may I ask the AG what period of time would the Property Manager be appointed for?

Mr. Al-Rawi: It is determined by the President in his appointment. We did not prescribe a period. Same way in the Industrial Court, you do not prescribe a period, tax appeal, equal opportunities, et cetera. There is the ability to actually appoint. You see this manager has a very necessary function and that function, in terms of a limitation of time may exclude you from people who may be willing to take the position. So we have not prescribed a defined formula of a number of years. We took comfort in the fact that other laws have the same prescription and formula. And importantly, it is up to the President in the instrument of appointment

to do that and the President does do that in instruments of appointment. Remember this is "President in own discretion".

Sen. Mark: So would the Industrial Court, as an example, as you mentioned it, the appointment is for sometimes three, a maximum of five.

Mr. Al-Rawi: Yeah.

Sen. Mark: But in terms of this instrument, you would leave it so the President could go to seven years?

Mr. Al-Rawi: The President could choose as the President chooses. Remember there is still this power to revoke as well, and it really depends upon your functionality. Similar to a large corporation which would employ a CEO, a CEO is not necessarily hired for three years, it may be. A CEO has KPIs, Key Performance Indicators, and then it is reviewed, is deemed to be functioning or not functioning and I think that allows for the flexibility of security of tenure for somebody who may be interested in a job such as this and also that somebody has to perform and be supervised because these things are public accounts.

Sen. Vieira: I am remembering in the 80s when we had Victor Herde **,** he was the receiver for everything.

Mr. Al-Rawi: Correct.

Mr. Vieira: You do not want in the middle of a receivership for his term of office just to run out and leave it hanging high and dry. So there—

Mr. Al-Rawi: The Central Bank Act—one of the primary laws that have no term limit or number of persons is the Central Bank Act.

Sen. Ramdeen: Attorney General, yesterday in your debate there is a particular section, I saw it, but I just cannot put my hand on it now, where you had indicated that one of the safeguards in this legislation is that, as previously the State could not use the property.

Mr. Al-Rawi: Correct.

Sen. Ramdeen: You remember?

Mr. Al-Rawi: Yes, yes.

Sen. Ramdeen: Can you direct me to that section?

Mr. Al-Rawi: I will tell you now.

Sen. Ramdeen: And I will tell you why I am raising it. I saw it but I just cannot put my finger on it now. Can I tell you why I am asking you to look for it, Attorney General?

Mr. Al-Rawi: It is on page 29, subclause (6) of clause 34.

> "Where the High Court makes a Property Restriction Order, under this section, the State, the Agency or any other agency of the State shall not use the property subject of the Property Restriction Order for the use of the State or the Agency or any agency of the State."

Sen. Ramdeen: The reason why I am asking you is because at page 18, under (e), one of the powers that you gave the Property Manager is to:

> "make provision for the property to be used by the State…"

Mr. Al-Rawi: I do not think they are inconsistent. I think that that will be read in conjunction with the—so this is under subclause (9)(e), falling under clause 17. So this is the Property Manager acting in two capacities: property manager after a Civil Asset Forfeiture Order, has the need for that kind of power. It is where you have a restriction order which is the interim or ex parte exposure that really the State ought not to be on a frolic of its own using people's property. After you have vested the property in the State, in the personality of the property manager, then they should have that function.

Sen. Ramdeen: Would you have a problem with making that more specific?

Mr. Al-Rawi: You mean in clause 34, later when we get there?

Sen. Ramdeen: No, no.

Mr. Al-Rawi: In 17?

Sen. Ramdeen: In 17. I just think it is a little bit too wide.

Mr. Al-Rawi: You see, if I could respectfully say why I do not think it is necessary, because when we are dealing with Part IV, Civil Asset Recovery, it is then we get into the interim and then the final. And in the interim we put the caution that you cannot, whilst it is under a restriction order, use the property. After the final there is no restriction on that, and that is why Part III is separate from Part IV.

Mr. Vieira: There is a logic. I am reminded of when Dole Chadee's assets were seized and they used his property as a Drug Rehabilitation Centre. That was a benefit and that was laudable and should be continued. But there is a danger while the proceedings are going on before a final order is made, if the State were to take possession, then all kinds of charges could be brought about: damage to the property, wrongful intent, and so on. So I think these again are measured and they make sense; there is a logic to them.

Mr. Chairman: Hon. Senators—Sen. Mark.

Sen. Mark: Attorney General, the agency that we are dealing with, because all of these office holders would fall on the agency. I did not see any provision that would address quorum, because the agency must meet. But I am not seeing any provision.

Mr. Al-Rawi: There are no meetings. These are—it is like the PCA, the PCA quorum became an issue, for instance, and then we had to fall to the doctrine of necessity as to whether two could work in the consequence of one. So these people are vested with office, vested with quorum, so, there is no quorum of the Cabinet, for instance, other than the AG and the Prime Minister. But that is subject

to the doctrine of necessity as well, because you would have certain circumstances which obliged that to happen.

Look, when—please do not run off with what I am about to say, but I am giving you a live example, okay? When Sen. Ramlogan resigned as Attorney General, there was a point in time when the Cabinet was not constituted between the 4th and 5th of February, 2015 when that resignation took effect. Did it invalidate the entire actions of the Government at that point? No, it did not, because it was then cured by the subsequent appointment of Sen. Nicholas at that point. So, that is the only place that you would find a quorum in terms of an entity, but these trustees are vested as trustees. So it is their mere existence that we are looking at as opposed to the quorate functionalities of them.

Mr. Chairman: Hon. Senators, the question is that clause 17 be amended as circulated by the Attorney General and further amended at subclause (4). After the word "President" insert the words "in his own discretion".

Question put and agreed to.

Clause 17, as amended, ordered to stand part of the Bill.

Clause 18.

Question proposed: That clause 18 stand part of the Bill.

Sen. Ramdeen: Attorney General, the provision at clause 18 is one that is very all encompassing in relation to the liability of the property manager.

Mr. Chairman: Speak up Sen. Ramdeen.

Sen. Ramdeen: Sorry, Mr. Chair. If there is an action that is taken by the property manager in good faith—mistakenly in good faith, because you can act mistakenly in good faith, is it that—I want to just get this clear—is it that the agency under the compensation provisions will pick up that liability at all having regard to the fact that you are insulating from liability the property manager as well

as the trustees? I just want to get that clear.

Mr. Al-Rawi: Yes, yes. So under clause 43, the compensation factors can come in there. This was intended to mirror up section 44(d) of the Central Bank Act for the exculpation of personal liability to the person who acted in good faith. And, of course, there is a high hurdle for the good faith argument as well—good faith/bad faith depending on how you actually cast it and how the case law has gone. So there is a fairly high hurdle there. But this was intended to treat with the personal side of it. It does not preempt, it does not—to cause an exclusion from the compensation that comes because of the consequence of that thing.

Sen. Ramdeen: All right. I just want to make that clear for the record if that is the position I am—

Mr. Al-Rawi: Yes, yes it is.

Sen. Ramdeen: I am satisfied that that is the position.

Mr. Al-Rawi: And we found it in the Magistrates' protection arena where the good faith argument acting outside the jurisdiction, for instance, came about in the case law which we did and looked at as a Senate in the Magistrates Protection (Amdt.) Bill.

Sen. Ramdeen: I am satisfied with that.

Question put and agreed to.

Clause 18, ordered to stand part of the Bill.

Clause 19.

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

Sen. Mark: Mr. Chair we would ask the Attorney General again to look at this. Remember the AG, and AG, through the Chair, you have been making the point that you would like this whole process, like Caesar's wife, to be beyond reproach. But once you are coming to employing persons, as what we are doing here, right,

once you are talking about contractual employment—

Sen. Ramdeen: Once it is guided, only guided.

Sen. Mark: Yeah. Once you are talking about contractual employment you are talking about the Cabinet becoming involved in this. And therefore the employees are beholden to the Cabinet indirectly. And I think that this provision needs to be revisited if the entire process is not to be polluted and/or subverted. I would like the Attorney General to look at this and I do not take comfort at all with "guided". I do not want anybody to guide the CPO. Guiding the CPO is dangerous. Guiding the CPO—

Sen. Ramdeen: The Agency. Guiding the agency.

Sen. Mark: Yes. No, but I am dealing with the CPO here. So I am saying, Mr. Chair, that I would like the Attorney General to look at this provision, 19(1), and give us his thoughts on it as to the contractual nature of the employment of persons on this.

Mr. Chairman: Attorney General I think I will take Sen. Vieira before—Sen. Vieira—before you respond.

Mr. Vieira: Thank you, Chair. I see clause 19 in exactly the opposite light. The reason this clause is here is to make clear that the agency is an independent body, it is a corporate body in its own right and it does its own hiring and employment. If Cabinet were to put its mouth in the people's business they would be overreaching.

Mr. Al-Rawi: I thank Sen. Vieira for pristine clarity. It is the exact opposite of the fear espoused by Sen. Mark. The Cabinet has no role or function whatsoever. It would be acting ultra vires, the agency having been established by creature of statute through the independent structures. It is only the agency that treats with these. And there is no fear in the guidance issue because otherwise you would find an incongruity between terms and conditions across the sectors. So the guidelines

by the CPO are necessary for insertion here. So I thank Sen. Vieira for adding to the views that the Government shares.

Sen. Ramdeen: In subclause (5) you are mirroring the conflict of interest provision that you had earlier. However how it reads is:

> "An employee or expert engaged by the Agency shall fully disclose in writing any actual, apparent or reasonably foreseeable conflict of a direct or indirect interest he may have with the activities of the Agency."

But it does not say in writing to whom.

Mr. Al-Rawi: Well, it is to the Agency. So it is:

> "An employee or expert engaged by the Agency…"

—could only be reporting to the Agency.

Sen. Ramdeen: I think we should—[*Interruption*]

Mr. Al-Rawi: The agency's organizational structure has not yet been promulgated. To pinpoint an entity inside of the Agency now in law descriptively.

Sen. Ramdeen: No, I am not suggesting we do that. I think we should just say, "the Agency". I think we should say, "the Agency".

Mr. Al-Rawi: I think it reads that way, respectfully. The plain and ordinary meaning of the clause:

> "An employee or expert engaged by the Agency shall fully disclose"—in that engagement—"in writing, any"

—I am adding in words here. It could only mean in that engagement—

> "…in writing any actual, apparent or reasonably foreseeable conflict of a direct or indirect interest he may have with the activities of the Agency."

Sen. Mark: Is there anything wrong, AG, just to reinforce it is the Agency?—to include the word, "Agency".

Mr. Al-Rawi: Well who else could it be.

Sen. Mark: We do not know.

Mr. Al-Rawi: Well we know it could only be the Agency. The fiduciary relationship established there could only be to the Agency.

Sen. Mark: "An employee or expert engaged by the Agency shall fully disclose". So what is wrong to disclose to the agency.

Mr. Al-Rawi: It is superfluous and otiose.

Sen. Mark: But would you have any objection to it?

Mr. Al-Rawi: Yes, it is not necessary.

Sen. S. Hosein: AG at subclause (7):

> "An employee who recklessly or knowingly fails…"

Again, I do not know if you want to contemplate the same objection that was raised by Sen. Chote.

Mr. Al-Rawi: Oh. Yes, yeah, yeah.

Mr. Chairman: "An employee who recklessly or knowingly…" yes?

Mr. Al-Rawi: Thank you Sen. Hosein.

Sen. Dillon-Remy: Chair, in clause 15(1), it talked about:

> "A Trustee"—or Proper Manager—"who has any actual, apparent or …foreseeable conflict…interest"—disclosing—"in writing to the President…"

I think the question here is, if you said in that clause who the disclosure was in writing to in the same way, whether you could not write—put it here in this clause as to the employee, subclause (5), "disclose in writing to the Agency". I think that is the question.

Mr. Al-Rawi: I understand. The difference between the two clauses is that the trustee had to report outside of the trustee because they are the head of the institution. So we prescribed, not the JLSC who appointed them but instead the

President for the reasons that Sen. Vieira explained, a need for alacrity, et cetera, at times. The point in subclause (5) here is that the operative words here are: "engaged by the Agency". You could only disclose to the Agency. There is no one else to disclose to, because it is in the process. Remember it is:

> "An employee or expert engaged by the Agency shall fully disclose in writing…"

It is in the process of that engagement.

Mr. Vieira: And if I could just, to help Senator. The Agency is a corporate body and it would have a chain of command. So in the case of an expert, the expert may want to disclose to the trustee because the trustee is making the application to the court and where you are dealing with experts you have to have full disclosure and the communications. But a sub-employee, a secretary or a staff person who come on may not need to disclose to the trustee. They may disclose to a manager within the agency. So to specify a particular purpose might be little too onerous. The agency I think it is captured there. You will disclose within the relevant chain of command where you need to disclose.

Mr. Al-Rawi: Thank you.

Sen. Mark: May I ask the Attorney General to explain the apparent contradiction between subclause (5) and subclause (6). We are proposing that you disclose to the agency. The Attorney General is saying, no.

Mr. Al-Rawi: Sure, I can easily do it. Subclause (6) does not speak of the process of engagement. So (5) is, listen, (5) is elegant, tight, simple, concise language, grounded in the process of engagement. It is materially and obviously distinguishable from subclause (6) which is a step beyond. Subclause (6):

> "An employee whose direct or indirect interest is likely to be affected…"

We are taking it from a different linguistic purpose. So the distinction is to be

made in the word "engaged".

Sen. Mark: Yeah, but we are talking about—forget this clause here. We are advancing, Mr. Chairman, that we should insert after the word "disclose", "to the Agency".

Mr. Al-Rawi: We respectfully disagree for the reasons offered. I do not want to protract the position, Mr. Chairman. I respectfully decline the invitation.

Mr. Chairman: Hon. Senators, the question is that clause 19 be amended as follows:

> At subclause (7) after the word "recklessly" delete the word "and" and insert the word "or".
>
> *Question put.*

Sen. Mark: Could you put my amendment, Sir?

Mr. Chairman: You had amendment on clause 19?

Sen. Mark: No I proposed an amendment on the floor. I said that, Mr. Chair, in (5) after the word "disclose" we want you to insert after the word disclose, "to the Agency". And the AG said he respectfully declined my invitation. But we want that inserted here.

12.00 noon.

Mr. Chairman: Sen. Mark, as far as I understand it, it was a conversation, and you were having a discussion with the Attorney General in relation to what you just said, to which I think the Attorney General respectfully declined. The amendment that was actually proposed by Sen. Hosein, I think it was, was for the one that I just put in relation to deleting the word "and" and replacing it with the word "or" in keeping with what has gone before. That is the amendment that I put. So are you indicating now that you want to formally put an amendment on what you have stated?

Sen. Mark: Yes.

Mr. Chairman: Okay. Could you just indicate—?

Sen. Mark: I am proposing, Mr. Chair, that after the words "shall fully disclose", we insert the words "to the Agency".

Mr. Chairman: This is at subclause (5)?

Sen. Mark: That is subclause (5) of clause 19.

Mr. Chairman: Okay. Sen. Hosein?

Sen. S. Hosein: Thank you. AG I just saw this. With respect to the persons who fall under the staff of the agency, you have advisers, experts and consultants. Now, when you look at subclause (8) there is a criminal sanction for expert, adviser or consultant who fails to comply with (5), but when you look at (5), adviser or consultant are not there. So you may want to include "employee, expert, adviser or consultant."

Mr. Al-Rawi: Sharp eyes. Agreed.

Mr. Chairman: So, Attorney General, you could repeat?

Mr. Al-Rawi: Yes, Sir. Sen. Hosein has pointed out that there is an incongruity between the offence in subclause (8) and the category of persons who would be exposed to the offence in subclause (5) insofar as there is a cross-reference. In those circumstances, subclause (5) should be amended to say to insert the words: "an employee", delete the word "or", keep the word "expert" and add in the categories of "adviser or consultant". So after the word "expert".

Sen. Ramdeen: [*Inaudible*]

Mr. Al-Rawi: "An employee, expert, adviser or consultant engaged by the Authority". [*Interruption*] Yes. "expert,".

Sen. Ramdeen: I thought so.

Mr. Al-Rawi: Yes, Sir.

Sen. S. Hosein: AG, one more point for clarification. Why is not the same opportunity given to the expert, adviser or consultant to make an application to the High Court, as done in subclause (7), for employees? And there is no term of imprisonment for them also, at subclause (8).

Mr. Al-Rawi: The learning which came out of the Commonwealth and other jurisdictions is that they treated the experts and consultants slightly differently. They were exposed to a fine. The difficulty in going—the employee is subject to not being employed again, but the expert and consultant, that contract can come to an end. There are consequential workouts to happen if you are dealing with an employee which are a little bit broader. So I am advised by the CPC's department that in their reflection of the comparative laws that we have used, that there was a difference in treatment between the two categories of personalities in the manner expressed.

Sen. S. Hosein: I could make a distinction with the categories of persons in terms of the functions that they perform, but under the model that you all are proposing, would not all of the staff of the agency be on contract positions?

Mr. Al-Rawi: So the distinction, as I have got it from our expert team to my left—you are right—is that subclause (7) treats with the offences against the employee. So you recklessly or knowingly fail to comply. We actually did not have to be express and put to the fact that you could go to the court. However, I think that the question is whether we ought to include the mental intention under subclause (8). So it would probably catch the argument, because "recklessly or knowingly", in respect of "an expert, adviser or consultant", really ought to perhaps be expanded there. I think that that may capture it and yet preserve the rationale offered by the experts.

Sen. S. Hosein: AG, what if in (7) we just, after "employee" insert "expert,

adviser or consultant engaged by the Agency" and just delete (8)?

Mr. Al-Rawi: Then the difference of treatment of the fine versus offence comes in. Just give me a moment.

Sen. Ramdeen: AG, while—[*Inaudible*] That arises out of that as well?

Mr. Al-Rawi: Sure.

Sen. Ramdeen: I understand why you have (7)(a) and (b), which is consistent with what you have done before. My only issue is, this is an offence that is liable on summary conviction. So how does the person prove these particulars to the High Court in a summary offence? What is the mechanism?

Mr. Al-Rawi: Well, the rationale for that is that we had merged the jurisdictions for the court. So the question whether I should use the word "court" as opposed to "High Court"—

Sen. Ramdeen: Yeah. Well, that is what I mean.

Mr. Al-Rawi: Yeah. Because under the criminal division we had that merger of jurisdictions for High Court to sit in summary court matters.

Sen. Ramdeen: You could leave it out totally and just say, "unless he proves" and then you just stop at "proves". "Unless he proves". You take out "to the satisfaction of the High Court unless he proves", take out "to the satisfaction of the High Court that he did not know". So that that will just engage whichever court that he is in.

Mr. Al-Rawi: And whichever jurisdiction.

Sen. Ramdeen: Yeah.

Mr. Al-Rawi: Yeah. Mr. Chair, if you give me a minute? [*Pause*] Mr. Chair, I think it is entirely agreeable to modify the clause as set out. I thank Sen. Hosein for the recommendation, and Sen. Ramdeen. We can propose the deletion of subclause (8) and the amendment of subclause (7) as follows:

"An employee", and insert after the word "employee" ", expert, adviser or consultant who recklessly"—sorry—"engaged by the Authority". After the word "consultant", "engaged by the Agency who recklessly or knowingly fails to comply with subsection (5) commits an offence and is liable on summary conviction"—fine of—"and to imprisonment of a term…five years", "unless he proves". Delete the words "to the satisfaction of the High Court" and that should do it. And then we would renumber subclause (9) as (8).

Sen. Ramdeen: Is the policy to (6) not the same? If it is not, then if there is a breach of (6) then what do you do? Somebody who breaches (6)?

Mr. Chairman: Attorney General, just as a point of suggestion, given the number of proposed changes or amendments to this particular clause, if we should stand down clause 19 to allow you to put the proposed amendments in written form just for easier disposal after. Is that something that would be agreeable?

Mr. Al-Rawi: If you would like, sure. We only really had two amendments, one to subclause (5) which we have already taken care of, and then the second one to subclause (7), and then the deletion of (8).

Mr. Chairman: No, no. We have to treat with the formally proposed amendment by Sen. Mark, which I will treat with, and then you had a proposed amendment to subclause (5)—

Mr. Al-Rawi: Yeah.

Mr. Chairman:—the addition of the commas, the grammatical things and "adviser or consultant". Subsequently, to subclause (7), same general additions, save and except for where you are adding "engaged by the Agency", and removal of the word "and"; deletion of "to the satisfaction of the High Court"' deleting subclause (8) in its entirety and renumbering (9) to (8).

Mr. Al-Rawi: That is it.

Mr. Chairman: That is it?

Mr. Al-Rawi: Yeah. Sen. Ramdeen had just asked a question as to what the sanction in relation to subclause (6) is, and we thought it important to not treat with it in the manner in which we treated with (5), because (5) is where the trigger happens for the actual or apparent conflict of interest. (6) was more in the fashion of what we would do administratively to encourage compliance with the matters that (6) provides for. But we think that (5) captures the offence adequately, because it is at that point where the conflict grounds.

Sen. Ramdeen: Can I ask you, Attorney General, is it correct that (6)—when you read (6) in relation to subclause (1), is that a correct reference to it to subclause (1)?

Mr. Al-Rawi: Well, it is in relation to his employment and function. So yes. Because (1) is where the agency employs you "for the efficient performance of its functions". So it is correct. But we did not add a sanction to that until you get to the conflict of interest point, which is subclause (5). We have accepted the recommendation that we will expose the consultant, expert, adviser to the same threshold as the employee.

So, Mr. Chair, in the round, therefore, we propose the amendment to subclause (5) which would be:

Delete the word "or". After the word "employee" insert a comma. After the word "expert" insert a comma and the following words, "adviser or consultant".

Mr. Chairman: Permit me, Attorney General. You would insert the word "comma" after the word "employee" first—

Mr. Al-Rawi: Yes.

Mr. Chairman: Then delete the word "or".

Mr. Al-Rawi: Yes.

Mr. Chairman: Insert a comma after the word "expert".

Mr. Al-Rawi: Yes.

Mr. Chairman: Insert the words "adviser or consultant".

Mr. Al-Rawi: Yes.

Mr. Chairman: And that would be for clause subclause (5).

Mr. Al-Rawi: Yes, Sir. And then for subclause (7) it would read:

"An employee", insert comma after the word "employee", "expert, adviser or consultant engaged by the Agency." Then continue: "who recklessly". Delete the word "and". Insert "or" after the word "recklessly". Then continue: "unless he proves". Delete the words "to the satisfaction of the High Court". Then in subclause (8): Delete subclause (8) and renumber subclause (9) as (8).

Mr. Chairman: Good. Now let me just ask members, as much as I have that and as much as the Attorney General has that, does everybody follow that? Right. So, Attorney General, I think it would be best to just put those amendments in written form so that everyone can have sight of it and follow it, and I will treat with Sen. Mark's proposed amendment, which is to subclause (5). Sen. Mark, correct if I am wrong, after "disclose" insert the words "to the Agency". Is that the proposed amendment?

Sen. Mark: Yes, Mr. Chair.

Mr. Chairman: Right. Attorney General—

Mr. Al-Rawi: Sure. Mr. Chairman, it will take us a good 40 minutes to go upstairs, type out, write, bring back, circulate, those written amendments. We have just done them four times on the floor. Is it still your desire that we do that?

Mr. Chairman: You have to go upstairs?

Mr. Al-Rawi: Yes, Sir. We have no facilities on the ground floor, no tables, no computers. We are on the sixth floor to do these amendments. I have had this

conversation with the Clerk on umpteen occasions.

Mr. Chairman: All right, Attorney General. I will read it out as slowly as I can. So I would ask members to ensure that they have the correct page, which is page 19 of the Bill that is in front of you; clause 19, as well, so that you can follow along. I will treat with the proposed amendment by Sen. Mark first as I put that question for a vote.

Mr. Al-Rawi: Mr. Chair, I apologize. To eliminate the need to have a long argument on what is implied, we will accept "to the Agency". It is really superfluous, but to please my friend, Sen. Mark, I will happily accept it.

Mr. Chairman: Okay. All right.

Sen. Mark: Thank you very much.

Mr. Chairman: Again, so I am going to take this slow. Members please follow along.

The question is that clause 19 be amended as follows:

At subclause (5) after the word "employee" insert a comma. Delete the word "or". After the word "expert" insert a comma. After that inserted comma, insert the words "adviser or consultant". After the word "disclose" insert the words, "to the Agency".

At subclause (7), after the word "employee" insert a comma. After that inserted comma, insert the words "expert, adviser or consultant engaged by the Agency". After the word "recklessly" delete the word "and" and insert the word "or". And after the words "unless he proves" delete the words "to the satisfaction of the High Court".

At subclause (8), delete subclause (8) and renumber subclause (9) as (8).

Mr. Al-Rawi: Yes, Sir. That is it.

Question put and agreed to.

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

Clause 20 ordered to stand part of the Bill.

Clause 21.

Question proposed: That clause 21 stand part of the Bill.

Sen. Dr. Dillon-Remy: Chair, I had a question.

Mr. Chairman: Sen. Dillon-Remy.

Sen. Dr. Dillon-Remy: The question that I asked during my submission was about the agency having the power to borrow money, and I did not understand why, when they were getting money from the Consol—appropriated by Parliament, et cetera. And their functions, as far as I see, I understood it, had to do with receiving property, managing property, disposing of property. I did not understand why they needed to be a borrower of money.

Mr. Chairman: Attorney General?

Mr. Al-Rawi: Yes, Sir. If we did not include the alternate source of borrowings, then they could never borrow, because the parent law must describe the functions that they have and the limits and extent of their arrangements. So if ever there was a situation where borrowing became an opportunity for them, we would have to come back to Parliament and amend the law to provide for the power to borrow. The second thing—and that is because of the corporation establishment in law. So companies, for instance, under the Companies Act, under the old form the Companies Ordinance, Chap. 31:01, you had to specify every single power. If you did not have that power, you could not do it. We turn that on its head in the Companies Act, Chap. 81:01, basically providing with companies—with all the powers of natural individuals, except we now say what they are limited, and cannot do. So the general corporate law is that you must specify powers in one of the two formulas.

The same thing applies to statutory entities, statutory corporations, as created here. It is an accepted measure of operation that you are going to have to finance yourself, and the sources of financing, yes, include moneys which may come to you in your functionality as asset managers: the conversion of property, et cetera. They do also come from the Consolidated Fund, and that would be by way of appropriations during the budget cycles. The budget cycles are done on a biannual basis, firstly at the budget cycle in September or October when the financial year-end comes in, and then at the mid-year review where you have the opportunity to raise lower or cause virements from Ministries to Ministries.

In that budgetary cycle, the need for flexibility arises, and therefore there are sometimes very favourable terms and conditions for borrowing that could be attractive to entities such as this. If the mischief in one's mind is that borrowing is somehow going to mask the public debt, that is not the case. All of the arrangements have to be approved via the budgeting division of the Ministry of Finance in usual positions, and therefore, it would be prudent to follow the precedent of all other statutory corporations by allowing for the power to borrow.

Mr. Chairman: Sen. Dillon-Remy, you have—?

Sen. Dr. Dillon-Remy: No, I am fine.

Mr. Chairman: Sen. Mark?

Sen. Mark: Mr. Chair, which clause are we on, Sir?

Mr. Chairman: 21. You have proposed amendments to 22.

Question put and agreed to.

Clause 21 ordered to stand part of the Bill.

Clause 22.

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

Sen. Mark: Mr. Chairman, we would like the Attorney General to consider an

amendment to 22(3). We would like to put a limit or—I do not want to say limit in that strict sense, but we do not want, Attorney General, for this agency to go on a frolic of its own, and we need to identify a limit before the Parliament itself can consider any further amounts to be issued to this agency. So we are proposing that in clause 22(3) we add, after the words "Consolidated Fund", "not exceeding the sum of $10 million". And if they need more funds, let them come to the Parliament. Otherwise, we are going to be giving these people a blank cheque on the Consolidated Fund. So I would like the Attorney General to consider that.

Mr. Al-Rawi: I thank Sen. Mark for exploring the issue. It is an important one. Caps sometimes are very prudent to put into place; concept of blank cheques. Fortunately, we are anchoring this under several safeguards. No appropriation may come out of the Consolidated Fund unless it is appropriated by the Parliament. So the budget cycle in the year-end budget, or beginning of year budget, and also in the mid-year's, that is the only manner in which an appropriation can happen, via the money Bills, as they are laid in the constitutional arrangements.

The second factor is that, for this to actually happen, there is a coordination with the Exchequer and Audit laws of Trinidad and Tobago, and under the Exchequer and Audit Act, the approval of the Minister of Finance for certain expenditure must be factored. It happens under the arrangements of the budgeting division, et cetera, because it would be imprudent to allow for a runaway train to happen. So there is adequate safeguard in those two particular counterbalances to this arrangement. The difficulty with putting a cap is that we would have to legislate the amendment of the cap on a continuous basis for a number of factors: the fluctuations in RPI indices; the fluctuations in currency value or not; deprecation; other factors that also go on this. And then what we would also have is the fact that the thing that we are treating with is where moneys from the Seized

Asset Funds are insufficient to manage criminal property, this is the State's obligation at management.

Right now, if we look at the management of vehicles which are seized by Customs or by the police, there is a similar arrangement in place here now. But what we have found is that we have hundreds, if not thousands, of assets wasting away on the port, in police custody. And then there is a racket that goes on top of that; people lifting parts and procedures, et cetera. So we wanted to bring all of this under an asset manager. That is why, in particular, in the consequential amendments, we manage the Seized Asset Funds under section 58 onward of the Proceeds of Crime Act to bring that under the asset trustee arrangements as well.

So I do accept the need for caution, but I hope that the pointing to the Exchequer and Audit Act, the appropriation as it comes under the Constitution, and other arrangements, helps to alleviate your concern.

Sen. Mark: Mr. Chairman, may I also ask the Attorney General again to ensure that there is proper accountability? And as you said, you do not have a runaway train. Can we probably then consider—I will read it:

> "Where monies from the Seized Asset Funds are insufficient to management criminal property under the control of the Agency, the balance shall be defrayed"—with the approval of the Minister of Finance.

Mr. Al-Rawi: It is in the Exchequer and Audit Act and in the appropriation cycles by the Constitution of the Republic of Trinidad and Tobago. It cannot happen any other way.

Mr. Chairman: Sen. Richards.

Sen. Richards: Thank you, Mr. Chair. Just for a matter of clarity, AG, you dealt with the lower limit there, according to Sen. Mark's interventions. Is there a ceiling envisioned for the management of assets by the agency?

Mr. Al-Rawi: Well, it would be inappropriate to hazard a guess at that right now, because we just do not know what the size of it is, for a number of reasons.

12.30 p.m.

A number of entities are managing assets or failing to manage assets right now and it is seen in the graveyards that we have all over Trinidad and Tobago. If you look at the ships out at sea, if you look at arrested vessels, if you look at the EMA's intervention as it is to taking salvaged material out of the water, that is one category: droghers, crafts, et cetera. If you look at motor vehicles that are impounded at the Customs' end and that are stopped from importation. If you look at the illegal mining and quarries arrangement where equipment is seized in quarry operations. In fact, there was $80 million of equipment seized a couple of years ago and nobody turned up to claim it. That is to tell you how lucrative illegal mining is, that somebody could walk away from $80 million of equipment.

So there is a whole host of graveyards all over this country that nobody is managing. The police wreckers, the impounding of crashed vehicles, et cetera. There are graveyards everywhere. So we wanted to bring those things into the matrix first and then get an estimation as to how we treat with this. Because these things can potentially feed into the VMCOTT arrangements after the Civil Asset Trustee in treating with the disposition of wasting assets or depreciating assets. It may very well be that things which are seized now become an entire second-hand trade legitimately as opposed to illegitimately because there is anecdotal evidence out there that people are engaged in schemes, as we see in the PTSC, et cetera.

So we do not have an estimate just yet but that is something that could obviously work its way into existence. We are working with two forms of experts. The ARIN which is the asset recovery network and CARIN, which is the Caribbean version of that, and Trinidad and Tobago has signed on to the CARIN

arrangements in the Caribbean basin. It is something that we prospered. In fact, the member of CARIN is sitting to my left right now. We engaged, whilst I was Chair of the CFATF arrangements, in that exercise in anticipation of getting the seized assets committee up and running and that is why we operationalized section 58 of POCA for the first time, just last year.

Sen. Richards: My concern is—and I understand when the agency is up and running you will have clearer idea but at what point does the State start to benefit. If we look at—many of the speakers on the debate cited the 22 billion or so as flagged by the FIU. At what point does the agency have a ceiling on its operational requirements financially and what is held as repository, an agency to the tune of possibly billions of dollars, depending on how efficiently this works?

Mr. Al-Rawi: I understand but permit me to just step outside of this Bill for a moment. The creation of this agency is intended to receive the benefits of other operation of law; actual seized committees. That is why we have amended the Proceeds of Crime Act, the Seized Asset Committee, to plug it into this equation. Illegal mining and quarrying, EMA, we intend to bring all of those wasting assets into this arrangement so we consolidate the management. So it is not only for unexplained wealth or civil asset forfeiture, it also includes forfeiture under the Proceeds of Crime Act and other laws. So we intend to create a hub for management of assets.

Sen. Richards: Thank you.

Mr. Chairman: Sen. Vieira.

Sen. Vieira: Thank you, Chair. Well, AG, you have pretty much gone in the direction because I think there was a concern in the debate that this very expensive undertaking—setting up this agency, public trustee, deputy public trustee, property manager, experts, consultants—it is going to be a lot of energy and money to get

this up and going, and we really do not want another albatross or white elephant. We want, I think, to know that there is going to be value added, that this agency is going to deliver as promised and I was wondering, is there parliamentary oversight of this agency.

Mr. Al-Rawi: Yeah. So first of all, let me say, this is the first time this country will actually be putting all the assets in one place and for the first time, under a trustee and under managers. Save for the Proceeds of Crime Act in the amendments that we caused in 2018 to section 58 onward, save for the Proceeds of Crime Act, Seized Asset Funds Committee, the point is that it was not being managed in a transparent way.

Yes, this is subject to parliamentary oversight in a number of ways. The limbs of oversight include: section 116 of the Constitution, the Auditor General's oversight by way of stating that these are public accounts for that purpose which allows for private auditing under the Auditor General's supervision. Two, the laying of annual reports in the Parliament. Three, the management of enquiries under the IFRS standards for accountancy. Four, insofar as clause 28 provide for—well here we go: 26 is audit of accounts, clause 28, the agency shall submit report annually to Parliament within three months; it is then fed into the PAC, PA(E)C models so there is joint select scrutiny over those under the Standing Orders of the Parliament.

And very importantly, when we look to subclause (3) of clause 23:

> "Subject to the provisions of the Constitution and the Exchequer and Audit Act, the estimates of expenditure, as approved by the Minister, shall be the expenditure budget of the Agency for the financial year to which it pertains."

So there are multiple bites at this cherry in our parliamentary oversight

mechanisms. And the novelty is that this is the first time that this is going to happen and respectfully, it is not that hard to create the agency. There are multiple versions of it happening in a very inefficient, poor, scandalous and/or allegedly corrupt situation. What is required is to put a cleaning lens onto all of this so that you actually see what you are doing and you account for it. If we ask any agency what is the status of an asset now, they do not know where it is, what happened to it and who is managing it. It is just derelict waste and that has to stop. We have billions of dollars of assets that way when you look to the replacement of police vehicles, corporation vehicles. You look at all of our asset management. We are in trouble in terms of wasting money: ships, coast guard/army vehicles, Ministry of Works, all the same.

Sen. Ramdeen: And the liability of that, too.

Mr. Al-Rawi: And the liability.

Mr. Chairman: Sen. Mark.

Sen. Mark: I just wanted to ask the AG, through your good self, Mr. Chairman, AG, the assets that they would have under their management and control, that is the agency, would they be able to mortgage these assets in the event that they want to raise funds?

Mr. Al-Rawi: Good question. Borrowing usually provides a quid pro quo. In a statutory arrangement, corporate entities, statutory bodies in the power to borrow may do so with or without collateral. That would have to be approved by the Minister of Finance under the Exchequer and Audit Act. So there is nothing technically speaking that could not involve a borrowing under a trust arrangement. So if one had diverse assets, the manner in which you consolidate the value of diverse assets is you usually put them under a trust arrangement and then you will bankroll the trust arrangement by a derivative security. So it is not inconceivable

that that can happen but it must be specifically approved.

Sen. Mark: By the?

Mr. Al-Rawi: By the Ministry of Finance.

Sen. Mark: Would it mean that once your property is seized, you move from a freeze order to a restriction order?

Mr. Al-Rawi: And then potentially a forfeiture order.

Sen. Mark: And potentially a forfeiture order. Now between the order where we are going to forfeit to one where we are going to restrict, the assets that would be in possession of this agency during this range, would those assets, if they need money, be mortgaged?

Mr. Al-Rawi: Would they be at risk of somebody's collateral security?

Sen. Mark: Yes.

Mr. Al-Rawi: No, because we have put an expressed provision in the Bill to say that the State cannot use it in any form or fashion and therefore you cannot use it for purposes of collateral security. They are effectively ring-fenced by the order of the court and by the statutory mandate that ring-fences the assets. It is only when the title is taken to the State that the State has that potential. So as and until title is transferred to the State, it is ring-fenced and further, that is supervised by way of accounting mechanisms.

Sen. Mark: Okay, all right, thank you.

Mr. Chairman: Hon. Senators, the question is that clause 22 be amended as circulated by Sen Mark.

Question, on amendment, [*Sen. W. Mark*] *put and negatived.*

Question put and agreed to.

Clause 22 ordered to stand part of the Bill.

Clause 23 ordered to stand part of the Bill.

Clause 24.

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

Mr. Chairman: Sen. Mark.

Sen. Mark: Attorney General, in clause 24(1), if you go to line 5 starting with the word "commencement"—you are following me?

Mr. Al-Rawi: Yes.

Sen. Mark: Would it not read a little more—

Mr. Al-Rawi: Elegantly.

Sen. Mark:—elegantly and put it that way, yes, that we use the expression "from the date of proclamation of the Act" or "on the date of the coming into operation of the Act"?

Mr. Al-Rawi: So we went with commencement because a proclamation provides for a commencement and a proclamation may be multifaceted or bifurcated. So for instance, you may proclaim different parts at different points and the proclamation is just the instrument which tells you when you commence. So the operative term is really "commencement".

Sen. Mark: What about "coming into operation"? It does not matter?

Mr. Al-Rawi: "Coming into operation" is nicely packaged under the word "commencement".

Question put and agreed to.

Clause 24 ordered to stand part of the Bill.

Clause 25.

Question proposed: That clause 25 stand part of the Bill.

Mr. Chairman: Sen. Mark.

Sen. Mark: Mr. Chairman, we are proposing that in clause 25 that we put after the words "as soon as possible thereafter", we are taking out rather and replacing—that

is clause 25. Yeah, we are deleting the words "as soon as possible thereafter" and we would like them to be replaced with the words "within 14 days from the date of the receipt by the Minister".

Mr. Chairman: That is subclause (2). Yes?

Sen. Mark: Yes.

Mr. Chairman: Attorney General.

Mr. Al-Rawi: Sure. I understand the mischief that Sen. Mark is directing this proposed amendment at and the reason that we have put that formula "as soon as possible thereafter" is because the Minister may well need a second audit or a clarification audit, and we kept with a formula which is actually used in other laws, "as soon as possible thereafter". The information is discoverable under the Freedom of Information Act. It must be laid in the Parliament. It is open to judicial review to also cause matters to be laid in Parliament, as Sen. Ramdeen is well experienced and capable of doing in his other capacity as an attorney at practice. So we went with this because of the flexible approach that is required in this. When we look to the provisions of a number of laws, this formula applies. We have seen times where they say "within three months" or other positions but this is the formula recommended by the CPC's department after the matrix of laws was looked at.

Sen. Mark: Mr. Chair, I respect the CPC but we are dealing with moneys here in which and we heard a very serious matter, and I would like to suggest—I think Sen. Vieira was making the point, what is role of the Parliament?—and we need a little more certainty and predictability. This is vague, it is wide as the ocean. We do not know when the report will be issued. So we are saying, Mr. Chairman, the Parliament is approving moneys, we must know when a report is coming to us and we do not want to leave it to the discretion of the Minister. And therefore, we are

saying that we must include a definite provision that would bind the Minister, tie the Minister to the laying of the report. We are proposing 14 days if the AG wishes to compromise with us, but we are not prepared to go with "as soon as possible thereafter". That means to say that the Parliament would not be in charge of this operation. In fact, Mr. Chairman, this agency should be reporting directly to Parliament, you know, rather than a Minister "eh know".

Mr. Al-Rawi: Mr. Chair, this might sound strange in my reply to say that I agree with Sen. Ramdeen but it does not change the result of the Government's position, and I will say why. Under the next clause, which is clause 26, there is an audit of accounts. We make this subject specifically to the Auditor General's supervision under section 116 of the Constitution. The Auditor General's reports must be laid in Parliament and the Constitution provides for that. So there is no escaping the fact that these audits are going to be audited by the Auditor General under the provisions of the Constitution and must and will, pursuant to constitutional instruction, find themselves on the Parliament's desk.

Further, when referred to the Parliament, we have, under our Standing Orders, established the Public Accounts Committee and the Public Accounts (Enterprises) Committee which have direct supervisory aspects in relation to this. Further, the Joint Select Committee on National Security, which has a wide purview, can also from time to time call entities such as this. So there are multiple bites at the cherry for the very mischief that I commend you on raising. The difficulty is that if we were to say 14 days, it becomes problematic in the multiple variations of excuses or reasons why that cannot happen.

Sen. Mark: Well, Mr. Chair, may I ask the Attorney General, the 14 days is too soon, would the AG wish to say 30 days so at least we have a time frame in which the Minister must table the report? But to leave it open, Mr. Chairman, I think that

the AG would know that there is need for accountability and Mr. AG, you would know that what you have said is correct. But those matters of accountability re: the PAC and PA(E)C can only take effect when those reports are referred to those bodies by the House of Representatives. So if we do not have a definitive date for those reports to be submitted, when are those reported going to be interrogated by the Public Accounts Committee or the Public Accounts (Enterprises) Committee. So I would like the Attorney General to reconsider that position and we are prepared to even compromise from 14 to a month but there must be a predictability exercise here.

Sen. Dr. Dillon-Remy: Chair, can I ask a question, please? This talks about the financial statements within—subclause (2) says:

> "Within three months after the end of each financial year the Agency shall cause to be prepared, in respect of that year-
>
> (a) a report setting out the activities…and
>
> (b) financial statements…in accordance with the IFRS"

This does not talk about audited statements. And the Attorney General is mentioning the Auditor General but the Auditor General's statements usually come like years after the event, does not come within this space of time that this is seeking to address.

Mr. Al-Rawi: The Auditor General's statements actually are not statements—administrative reports come years in arrears but the Auditor General's reports do not. They have not that far a time lag on them because the Auditor General has a specific authority and ability to outsource the production of audited reports. So the Auditor General's reports are usually very contemporaneous with the activities of the entities. The maintenance of IFRS standards require the regularity of accounting procedures.

The mischief we are looking at here is how we cause a report to come to the Parliament's attention and if we take the mischief at its highest, suppose the Minister does not bring it to the Parliament, then the Auditor General will because the agency's accounts and records of transactions have to be audited under section 116 of the Constitution. So that mischief is conclusively dealt with by the Auditor General's purpose.

Sen. Mark: I do not agree. I beg to differ. If we do not put in law when the Minister shall table the report, the financial audited report, issued and/or prepared by the Auditor General, the Auditor General does not have that power under the Constitution to send it directly to the Speaker or to the President of the Senate. The only report that the Auditor General has the power to send directly to the Speaker and to the President is the annual audited accounts report for the Republic of T&T which comes at the end of April of each year, and it is sent to the President, it is sent to the Speaker, not to the Minister of Finance, directly to the Speaker and the Speaker lays it in Parliament through the Deputy Speaker or your good self. So I would ask the Attorney General to revisit that position and give us a definitive time when this report will be laid in the Parliament.

Mr. Chairman, we are using public moneys and we need to have accountability here and that is the point that Sen. Vieira was making. What is the role of Parliament in this whole situation? I do not want to propose an amendment, I want the AG to compromise. Just find a compromise.

Mr. Chairman: Sen. Chote, you have comments?

Sen. Chote SC: Yes, I was just looking at section 116 of the Constitution of Trinidad and Tobago and all that it says is 116(4) says:

> "The Auditor General shall submit his reports annually to the Speaker, the President of the Senate and the Minister of Finance."

Now the mischief I think Sen. Mark addresses, or the difficulty Sen. Mark addresses is a very valid one which is to say while the Constitution provides for this to be done, practical experience has taught us that it is really, if ever, done on an annual basis. It is laid in Parliament, sometimes, several years afterwards. So I do agree that we should take into account some sort of time frame.

Mr. Al-Rawi: It is provided under section 66A onward of the Constitution where the committees are set up: the joint select committees to Government Ministries, municipal corporations, statutory authorities—that is where we would fall in—enterprises owned or controlled on behalf of the State, service commissions and then how that flows through 66B, 66C and then you get to 66D:

> "A Body listed at (A) to (D) in…"—section—"66A(1)(a) shall submit to the President…"—et cetera—"a report…" et cetera.

Now if I take aside the fact that there is a flow that comes to the Parliament, let us assume that that is given. Via the Auditor General, it comes to the Speaker or it comes to the President and then the Standing Orders say what we receive. Let us just take that out for aside. If I were to centre upon what Sen. Mark is asking, it is very narrow. Give us a time frame: three months, 60 days as opposed to as soon as reasonably practicable. What we are speaking about here is the agency keeping the report.

In subclause (2), a copy of such report within three months after the end of each financial year, the agency shall cause to be prepared in respect of that year a report setting out activities, financial statements and:

> "…a copy of such report…shall be forwarded to the Minister and shall be laid in Parliament as soon as possible thereafter."

So it is that time frame that Sen. Mark is referring to and I understand the point. What I am looking at right now is, should there be a specific time frame? Is there a

manner in which we can compel if that is not done? And obviously, in both instances, whether you put the time frame or you put as soon as practicably thereafter, if you do not do it, somebody knocks on the door of the court by way of judicial review proceeding to ask for a mandamus that you do it; and that happens all the time.

So in either case there, in the default position, is going to be done by way of a pre-action protocol saying well, look, you are supposed to provide this, what is your response to not providing it and if you have not provided the reasons that can withstand scrutiny and reasonable basis, you are then invited into a judicial review proceeding to cause you to be compelled to make it happen. The SSA, for instance, found itself subjected to a claim by a well-known activist, previous Senator Devant Maharaj, who took the Government to court in 2016 asking for the SSA reports for the period 2010, 2011, 2012, 2013, 2014, 2015 when they were not prepared, and the Government was compelled to produce those reports and could not stand behind the excuse that that particular previous Government had not done it and the ex-Senator ought to have known.

So I am giving you a severe example of how a government, without culpability, can be compelled by the court to produce documents. So there are examples of this particular formula and I was going to the use of the prescription. So I am not opposed to it, I am looking to what is the appropriate formula and can it be activated.

Mr. Chairman: Sen. Chote.

Sen. Chote SC: Mr. Chairman, thank you. AG, I do not know that the references to section 66 and in particular 66D will assist us because all it says is:

> "…shall submit to the President…in each year report on the exercise of its functions and powers…"

We are talking, I think, about the narrow reports dealing with the money. How is the money to be followed and how is it to be accounted for? I respectfully suggest that it does not really give me much comfort to say that somebody can take it to the court because when that kind of thing happens, all that means is that some poor person who is expecting to have their case heard now has to be pushed back.

So what I am respectfully suggesting, I know that there may be instances where the court would become engaged but I am just thinking that if we give a time frame, then we are saying to the persons and to the Minister that this is what Parliament has considered to be a reasonable time frame. So we are looking at possibly three months I would say and that ought to give the Minister sufficient time to have it laid in Parliament.

Mr. Chairman: One second, Sen. Mark. Sen. Vieira.

Sen. Vieira: Yes, I join with Sen. Mark and Sen. Chote on this because let us look at clause 25:

> "Within three months after the end of each financial year the Agency shall cause to be prepared, in respect of that year-
>
> (a) a report setting out the activities of the Agency…"

Now I am more interested in this aspect than the financials and the financial statements. Now these are not audited. So this clause already requires within three months after the end of each financial year, you have this report. That report is going to the Minister. Why can the Minister, within a certain time frame of getting that report that he is statutorily obliged to get, not submit it?

Mr. Al-Rawi: As I said in response generally, I am entirely inclined to treating with this issue. I was sharing the mischief in my mind as to the need for a second report, et cetera, because it is not the Auditor General's report.

Sen. Vieira: That is right.

Mr. Al-Rawi: So I have, of course, noted the three-month aspects and I was only looking at, with my jacket being tugged by the very senior CPC on my left telling me be careful, you are making a mistake, "as soon as reasonably practicable" is in the circumstances of the second report. Now if I take my own argument that you can be compelled either way, you do not do it and three months pass, you will be compelled—because there is no sanction if you do not do it other than somebody still going to court. Right? It just gives you that formula to know that you ought to act with alacrity in a particular period. Then if the recommendation is that they are effectively the same, then I can see the wisdom in saying, look, put in a period. But I wanted to share the perspective that I was being urged to offer by way of caution. If the committee, in its general considerations, thinks that it ought to be prudent to insert a clause, then I am entirely minded to do that as well. Would three months be the period? Would 60 days be the period?

Sen. Vieira: You see, AG, we appreciate what you have said and we understand the concerns of the advisors but we talk all the talk about transparency and accountability and good governance. You need to put in some sort of stretch target, you need to aim high, you need to have that whip to crack. And so I think the feeling here is, "Look, we supporting you with this", come up—

1.00 p.m.

Mr. Al-Rawi: What is the time frame?

Sen. Mark: Thirty days.

Mr. Al-Rawi: That is too short.

Sen. Vieira: Three months?

Mr. Al-Rawi: The shortest I have ever seen is 60 days. [*Crosstalk*] Sixty days from receipt? [*Continuous crosstalk*]

Mr. Chairman: Hold on, hold on. Let me just hear the Minister in the Ministry

of Finance. You want to—

Sen. West: If it is 60 days from receipt of the audited financials, then I have no problem with that. If it is 60—if it is to prepare and submit, we need at least 90 days.

Mr. Chairman: So, to prepare and submit, 90 days or 60 days?

Sen. West: That is the standard.

Mr. Chairman: Attorney General.

Mr. Al-Rawi: Well, I will just explain why before we run off on a fight over 30 days, because that is effectively what it is. Right? The reason is that these reports, when they are prepared, they are submitted to Cabinet always. Every report comes to Cabinet. Cabinet then goes through its sub-committee, which is the Finance and General Purposes Committee, and also a further sub-committee, which is the Reports Committee. They then further interrogate where there are gaps or loopholes. They get responses back. Sometimes alternative Ministries are required.

So, whilst 60 days sound long, in the cycle of governance, it is not that long, because you are really counting in weeks. Days look like weeks. Weeks look like days, if I put it that way, for anybody that has had that experience in that cycle. So the proposal could be within 60 days of receipt of the report and financial statements.

Sen. Mark: Mr. Chair, may I? Mr. Chairman, Mr. Chairman, can I speak?

Mr. Chairman: Yes, go ahead.

Sen. Mark: AG, if you go to clause 25(2), this agency is given three months to put its house in order and to audit its books. They must complete their financial auditing process within three months. Once that is done, they forward the report to the Minister of Finance. If the Minister of Finance, Mr. Chairman, has a

completed financial audited report, why must it take the Minister of Finance 60 days in which to table that report? The report is already completed, Sir. So all that is required, Mr. Chairman, is for the Minister of Finance, upon receiving that completed financial audited statement from the agency, all the Minister needs is 14 days in which to send it to the President or the Speaker. We are prepared to even compromise, 30 days. But for 60 days for a completed audited report to be sitting down on the table of a Minister of Finance, what are we doing?

Mr. Al-Rawi: Mr. Chair, it is just not that. We are talking about the mischief of reporting. It is respectfully just not that. Look, if I disclose, as an office holder currently, the Office of the Attorney General has not submitted reports for eight years straight, none. I am pre-empted from putting in reports as the current Attorney General, because I have five-year vacuum behind me. Not a single report has been prepared, none. So I am constrained to comply with the law, because my two predecessors before me did nothing for five years and three months. I am just giving you an example of a reality in life. We are pushing and trying to get the reports.

Sen. Mark: Annual administrative reports?

Mr. Al-Rawi: Yes, I am giving you an example, which includes our accounting aspects too.

Sen. Mark: No, your accounting aspects are covered by the—

Mr. Al-Rawi: No, let me explain. We have been doing investigative work, which the Auditor General has asked us to do in certain things. And I am just telling you, when I came into office, as an example of why the 14 days is difficult versus the 60 days, I met bags full of shredded material and can find no records in certain points. So there are some instances where you just do not have the liberty of saying 14 days will work it. So, if I look to what is traditional, I have seen in the

Constitution 60 days. I would prefer 90 days, which is three months, which is what people put, but I am prepared to go in such direction.

Mr. Chairman: Sen. Mark, hold on. So not have a continual back and forth, in relation to the number of days—so you have proposed 14 days in your amendment and are you willing to go to 30 days. The Attorney General has countered by saying 60 days. I do not think the—

Sen. Mark: I just want to clarify one point, Mr. Chair.

Mr. Chairman: Sure.

Sen. Mark: Mr. Chairman, I think that we are confusing issues, and I will you tell you why, briefly. The agency, whether it be this agency or any other State agency, has within, under the State Enterprises Performance Monitoring Manual, three months at the close off the financial year, to prepare and submit to the Minister of Finance its audited financial statements. The Minister of Finance or any Minister has no role or business in reviewing those accounts with a view to changing anything, when they are just a conduit. That is the role of the Minister. He gets the audited accounts from the Auditor General and all he or she has to do is to forward it to the Parliament. And all I am asking, Mr. Chairman: Why must it take 60 days, when you get completed audited accounts from the Auditor General that you cannot touch? You cannot change a full stop or a comma, you send it to the Parliament. Why do you need three months or 60 days? All you need is just 14 days to send it to us. That is all.

Mr. Chairman: Okay, Sen. Mark, so you have made your statement. AG, final comments on it and we will—

Mr. Al-Rawi: It is not true that you cannot change a full stop or a comma. You get accounts, which can be provisional accounts. Your get accounts, which may be qualified accounts. You get accounts, which are draft accounts depending upon

circumstances. So that is not true. This is not the perfect world where accounts are in perfect form. And, therefore, we are proposing, hearing the discussion afoot, that we can agree to 60 days. I do not think that that is such a difficult thing.

Mr. Chairman: Great. Attorney General, at this point in time, Sen. Mark, which amendment do you want to put forward? The one that you have circulated says 14 days. Do you want to continue for me to put the question on that amendment?

Sen. Mark: Yes, I am sticking to 14.

Mr. Chairman: Okay.

Sen. Mark: Because I think that is a reasonable time frame.

Question, on amendment, [*Sen. W. Mark*] *put and negatived.*

Mr. Chairman: Attorney General, let me just ask for clarification, so are you proposing an amendment for 60 days on this particular clause?

Mr. Al-Rawi: Yes, Sir. We are proposing an amendment to clause 25(2), that we delete the words "as soon as possible thereafter" and we put instead "within 60 days from the date of receipt by the Minister".

Mr. Chairman: The question is that clause 25 be amended as follows:

At subclause (2), delete the words "as soon as possible thereafter" and insert the words "within 60 days from the date of receipt by the Minister".

Question, on amendment, [*Mr. F. Al-Rawi*] *put and agreed to.*

Question put and agreed to.

Clause 25, as amended, ordered to stand part of the Bill.

Mr. Chairman: Hon. Senators, before we move on to clause 26, the time is 1.09 p.m. and I think it is a good time to take the lunch break. As such, this House will now stand suspended for one hour until 2.09 p.m.

1.09 p.m.: *Committee suspended.*

2.09 p.m.: *Committee resumed.*

Mr. Chairman: Hon. Members, we are at clause 26.

Clause 26 ordered to stand part of the Bill.

Clause 27.

Question proposed: That clause 27 stand part of the Bill.

Mr. Chairman: Sen. Mark.

Sen. Mark: Yes, Mr. Chairman, I know that the agency has the authority or is being given the authority to borrow money. It is one thing for the agency to borrow money, it is one thing for it to invest money, but I have a problem with the Minister having the authority to lend money. I do not understand how a Minister—this is not a sou-sou and I do not understand where the Minister is getting—

Mr. Chairman: Sen. Mark, the issue that you have is a very short clause with the Minister having the ability to lend money. Yes? Attorney General?

Mr. Al-Rawi: Mr. Chairman, we are incorporating a body corporate, therefore the functionality of lending, borrowing, receiving, et cetera, must all be provided for. For the record, as Attorney General, the Office of the Attorney General handles the positive vetting of all arrangements for lending on a continuous basis. So this is a standard, normal feature, which is also articulating along with the Exchequer and Audit Act.

Question put and agreed to.

Clause 27 ordered to stand part of the Bill.

Clause 28.

Question proposed: That clause 28 stand part of the Bill.

Mr. Chairman: Sen. Mark.

Sen. Mark: Well, you see how we have collided in 28?

Mr. Chairman: Brief comments, Sen. Mark. Is there an issue with clause 28?

Sen. Mark: No. I am happy with it, because I think what it is saying is exactly what I have said, that after they submit their report—now this report, Mr. Chairman, is this the audited or is this the administrative report?

Mr. Chairman: Attorney General.

Sen. Mark: Attorney General?

Mr. Al-Rawi: It is the annual report.

Sen. Mark: This is the annual report, okay.

Question put and agreed to.

Clause 28 ordered to stand part of the Bill.

Clause 29.

Question proposed: That clause 29 stand part of the Bill.

Mr. Chairman: Sen. Mark, you have an amendment?

Sen. Mark: Yes, in clause 29, subsection (2), delete "the" word after in subsection (2).

Mr. Al-Rawi: I just could not follow where that deletion was supposed to come. If Sen. Mark could assist me with that?

"Sums under subsection (1)(d) shall be paid into the Seized Assets Fund after the period—

(a) referred under 43(3) has expired or..."

If I skip to (b):

"(b) within which an appeal may be..."

Sen. Mark: Yes, Attorney General, the amendment here is really we are saying that under subsection (2), after the word, after—let me just read it.

Sums under subsection (1)(d) shall be paid into the Seized Assets Fund after "any" period

—rather than "the" period. That is the amendment that we are proposing

Mr. Al-Rawi: So there are four "the s" from the chapeau 1; (a), 2; (b), there are two appearing. Which one is to be deleted?

Sen. Mark: No—

Mr. Chairman: Subsection (2), Attorney General?

Mr. Al-Rawi: Yeah.

Mr. Chairman: There are four of them. At the very end, before you get to subclause (a).

So sums under subsection (1))(d)...

—following?

Mr. Al-Rawi: Yeah.

Mr. Chairman:—shall be paid into the Seized Assets Fund after...

and, Sen. Mark, delete the word "the" and put "any".

Sen. Mark: We are deleting that and we replacing it with "any".

Sen. Ramdeen: Attorney General, the policy behind that is that you had indicated in your piloting of the Bill, that one of the safeguards of this legislation is that you will only, anyone's property will only be subject to forfeiture after an appeal process has been finished. I thought that the way in which the section was drafted, after the appeal has been determined, whichever is later, you might have, you have two concurrent levels of appellate jurisdiction in our courts, the Court of Appeal and the Privy Council.

And I thought that the insertion of the word "any" after the appeal would capture not only the initial appeal to the Court of Appeal, but would also capture any subsequent appeal that may go to the Judicial Committee. It does not take away anything from what you have, as a matter of policy, put into the legislation, but it will just make sure and capture the safeguard that it will only come to an end after the second, if that is triggered, the second appellate level.

Mr. Al-Rawi: I now understand the purpose is to take care of that second level. I am just, with your leave, having a look at section 43, which is the compensation section. [*Mr. Al-Rawi peruses document*] It would make sense. Insofar as 43(3) has both the High Court and the appellate roots, I agree to the amendment. Thank you Sen. Ramdeen.

Sen. Ramdeen: Much obliged.

Question put and agreed to.

Clause 29, as amended, ordered to stand part of the Bill.

Clause 30.

Question proposed: That clause 30 stand part of the Bill.

Mr. Chairman: Sen. Mark, very short.

Sen. Mark: No.

Mr. Vice-President: Sen. Ramdeen, you have something to say.

Sen. Ramdeen: AG, I know at, I think it is clause 7.

Mr. Chairman: Subclause (7)?

Sen. Ramdeen: No, no, no. I think at clause 7 is the section, you could correct me, where you have the provision for without notice, the bona fide purchase of a value without notice.

Mr. Al-Rawi: Clause 7(9).

Sen. Ramdeen: Should we not include that there, in your lawfully obtained property, in addition to what you have?

Mr. Al-Rawi: Well, because we—so this interpretation subclause, clause 30, applies to this part and property lawfully obtained is separated out from the different categories that we went. So we had looked at it as a standalone aspect. Recoverable property is caught by clause 7, and recoverable property, with the exclusion of 7(9) for the bona fide purchase of a value without notice of the

specified offence would stand alone. So, I mean, if it bites in one of our clauses looking a little bit later, could we perhaps look at it then?

Sen. Ramdeen: I am just wondering if you could ask the drafters if 7(9) would be a subset of one of these provisions. I am just trying to—

Mr. Al-Rawi: We wanted to qualify 7(9) as to what "recoverable property" is, because when we are looking at the restriction orders in this part and then we are looking to the conversion into a forfeiture order, we are only dealing with recoverable property. So we see it as standing alone and mutually exclusive.

Sen. Ramdeen: But for someone who has obtained property as a bona fide purchase of a value without notice, would that person be captured by your property lawfully obtained?

Mr. Al-Rawi: That person would be captured by the fact that it is excluded as recoverable property. So that property would never fall into that net.

Sen. Ramdeen: Okay. Like you said, I agree with you. Can we just look at it as we go along and—

Mr. Al-Rawi: I am very happy to do that.

Sen. Ramdeen:—to see how it marries with the—

Mr. Al-Rawi: If there is a need to fine-tune it, I welcome the approach.

Question put and agreed to.

Clause 30 ordered to stand part of the Bill.

Clause 31.

Question proposed: That clause 31 stand part of the Bill.

Mr. Chairman: Sen. Mark, you have amendments?

Sen. Mark: Yes, Mr. Chairman, we are proposing that, consistent with the position that we outlined in the debate, that the Director of Public Prosecutions functions on the law and the Constitution ends at the level of criminal activity or

charges. And we are mingling or co-mingling both civil with criminal, which is really unconstitutional as far as we are concerned. And, therefore, we are saying wherever we have the words "Director of Public Prosecutions" in this particular 31(2), we replace it with the word agency. And that is our thing.

Mr. Chairman: Attorney General.

Mr. Al-Rawi: Mr. Chair, this matter has been interpreted by several courts. We have had the experience coming out of Antigua and Barbuda and the United Kingdom, where the advocacy was pointed to say that civil and criminal ought to be two streams that do not mix. So we have had the benefit of judicial pronouncements to say that that is in fact something which can properly happen. It is also in the Canadian jurisprudence, as Sen. Rambharat had pointed out in his debate. We do not think it proper for the agency to be advising itself, and we preferred to have the filter of the DPP.

Section 90 of the Constitution, which gives the three aspects in which the DPP can operate to initiate prosecution, to take over prosecution and to end prosecution, are not the sole parameters, which the DPP operates by or under. There are other parameters which we find in other pieces of law, statutes, which allow for a broadening and functionality. And then there is the common law that the DPP has by virtue of practice managed.

Some of that is in the saved law aspect. Some of that changed in our 1976 Constitution in particular, when we brought in the creature function of the DPP away from the Attorney General as it stood in our Constitution arrangements.

So, for all of those reasons now, on the record, we respectfully disagree with the invitation of the Opposition to replace the DPP's functionality with the agency and we ask Sen. Mark to consider our position that way.

Sen. Mark: We are also proposing, Mr. Chairman, that we delete the words "that

there is insufficient evidence to pursue criminal charges for a specified offence". But we—that should be deleted. There is no need for that.

Mr. Chairman: One second AG. Sen. Mark, you have also another one right below that. If you could just treat with the explanation for that one time as well, so the AG can respond?

Sen. Mark: Yes, and we are also proposing that we delete the words "and an application should be made for recoverable property to be forfeited".

2.25 p.m.

It is again the agency replacing DPP argument. So, Mr. Chair, line item 6, line Item 7, line item 9 on the list of circulated amendments of the Opposition all deal with the central principal of the argument that they put, which is to say, move the DPP because of the criminal/civil dichotomy which they have advanced as a submission. We do not agree with that submission because of jurisprudence in our own Constitutional arrangements, both prior to the '76 Constitution in our common law and in our statutes, and we are comforted by the jurisprudence coming from elsewhere in the Commonwealth which have said the opposite of the argument asked by the Opposition.

As it relates to line item 8, which is that there is insufficient evidence to pursue in 31(2). We see that as a safeguard, Mr. Chair, because we want to make sure, first of all, that the origination of these proceedings starts with a criminal investigation into a specified offence. There ought not to be fear in the hearts of people, that they are exposed to any average policeman, even though it says "Commissioner of Police, the Board of Inland Revenue, or the Customs and Excise Division" for a matter which is not a specified offence within the definition of that term in Section 2 of the Proceeds of Crime Act and as set out in the Second Schedule to the Proceeds of Crime Act.

Secondly, we consider, that the DPP must be engaged in this aspect and it is only when the DPP says: "Look, I do not have enough to go for a full criminal run", in which case the DPP would have used the Proceeds of Crime Act itself that the DPP then says to the agency, you may wish to seek civil aid to enforcement of criminal proceedings, because that is effectively what this is, and that is a concept which is well known in our laws and which is quite permissible, albeit under the functionalities of the Attorney General. It is at that point that the Civil Asset Trustee steps in, in place of the Attorney General, being properly insulated from that function in the manner we set out here. So, we think that this is an important safeguard to make sure that people are not subjected to arbitrariness, and we prefer that it stays as a constant feature.

Sen. Ramdeen: Thank you, Mr. Chairman. Hon. Attorney General, it was not an easy position to arrive at taking out the Director of Public Prosecutions from the proposed legislation, because there is a certain degree of comfort that people have with the independence and the insulation of the Director of Public Prosecution. But as a matter of practicality, you have indicated that you have to go before your assessment, to pass your assessment with FATF and CFATF and all of these things. But let us just carve away at this for a minute.

The Director of Public Prosecutions—and I am not saying this in any critical way—is adding nothing to this process, because the only thing that he is doing is saying that he is not satisfied that he can pursue a criminal charge. But outside of that, we have a situation in this country, where indictments are forwarded to the Director of Public Prosecutions. There is nothing in this legislation, nothing can be put into it, it is not a criticism, there is nothing in this legislation that says where a report is forwarded under the Explain Your Wealth Civil Asset Recovery to the Director of Public Prosecutions, he is going to give any priority to this?

That is number one. So, it comes to his desk like everything else. He has a thousand murder, PI, indictments to deal with as we speak. You have indicated to us on the Parliamentary floor it takes six years for him to decide whether to commit somebody for murder or not. It takes even more than six years in cases where it is not a capital charge. My difficulty is this, we add this to his desk and we expect that these things, because these things, the way in which this legislation is formulated, it has to be done with some degree of alacrity, you have provisional orders, just like you have explained Anton Piller and Mareva powers. So, you have to be able to move with some degree of stealth in this kind of thing.

You also indicated to us that we have investigations that are going on in one case for more than nine years. We must come to some position as to whether all of the work that we have undertaken as a Parliament and given you as the Attorney General and the Government, the support for this legislation will "not amount to naught". If a very important investigation is done and the report is sent to the Director of Public Prosecution, and you are waiting, and when I say you, I mean the agency is waiting for something to happen that does not happen for five years, and then—

Mr. Al-Rawi: Forgive me for interrupting, I caught it. Your simple submission is that this is to remove a potential roadblock for administrative capacity and that you were perhaps comforted by the fact that the trustee was well insulated enough to make this decision. But, if I may be permitted to distinguish the argument, this was not added to the DPP's desk; it was always on his desk. So because the specified offence under the Proceeds of Crime Act was always on his desk, we were letting him say, well look, I am no longer keeping it on my desk, because I have not reached the bar, and I am sending it elsewhere, and that is where we take our departure.

Sen. Vieira: Yes, AG, I was seeing it the same way that, because what the section does not state, but it is implicit, whereupon receipt of an investigative report under subsection (1), the Director of Public Prosecutions is of the view, it could also be that he wants to pursue the matter criminally and then go for forfeiture in that case. But now he also has the option, well you know what, I do not think there is sufficient to go for—secure a criminal conviction so let me refer it under the civil, so it makes sense. I was very troubled about this very literal circumscribing of the DPP's Office within the Constitution, but I think it is important to have this section to counter that very concern, that because he does not have that power statutorily provided, there was always open to the argument that he could not do it. We know he does it right now, he does a lot of things that are not narrowly contained as set out in the Constitution, but I think this makes it quite clear that he can make that referral.

Mr. Al-Rawi: Spot on. I could not ask for a clearer description, thank you.

Mr. Chairman: Hon. Senators, the question is that Clause 31 be amended as circulated by Sen. Mark.

Question, on amendment, [*Sen. W. Mark*] *negatived.*

Question, on amendment, [*Mr. F. Al-Rawi*] *put and agreed to.*

Question put and agreed to.

Clause 31, as amended, ordered to stand part of the Bill.

Clause 32.

Question proposed: That clause 32 stand part of the Bill.

Sen. Mark: Mr. Chairman, we propose amendments to 32(a), (b), 32(2), 32(2)(a). 32(a) the word "will", we would like to propose that it be replaced by the word "may". In 32(b) "is" be deleted, replaced by the word "may" and 32(2) we insert after the words "as soon as" the words "is reasonably practicable". And under

32(2)(a) we inserting after the word " the company" the words "being the subject of Property Restriction Order or a Civil Asset Forfeiture Order". We would like the Attorney General to consider that.

Sen. Ramdeen: Let me explain why.

Mr. Al-Rawi: I got, you know, I am agreeable. But there is perhaps a small bit of tidying up further in subclause (a). So 32(1)(a) we should—so we take the word "the" as it appears in the first line "An equity evaluation done for the company". We should say, "any company". And we agree that—so "any company which may be subject". So we agree that the "will" ought to change to "may". We should change "the" in first line to "any". And then the "o" as it appears, "be subject to an order" that really ought to be an "O". And we agree to that recommendation that "is to be", it should be instead be "may"; that is in (b). So I do not know if Sen. Mark is willing to adopt those recommendations.

Sen. Mark: Yes, no problem.

Mr. Chairman: So then, Sen. Mark, in light of what the Attorney General has just said, are you willing to withdraw your amendments to clause 32 So that the amendments as put forward by the Attorney General—

Sen. Ramdeen: Chair, we just have to do subclause (2). We can do all at the same time.

Sen. Mark: We have several amendments to subclause (2) for 32.

Mr. Chairman: We have treated with (a) and (b). You spoke to 32(2) and 32(2), further subclause (a).

Sen. Mark: But the Attorney General would like to enquire into those further.

Mr. Chairman: Attorney General, would you want to respond to those, to clause 32(2), 32(2)(a)?

Mr. Al-Rawi: So, line 12 really should be that you are deleting the word

"possible" because it is not stated there, right? And then inserting instead "is reasonably practicable" yes? Agreed.

So delete the word "possible" and replace it with the words "is reasonably practicable".

Sen. Ramdeen: And you can do your same surgery to (a) and take out "the" and put "any" which is what you did before. "Any company being the subject of the order" because by that time this presumes this is the second limb, so this presumes the order is made. Because this is after.

Mr. Al-Rawi: After the word "company" which may be subject.

Sen. Ramdeen: Do not put "which", AG, because this is after the order. So this is after the order has actually been made. So it has to be "being".

Mr. Al-Rawi: I was just wondering if the chapeau caught it, which is why I am sort of hesitating. [*Interruption*] I catch you. "Being the subject".

Sen. Ramdeen: Because, if you look four lines down, right hand side after, "the Property Restriction Order or a Civil Asset Forfeiture Order is made".

Mr. Al-Rawi: So after the word "company", being the subject of an order under this part. Or the order that was made? So "the order". Right.

So, Mr. Chair, if I could just assist in the texting of subclause (2). In subclause (2) at page 26, this is 32 (2) at the fourth line where the words "shall as soon as" delete the word "possible" and replace with "is reasonably practicable". Then in subclause (a), that is 2(a), at the last line of the sentence—so we can, forgive me, let us go to (a) "an equity valuation". Delete the word "done" because it appears in the chapeau. So an equity valuation for the company. Change "the" to "any". So, an equity valuation for any company to accurately determine the debt load and equity of—it will be "the".

Sen. Ramdeen: Yeah, it will be "the", "the subject of the Order".

Mr. Al-Rawi: Right. And then at the end of the word "company" we add the following words this is in (a) "being the subject of the Order".

So, fortunately, Mr. Chair, we have the presence of the Chief Parliamentary Counsel himself who is by far a better linguist and drafter than any of us here and he is recommending that instead of taking those last words at the end, he is recommending that it comes after the word "company". So it will read like this, and I read subclause (a) "an equity valuation for any company being the subject of the order to accurately determine the debt load and equity of the company."

Sen. Ramdeen: Hon. AG, can I make another suggestion?

Mr. Al-Rawi: We will probably have some surgery at (b) as well to do.

Sen. Ramdeen: That is what I am going to tell you. In (b) it supposed to—it should read, "a valuation of any other asset which is". Take out "to be".

Mr. Al-Rawi: And in (b), Mr. Chair. It should read "a valuation of any other assets which is" delete the words "to be", and that should take care of it.

Mr. Chairman: Sen. Mark, in light of what the Attorney General has just said, are you willing to withdraw the amendments that you have circulated?

Sen. Mark: Yes. Because the AG's amendment generally—

Mr. Al-Rawi: Thanks, Sen. Mark, for raising the amendments which we have incorporated.

Mr. Chairman: So, hon. Senators, again as before I would ask that everyone follow on page 25 as I go slowly with the proposed amendments to clause 32. So the question is that clause 32 be amended as follows:

Subclause 1(a) delete the word "the" insert the word "any". After the word "which" delete the word "will", insert the word "may", after the word "an" capitalize the letter "O", in Order.

At subclause (b) delete the words after which "is to" insert the word "may".

At subclause (2) delete the word "possible" which comes after "as soon as" and insert the words "is reasonably practicable".

At further subclause (a) delete the word "done", delete the word "the" which comes after 4, insert the word "any" after the word "company" insert the words "being the subject of the Order".

And further subclause (b) delete the words "to be".

Mr. Al-Rawi: That is perfectly correct.

Question put and agreed to.

Clause 32, as amended, ordered to stand part of the Bill.

Clause 33.

Question proposed: That clause 33 stand part of the Bill.

Sen. Mark: Mr. Chairman, we have proposed a number of amendments to clause 33 for the Attorney General's consideration.

In 33(1) we are proposing we delete the words "by the Director of Public Prosecutions".

In 33(2) we are saying that we delete that completely.

In 33(3)(b) we are also proposing that that be deleted completely, because we are clear that this is civil and not criminal but we are also clear that it is criminal too. But just for clarity we think it is better we delete that completely.

And we are also proposing rather in 33(5) that we remove the (2) because we have just deleted that, and we are also proposing that we delete the words "and without notice".

Mr. Al-Rawi: I understand the consistency of the Opposition's approach on the issues of the DPP which ground I think we have already traversed and we have a difference of policy positons on that. So I respectfully decline the invitation to delete the references to the Director of Public Prosecutions.

With respect to the term "criminal conduct" that is defined in the context of this Bill, and that is to be found at page 3 of the Bill, where the definition of criminal conduct is specifically which is a specified offence both within and without Trinidad and Tobago in the context of that description. We therefore respectfully cannot agree to the amendments of line 15, line 16, and line 17 as proposed by Sen. Mark.

With respect to the deletion of "and without notice", if subclause (5) were to be done ex parte and without notice, we think that we would be doing an injustice to the fact that first of all that this is something that may be done, it is not mandatory. There is nothing to stop a judge from saying, "We want you to actually serve the ex parte opposed" as it is done. It is an ex parte opposed where you give counsel the right to actually hear, but it is to preserve the ability that in instances where the assets may be frittered or lost in typical Mareva type situations that you preserve the right to move ex parte and without notice.

In our own discussion of section 33. Mr. Chair, we had noticed an inconsistency in our approach in subclause (4), because we had inadvertently confined ourselves only to the policeman as the part contemplates when in fact it is the customs officer, the police officer within the particular rank and also the comptroller. So the Chairman of the Board of Inland Revenue, the Comptroller of Customs and Excise Division as investigating officers must go alongside the police officer as defined. So we had proposed the deletion of the word "officer". And then the understanding of what the investigating officer would be, would be the three people referred to earlier. [*Interruption*] We are deleting the word "police", yes, forgive me. So it is not just a police officer, it is any officer being of the three species.

Sen. Ramdeen: AG, with respect to subclause (5), you said an application under

subsection (1) or (2) will be made ex parte and without notice. But it being made ex parte is without notice. It will preserve the position of you going to—in a position where you do not want the other side to know.

Mr. Al-Rawi: Well, the usual formula is ex parte and without notice. So we have seen it in both ways. You can say ex parte and then say that it also implies without notice. It is a sequential thought I agree, however, we wanted to make sure that we were expressed on the position, because it has been litigation about this. Ex parte opposed, for instance, is technically without notice but opposed.

Sen. Ramdeen: But would only be if the judge thinks so.

Mr. Al-Rawi: Correct. Which is why we use the word "may".

Sen. Ramdeen: I have a problem with one thing that is not covered by the amendments which is this. Under section 33(1) we accept you positon—well you have held firm to the policy position of the DPP being in—let us take that for granted. "Upon referral of a matter by the"—DPP—"under section 31, the Agency shall apply to the High Court in the prescribed form."

But we are not setting any time frame for them to do it. What I am saying if you do not want to put in days, like within 14 days or 28 days or whatever. But at least they should be doing it with some kind of alacrity. Because this is for a provisional order. Should we not say as soon as reasonably practicable?

Mr. Al-Rawi: Then that would open a whole Pandora's box into judicial reviewing the time frame within which they were to act and therefore, put some form of prescriptive consideration into the mix. So we did not want in the difficulties and with vicissitudes of prosecutorial action to put in a time frame on that end. They would be chasing, for instance, in summary offences, a statutory time clock anyway, obviously not the same for indictable offences.

So we prefer to leave it that way. We do think that in subclause (5) we could

delete the word "or" and then "(2)", because the reference to "or to" do not necessarily make sense in the body there. So we would add to our deletion of the word "police" in subclause (4) deletion of the words "or" and the "(2)" in subclause (5).

Sen. Ramdeen: You see the problem with it is this AG. Under the Interpretation Act they will still be required to do it as soon as reasonably practicable. So the same Pandora's box being unable to do it. Because where they have an obligation to apply to the High Court, because the problem with this is that if you keep the word "shall" it means that they have to do it. So there is no discretion. So if they have to apply to the High Court upon the referral under the Interpretation Act they will have to do it within a reasonable time anyway.

Mr. Al-Rawi: And the Civil Proceedings Rules will amplify that and also the discharge on grounds of the lien abuse would also feed into that as well. So putting it in the positive point that they must provides adequate safeguards for people to say "Well look your undue delay in your disposition", et cetera, "and you ought not to prosper".

Sen. Vieira: I understand, Sen. Ramdeen's point, but when you are looking to go for any kind of whether it is Mareva, Anton Piller, or as a prosecutor, you always have to have one eye on timing and logistics. And putting in arbitrary timelines could be counterproductive. Take, for example, you may go to court today but it is a long weekend and you cannot get anybody at the bank to freeze the account or to do something that is one instance. But you also have to get your people in place, so I think this is probably a better way to leave it open.

Mr. Al-Rawi: And the rules committee of the court really come up with the prescriptive remedies for these things. I mean if we look to the revisions of the Civil Proceedings Rules in particular and the manner in which we have done some

surgery to timelines and filings, et cetera. And then that whole spawning of what was once the massive disaster of Trincan, until Matthews came along, we are really seeing the subsidiary rules taking care of these prescriptions.

Mr. Chairman: Hon. Senators, the question is that clause 33 be amended as circulated by Sen. Mark.

Question, on amendment, [*Sen. W. Mark*] *put and negatived.*

Mr. Chairman: Hon. Senators, the question is that clause 33 be amended as circulated by the Attorney General and further amended at subclause (5) delete the words "or" and "(2)".

Question, on amendment [*Mr. F. Al-Rawi*] *put and agreed to.*

Question put and agreed to.

Clause 33, as amended, ordered to stand part of the Bill.

Clause 34.

Question proposed: That clause 34 stand part of the Bill.

Sen. Mark: Mr. Chairman, we are proposing that in clause 34(1) delete the words "alleged to be" and replace it with the words "of which there are reasonable grounds to suspect". That is the first proposed amendment we are suggesting.

We are also proposing in 34(5)(c) that we delete the words "sees fit" and replace with the words "considers appropriate".

2.55 p.m.

And in 34(9) we are proposing that we:

> Delete the words in (a) "is limited to reasonable legal expenses that the person has reasonably incurred or that the person reasonably incurs; and".

And we are also proposing that we:

> Insert in (b) "includes any other matter the High Court sees just in the circumstances."

Those are the amendments that we are proposing to clause 34(1)(b), clause 34(5)(c) and clause 34(9).

Mr. Al-Rawi: Thanks Sen. Mark for the proposals. The first aspect in 34 is 34(1)(b). There is a definition of what "associated property" is to be found in clause 3. It is the second appearing at page 2 of the Bill.

> "'associated property' means in relation to criminal property, terrorist property or instrumentality of a crime that is recoverable under this Act, that part of the property which is not recoverable and…"

And (a) to (d) are included. So the context of usage of "associated property" in subclause (b) is to be factored firstly by reference to the definition. We say in (b):

> "the property to which the application for the order relates includes property alleged to be associated property, and the Agency has not established the identity of the person who holds it…"

We have used the concept of "alleged to be" because there is no one to defend its status. And so, even though we understand that there could some concern about an allegation for a thing which is defined, it was in the circumstance of the fact that there was no one there to defend the information which would make it certainly associated property or something else.

The second reference to clause 34(5)(c):

> "(c) make such other orders as it sees fit"

There is no objection to "it considers appropriate". They capture the same sort of essence to that. If that were to give some comfort, we could easily treat with that by agreeing to it. So, "considers appropriate". If we then turn to subclause (9) it says:

> "Where the High Court provides in a Property Restriction Order for a person to meet legal expenses that the person has incurred or may incur in

respect of proceedings under this Part, the High Court shall ensure that the provision—

(a) is limited to reasonable legal expenses that the person has reasonably incurred or that the person reasonably incurs; and

(b) specifies the total amount that may be released for legal expenses in pursuance of the exclusion."

The recommendation coming to us is any other matter the High Court effectively sees fair. So, if I could just try and look at the recommendation at line 21, the proposal is to delete subparagraph "(a)" the limitation of legal expenses and "(b)" would be "includes any other matter the High Court sees just in the circumstances". When we looked at this and we looked to the Cayman Islands, we looked to British Virgin Islands, we looked to other positions and the Commonwealth model, and we looked to the Anti-Terrorism Act where we did that carve out for legal expenses, and we looked to the usual qualifications for Mareva injunctions where the exceptions for that, which is frozen applied, we felt it prudent to tell the court that the court must be satisfied that there are reasonable expenses and that they must be reasonably incurred, because there can easily be an abuse in respect of legal fees.

Sen. Ramdeen: Mr. Chair, through you to the AG, sorry. We understood that that to be the policy. The reason why we had asked for the amendment to be made because if you go back to subclause (8), you will see that the powers of the court are circumscribed by only making provisions for reasonable legal expenses.

Mr. Al-Rawi: Yeah. But subclause (9) is where is grounded the positive obligation to demonstrate it to say that the court must be satisfied. It must ensure. So we wanted to put that extra caution because the literature that comes, in particular, for the carve outs for anti-terrorism legal expenses and other positions,

the literature which has come back to us in many forms is that you really ought to take care to specify these two things: reasonable expenses and that they are reasonably incurred, because it can form a method of abuse. And even though I belong to that class and that profession, our profession of attorneys-at-law are not known in some circumstances for reasonableness, especially as it relates to legal fees.

Sen. S. Hosein: Thank you very much, Chair. AG, I have a little trouble with respect to subclause (1) which is really the heart of this clause in terms of the test in which an applicant has to satisfy before an Order is made. Now, I am comfortable with subclause (1)(a), but when you go done to subclause (b), I think that the threshold is too low with respect to the property just being alleged to be associated property. Now, with it being alleged, it is even below the standard, the evidential standard of that of suspicion. I mean, there is no harm in accepting the recommendation that the property, there must be some—if I had my way, I would have said "reasonable grounds to believe" because it is property rights we are interfering with at the end of the day. But reasonable suspicion is probably a better standard in order to protect the property rights of an individual here. So instead of "alleged", I think we should go with the reasonable suspicion standard, because subclause (b) gives a higher standard which is reasonable grounds to believe.

Mr. Al-Rawi: Yeah. I think it is a very sensible submission. So we would happily accept it.

Mr. Chairman: Okay. So, Attorney General, just to treat with procedure, so that is you are removing. Could you walk me through the amendment that just—in the meantime, Sen. Mark, in relation to the amendments you proposed on clause 34, are you—yes 34(5)(c) was the one that the Attorney General indicated was agreeable; clause 34(1)(b) and 34(9) were the ones that there was a difference of

opinion on. Would you like me to still put the question in relation to all three?

Sen. Mark: No, I think he is still considering (b). I think he is considering.

Mr. Chairman: Okay, I will wait for the Attorney General.

Sen. Mark: Let us hear what his position is.

Mr. Al-Rawi: Mr. Chair, in 34(1)(b), I accept Sen. Hosein's recommendation that we move from the "alleged to be" formula and it would read in terms of a proposed amendment that after the word "property" as it appears in the second line of clause 34(1)(b), we would insert the following words:

> "…of which there are reasonable grounds to suspect is associated property"

Right? So we will delete the words "alleged to be". So subclause (b) would read:

> "The property to which the application for the order relates includesproperty of which there are reasonable grounds to suspect is associated property"

Right? And then in subclause 5(c), which appears on page 28, we delete the words "sees fit" and insert the words "considers appropriate". We respectfully, for the reasons volunteered in subclause (9), have some difficulty with the recommendations offered by the Opposition, and so those are the amendments that we consider are appropriate. So in subclause (9)(b) to add the "any other matter the court sees fit". So if we went to clause 34(9)(b):

> "(b) specifies the total amount that may be released for legal expenses in pursuance of the exclusion."

The recommendation coming is "includes any other matter the High Court sees just in the circumstances".

Sen. Ramdeen: Page 33, 35(5)(c).

Mr. Al-Rawi: Yeah. So a new subclause (c) would be appropriate for consistency which would read, Mr. Chair—so at the end of (b), after the semicolon, you put a "; or", sorry—"and". So, forgive me. At (a) after the ";" delete the word "and";

(b) where the "." appears, delete and put a ";" and insert the word "and" and then put a "(c)" which would read:

"includes any other matter the High Court sees just in the circumstances".

However, we could say "considers appropriate". What is the word we had used?

Sen. Ramdeen: Just use the same ones you have on page 33, so you will be consistent.

Mr. Al-Rawi: I know, but we had just changed the (9). We had done the other one to say "considers just".

> "Any other matter the High Court considers appropriate in the circumstances."

Mr. Chairman: Sen. Mark, in light of the response by the Attorney General, are you inclined to withdraw your amendments?

Sen. Mark: I think the Attorney General has agreed except for 34(9)(a), so I withdraw that, Sir.

Mr. Chairman: Hon. Senators, once again, follow along. At clause 34—I would go as slowly as possible so that Members could follow. The question is that clause 34 be amended as follows:

Subclause (1), further subclause (b), delete after the word "property" insert the words "of which there are reasonable grounds to suspect is", delete the words "alleged to be"; at subclause (5), further subclause (c), delete the words "sees fit" and insert the words "considers appropriate".

And at subclause (9), further subclause (a) after the ";" delete the word "and" and at subclause (b) delete the "." after "exclusion" insert a ";"semicolon insert the word "and". Insert a new subclause "(c)" with the words "any other matter the High Court considers appropriate in the circumstances".

Mr. Al-Rawi: That is it. Just for the record, I know you said it. It is "includes

any". Right? So the new "(c)" the first word appearing is "includes"—"includes any".

Mr. Chairman: Okay. So, let me just reread that last part. At subclause (9), further subclause (c)—new subclause "(c) includes any other matter the High Court considers appropriate in the circumstances". Correct?

Mr. Al-Rawi: Yes, Sir.

Question put and agreed to. Clause 34, as amended, ordered to stand part of the Bill.

Clause 35.

Question proposed: That clause 35 stand part of the Bill.

Sen. Mark: Yeah, Mr. Chairman, we are proposing for the consideration of the hon. Attorney General that we:

Delete from 35(5)(a) the words "is limited to reasonable legal expenses that the person has reasonably incurred or that the person reasonably incurs";

And then we are also proposing in clause 35(6)(b)—and this is consistent AG with the CPR or the Civil Proceeding Rules:

Delete the word "leave" and insert the word "permission".

So I just want to ask to be consistent with the CPR rules.

Mr. Al-Rawi: If I start from the top at 35—I thank Sen. Mark for the recommendations—I recognize that the proposed amendment in respect of subclause (5) is anchored in the logic of the clause 34 that we just considered, and I respectfully ask that we maintain the language as it is. I do think, however, consistent with the amendments offered to subclause (c), that we should change the words "sees just" in subclause (c) and replace with "considers appropriate", and we have no objection to the word "permission" by deleting the word "leave" in 6(b) and replacing it with the word "permission".

Sen. S. Hosein: In 6(b). [*Crosstalk*]

Mr. Al-Rawi: Forgive me, Mr. Chair, one moment.

Mr. Chairman: Sure.

Mr. Al-Rawi: I thank Sen. Hosein for the enquiry. It is properly a common "o" because it is an order under this section as opposed to the Property Restriction Order, but thanks for the clarification.

Mr. Chairman: Attorney General, I will put the question to the first amendment that Sen. Mark circulated. He has two on 35, and then you had a further amendment in relation to 35(5)(c). The question is that clause 35(5)(a) be amended as circulated by Sen. Mark.

Question, on amendment, [*Sen. W. Mark*] *put and negatived.*

The question is that clause 35(6)(b) be amended as circulated by Sen. Mark.

Mr. Al-Rawi: Well, you see, what I am confused about, what would be tidier is if we took the clauses themselves, ask which was withdrawn in light of the positions, because the Government has made amendments and, therefore, we could have taken it in one go, but I did not want to interrupt your flow. I thought you were going to put ours after.

Mr. Chairman: I am going to put yours after. What has happened here is that one amendment to clause 35 put forward by Sen. Mark is not agreed upon, the second one is. So I am trying to dispense with the amendments as proposed by Sen. Mark and then treat with the amendments as put forward by your good self. The amendments as put forward by your goodself, within that, one that has been proposed by Sen. Mark is agreed upon here. So it is either Sen. Mark withdraws in its entirety, his amendments to clause 35 and then I put the amendments in its entirety as put forward by you, the Attorney General—

Mr. Al-Rawi: As you please, Sir.

Mr. Chairman:—which was inclusive of second one of Sen. Mark.

Mr. Al-Rawi: Sure, as you please.

Sen. Mark: Mr. Chair, if I understand what you are saying, there is some disagreement as it relates to 35(5)(a).

Mr. Chairman: That is right.

Sen. Mark: So, I can withdraw that.

Mr. Chairman: Okay.

Sen. Mark: The other one I think that the AG would be willing to accept, because he did indicate that he has no problem with that.

Mr. Chairman: Which is exactly what I just did. What I just did—

Sen. Mark: Well, you see, I think he wanted us to clear this one first.

Mr. Chairman: That is fine.

Sen. Mark: We have cleared it up.

Mr. Chairman: That is fine. I am still going to put the question to clause 35 that you proposed amendments to that is agreeable. The Attorney General also has an amendment to clause 35 which I am also going to put subsequent to. So, again, I am putting the question.

So, hon. Senators, the question is that clause 35(6)(b) as circulated by Sen. Mark be amended as circulated by Sen. Mark.

Question, on amendment, [*Sen. W. Mark*] *put and agreed to.*

Mr. Chairman: Hon. Senators, the question is that clause 35(5)(c) be amended as follows:

Delete the words "sees just" and include the words or insert the words "considers appropriate". Attorney General?

Mr. Al-Rawi: Yes, Sir.

Question put and agreed to.

Clause 35, as amended, ordered to stand part of the Bill.

Clauses 36 and 37 ordered to stand part of the Bill.

Clause 38.

Question proposed: That clause 38 stand part of the Bill.

Sen. Mark: Yes. Mr. Chairman, we are proposing in 38(5) that we:Insert after the words "twenty-eight days" the words "from the date of seizure".

That is the first amendment that we are proposing.

Mr. Chairman: Sen. Mark, are you ready to explain your proposed amendment? Sen. Mark.

Sen. Mark: Mr. Chairman, we are saying that this clause reads that:

> "Property seized under an order granted under subsection (2)(b) may be retained by or on behalf of the Agency for twenty-eight days"

And then it goes on:

> "and the Agency may subsequently make an application for a Property Restriction Order"

What we are saying is that we want to make it very clear that "twenty-eight days" after or from the date rather "of the seizure" so that at least it could be made very clear. We would like the Attorney General to consider including those words.

Mr. Chairman: I would take Sen. Vieira's comments in the meantime. Sen. Vieira?

Sen. Vieira: I support that recommendation because it is really the agency, and the agency may get an Order today but not actually seize the property 14, 15 days afterwards, and the clock should start really ticking from when the agency is possessed of the property. So I think it is an eminent suggestion.

Mr. Al-Rawi: So, Mr. Chair, the way I read the clause is in the reverse right: "Property seized under an order." So the issuance of the Order is not a seizure

until it is actual possessed. So, I had understood it, quite properly, to mean that the Order had to be enforced. So a writ of FIFA, for instance, or an enforcement Order in the old days, the issuance of the writ does not mean that you actually have the enforcement. You have to then engage in the exercise of levy, take possession—all the common law rules as to how that happens. You hold on to it, you put a notice—all of those things came in. However, if it was a simple matter of avoidance of doubt, I mean the language would not hurt. So, it may actually go to enlarge the time frame from that perspective. So we can insert it after the words "twenty-eight days from the date of seizure".

3.25 p.m.

Sen. Thompson-Ahye: Chair, I am not sure what that adds to anything in this particular clause; the addition, I am not seeing what it adds. I do not see any—

Mr. Chairman: The Attorney General will respond.

Sen. Thompson-Ahye: Okay.

Mr. Al-Rawi: Mr. Chair, as I said in response to Sen. Vieira, I could never contemplate that a seizure would be effective upon the issuance of the order. A seizure is only on the enforcement of the order, so the execution. So, I never understood that it could be anything but what the language says here. However, and I will say it openly, insofar as it may give me an enlargement of time out of an abundance of caution, which is on the side of law enforcement, I will take it for what it is worth. I do prefer the language in its original form, but I can see the merit, as offered by Sen. Vieira, of putting in the qualification.

Mr. Chairman: Okay. Attorney General, could you just for clarification—

Mr. Al-Rawi: So, Mr. Chair, the proposed amendment to clause 38 will be at subsection (5), which is at page 35, after the word "days", as it appears at the third line, insert the following words, "from the date of seizure".

Mr. Chairman: Okay. That is it? Okay, Sen. Mark, on your proposed amendment, I am seeing here, 38(6), new clause.

Sen. Mark: Yeah. That is a new clause that we are proposing at the end of—

Mr. Chairman: So this what you have written here is a new clause?

Sen. Mark: Yeah. That comes after what we are dealing with.

Mr. Chairman: Right. So, Attorney General, in light of what you have just proposed, do you want to respond to what is being proposed here?

Sen. Mark: No, no, well, I think that new clause would be dealt with after we complete everything, Sir.

Mr. Al-Rawi: Well, I understand it is a new subclause so that it could be taken at this point.

Sen. Mark: Oh, yeah. Okay. All right. Yeah. Attorney General. I think that, Mr. Chairman, if I may, I think everyone agreed here that once you seize the property and the order falls through, then the property should immediately be returned to the person from who it was seized forthwith and not have the person go and—I think everybody has agreed to that, that we should not have to go and reapply for our own property.

Hon. Senator: Everybody?

Sen. Mark: Well, I say so. I said everybody.

Hon. Senator: Sen. Mark, okay, I think—

Mr. Al-Rawi: Mr. Chair, my difficulty with this—I understand the mischief that is intended but it does not take into account all of the other procedures which may apply. There is a route of appeal. There may be a further order. There are ongoing processes inside of this and, I mean, it is axiomatic that property that is no longer under seizure would have to be returned, and it—

Mr. Ramdeen: Let me just interrupt and give you the perfect example?

Mr. Al-Rawi: If I could just finish it?

Sen. Ramdeen: Sure.

Mr. Al-Rawi: I was going to say, it is axiomatic that it has to be returned, however, there has been a practice of causing it to be returned and whether if there is a positive step to be taken. Now, the State in the instance is being invited to take the step to return forthwith, but that assumes that the State is as nimble as the individual, which is never the case. So even though we find ourselves in this position of asking the applicant, the respondent, in this instance, to take the step, if it is that it is not returned, I think that, bearing in mind the difficulties in the State's operation, that it would be unduly onerous to put the State in that position of not returning. If I get the return factors as well, do I give constructive possession? Do I give actual possession? Suppose it has been locked away in a position? There are all sorts of ramifications as to the delivery of possession, constructively or actively, that cause me some concern now. So, I think that these things could be managed by way of the subsidiary legislation and rules, but to jump to saying, "where no application is made by the agency, under 38(8), within 28 days from the date of seizure, the property shall be returned to the person from whom it was seized", there may be an impracticality in this.

Mr. Chairman: Sen. Vieira.

Sen. Vieira: AG, I understand what you are saying, but we are talking about the deprivation of property, constitutionally enshrined guaranteed rights. We are talking about it being done by due process. What this is kicking in here is an application. You either make your application so that people know that you mean business and you are serious or you are not. We have to think from the point of view of a person who is a victim here, you know.

Mr. Al-Rawi: I am just going to do a quick comparison across the Proceeds of

Crime Act. I know search and seizure comes about at somewhere around section 32.

Sen. Vieira: You may be out of your home, you may be out of your business.

Mr. Al-Rawi: But you are not out of due process is my point, and I know you recognize that when you said that a little while ago.

Sen. Ramdeen: Attorney General—

Mr. Al-Rawi: Yes.

Sen. Ramdeen: I am sorry to disturb you, but why do you say you are not out of due process?

Mr. Al-Rawi: Because you are still within the point of being able to compel the return, taking the step to say positively, "Look this Order has expired, please have it returned." So, I mean, my question is—

Sen. Ramdeen: I just want to have the conversation. You mean that the property is not a—they have not made an application, they have seized, they have not made an application; the property now, at that point in time, there is no justification for holding the property anymore. Are you suggesting that the person whose property is the subject of the order should make an application for it to be returned?

Mr. Al-Rawi: So what we are talking about is the trigger to cause the return, because once the order expires it is not held. From a legal point of view, it may be practically being held, and it is the mechanism of delivering out of the State that we are talking about. The positive obligation that we are putting on the State right now is to do something within a specific period. Wearing the hat of the State now, I am just concerned to understand the realities of the State doing it in a measured way.

Sen. Ramdeen: Can I give you another side of the coin, which is this, the 28 days have passed, the property is not returned. In law there is no justification for the

property to be returned—sorry, for the property to continue to be held by the State—

Mr. Al-Rawi: And you are subject to detinue.

Sen. Ramdeen: Yeah. No, well, the subject to detinue is one thing. That is one aspect of the liability, but then you are going to saddle the State with the liability, with the same argument that is being made of having to pay the cost of proceedings that are going to the instituted for the return of the property, which is something that we should really be trying to prevent, because at the end of the day I do not think—and I do not say this with any criticism, but I do not think that we should—and the example I was going to give when you were making your contribution was this, we have examples in this country right now where exhibits, and you had made reference there are some aspects of this that deals with exhibits; there are cases before the court where exhibits are held by the court for eight and nine years when there is no reason to be holding them. And the reason why that is so is because there is no provision in the law that compels them to have to return it as soon as it is finished.

Mr. Al-Rawi: I have gone to the Proceeds of Crime Act and I am looking specifically at section 31, 32, "Orders to make material available for investigating the benefit from a specified offence", and here is what subsection (5) says:

> "The period to be specified in an order under subsection (2) or (3) shall be seven days unless it appears to the Judge that a longer or shorter period would be appropriate in the particular circumstances of the application."

So there is a trigger here for an application. So I am looking at—

Sen. Ramdeen: What section are we on?

Mr. Al-Rawi: I am not in pari materia. Right?

Sen. Ramdeen: No, no, I want to just follow.

Mr. Al-Rawi: So I am looking at subclause (5) of section 32, albeit, it is not in pari materia, it is in the reverse. Right? It is where there is discretion as to what the time frame for return looks like, because I have measure here now what the practicability of return is, if it was a ship, if it was a vehicle, if it is somewhere else. I do not know if there is a mandatory position of 28 days meeting the circumstances. So I am looking for some sort of formula right now that says, "as soon as is reasonably practicable in the circumstances", because I cannot anticipate what the circumstances of reasonableness would be just by reference to 28 days. That is the mischief that I am trying to wrestle with now. Any thoughts on that, Sen. Vieira?

Sen. Vieira: This is a police officer who finds something that he thinks is recoverable property and seized; I mean, if there is going to be a—

Mr. Al-Rawi: Take it a step further. The police officer goes to the agency. The agency does the seizure. The seizure is then put into the hands of the property manager, so it is not the police officer, just to be clear.

Sen. Vieira: "Oh", well, you are reinforcing my point then because you have to be responsible—

Mr. Al-Rawi: Yeah. So I am now about the delivery out. I am dealing with the mischief of detinue applying after a certain prescriptive period. If I seize a yacht and the yacht for the asset manager says that it is delivered in some safekeeping in Saint Martin, the 28 days may become problematic. So I am looking at the issues of constructive delivery versus actual delivery, and what would be prudent in these circumstances is really if a court were to say, "What is practical in the delivery out", but to put a one-size-fits-all is the mischief that I am on right now.

Sen. Vieira: But that same yacht that may be delivered in Saint Martin, look at it from the owner's point out view. He may have a chartered yacht business and he

stands to lose on the deal. He can be in all kinds of difficult situations because of belief. One would think that in a situation where you have moved the court, you have enough confidence in your case to move due process along swiftly.

Mr. Al-Rawi: The case and the seizure are related but also not related. So the question is the practicability of the asset trustee delivering the item out. When you stand in the shoes of the State and you have to pay damages, it becomes a very real thing. So it is not a capricious act that I can just simply say—I do not mean to be pejorative, right?

Sen. Vieira: No.

Mr. Al-Rawi: I want to caution against a one-size-fits-all. The recommendation here is that "within 28 days from the date of seizure, where no application is made with 28 days from the date of seizure of the property, the seized item shall be returned to the person from whom it was seized forthwith". My problem is the "forthwith".

Sen. Vieira: Maybe we can move it from 28 days and expand it, but—

Mr. Al-Rawi: No, I have no problem with making the application. You want to continue the detinue—no, I should not say "detinue". You want to continue the detention or seizure, go and apply to the court. It feeds in from the subsequent point that we have later. It is the "forthwith".

Mr. Chairman: Sen. Mark.

Sen. Mark: AG, our subclause does not talk or refer to any new application. We are saying that the State, through its various—hear how it reads:

> Where no application is made by the agency under section 38(8) within 28 days from the date of seizure of the property, the property seized shall be returned to the person from who it was seized forthwith.

So if you fail to make an application within 28 days, you are depriving me of my

property for 28 days—

Mr. Al-Rawi: Sen. Mark, I am not on that, if I may interrupt.

Sen. Mark: Okay.

Mr. Al-Rawi: So it should be subsection (5) and not (8). So it is not 38(8), it is 38(5).

Sen. Mark: Okay.

Mr. Al-Rawi: 38(5) says:

> "Property seized under an order granted under subsection (2)(b) may be retained by or on behalf of the Agency for twenty-eight days" from the date of seizure—we have now put in—"and the Agency may subsequently make an application for a Property Restriction Order in respect of the recoverable property."

So, insofar as it is a subsequent to the expiry of 28 days, the new proposed 38(6) is slightly askew, because it implies that there is a time frame between the expiry of the order and the making of a fresh order. So what happens is 38(6) can be read in two ways because we left the word "subsequent" in (5). Right? Effectively the mischief that I understand, Sen. Vieira—tell me if I am getting you wrong—is twofold; one, you have seized it already under 38(5); two, you have a further opportunity to apply for the renewal of that if you wish, which is reasonable in all the circumstances. If you do not apply for the renewal then you should return the thing, because it is only a further order of detention that the court should have to separate the thing from where it ought to be. In those circumstances the sole mischief that I have here now is the word "forthwith", so "as soon as is reasonably practicable" makes sense in the matrix, because then that factors all of the vicissitudes of the type of property that we are talking about in the circumstances of order detention. So if forthwith were to go to a—

Sen. Vieira: And just to put on the record, AG, that we understand that you are representing the State and that is the cap you wear, but we also have a duty, a responsibility to the citizens and their rights and freedoms and entitlements, and so the concern is striking that right balance.

Mr. Al-Rawi: Agreed. [*Crosstalk*] So, Mr. Chair, if a new subclause 38(6) were to be read this way:

> Where no application is made by the agency within seven days of the expiration of an order under subsection 38(5)—under subsection (5)—within 28 days from the date of the seizure of the property—no, that will come out—the property seized shall be returned to the person from whom it was seized as soon as is reasonably practicable.

And, in fact, that should at least be 14 days and not seven.

Sen. Vieira: I would prefer, "shall be returned forthwith and in any event not later than 14 days".

Sen. Mark: Yeah. Yeah. He has to go with that now.

Mr. Al-Rawi: My difficulty with the "forthwith" is that we are talking about multiple species of property that we cannot yet contemplate.

Mr. Chairman: Attorney General, I think you have made that point over and over again, and there has been some discussion, lengthy as it is. In relation to that particular word, the Attorney General has indicated that he does have some trepidation in relation to the word "forthwith". He is currently drafting a new subclause (6) to clause 38, which I will ask you to just read its entirety shortly, Attorney General, so that we can have that written down for when I put the question. So could you just, as soon as you are done, read it in its entirety so we may have that?

Mr. Al-Rawi: There may in fact be a fair compromise to Sen. Vieira as follows,

"where no application is made by the agency within 14 days of the expiration of an order"—

Mr. Chairman: Hold on, "within 14 days of the expiration of an order".

Mr. Al-Rawi: "Under subsection (5)".

Mr. Chairman: **"**Under subsection (5)".

Mr. Al-Rawi: "The property seized shall be returned to the person from whom it was seized within 14 days thereafter or as soon as is reasonably practicable."

Sen. Mark: No, that "doh" make sense, AG.

Mr. Al-Rawi: To take care of the different species of property because the State cannot, at the point, agree to 14 days. We will be in default and subjected to positions.

Mr. Chairman: Okay. So—

Sen. Ramdeen: I want to just ask a question.

Mr. Chairman: Very short.

Sen. Ramdeen: Yeah. It is just because of a change.

Mr. Chairman: Very short.

Sen. Ramdeen: AG, in the draft that you just read out, you are keeping subclause (5) as being 28 days for them to make the application?

Mr. Al-Rawi: Yeah.

Sen. Ramdeen: So if you are keeping the 28 days for them to make the application, why are you limiting yourself to the expiration of 14 days—

Mr. Al-Rawi: No, it is not 28 days to make it, you know. Property seized under an order granted under subsection 2(b), and 2(b) is a further order. Under subsection (1) may issue to a point as a receiver authorizing to search for preservation. They say that that further order can only last for 28 days, and if you want that further order to go beyond 28 days, you have seven days to apply for that

extension of time, failing which you ought to return it in the first instance within 14 days, if possible, but if the nature of the subject matter is not capable of delivery within 14 days, as soon as is reasonably practicable, which would gave the State a fair position to make best efforts.

Sen. Mark: Mr. Chairman, through you, the Attorney General—

Mr. Chairman: Sen. Mark, I think, like I said, there have been lengthy discussion on this particular clause and the Attorney General has put forward his comments in relation to this clause and the proposed amendments. At this point in time I am going to put the question. Attorney General, Sen. Mark, Members, we will follow like this. I am going to put the question as proposed by Sen. Mark on clause 38(5), which was agreed upon between the two. Then I will put the question on the new subclause (6), as proposed by Sen. Mark, and then I will put the question on the new subclause (6) as proposed by the Attorney General.

Sen. Ramdeen: Just before you put the question, Mr. Chair, could you just allow us to amend the amendment that is proposed by Sen. Mark by just correcting 38(8)? It says there it is supposed to be 38(5).

Mr. Chairman: Yes, I will. In the putting of the question, I will offer that.

Sen. Ramdeen: Thanks.

Mr. Chairman: Hon. Senators, the question is that clause 38(5) be amended as circulated by Sen. Mark. [*Crosstalk*] Hon. Members, let me just remind you, clause 38(5), Attorney General, is the one that was agreed upon originally by both sides.

Mr. Al-Rawi: Yeah, understood, it should be aye.

Mr. Chairman: And I am separating them because there is a difference with opinion in the whole clause.

Mr. Al-Rawi: Understood. I thought you were putting the whole thing.

Mr. Chairman: No.

Mr. Al-Rawi: Apologies.

Mr. Chairman: No, I am not putting the whole thing, I would have to separate it out.

Mr. Al-Rawi: Understood.

Mr. Chairman: So we will try this again.

Question, on amendment, [*Sen. W. Mark*] *put and agreed to.*

Mr. Chairman: Hon. Senators, the question is that clause 38 be amended to insert a new subclause (6) as circulated by Sen. Mark and further amended to delete the number (8) after section 38 and replace it with number (5). Is that correct?

Sen. Mark: Yeah.

Question, on amendment, [*Sen. W. Mark*] *put.*

Sen. Mark: Give me a division on it. [*Crosstalk*]

The Committee divided: Ayes 7 Noes 23

NOES

Khan, F.

Gopee-Scoon, P. Mrs.

Baptiste-Primus, J. Mrs.

Mr. Chairman: Members, Members, can we have a little silence so we could hear the vote?

Sen. Richards: Just for clarity, could you just reiterate what we are voting on specifically, please?

Mr. Chairman: Members, again, I understand that this could be just a little bit confusing, take a look at the circulated amendment in front of you by Sen. Mark. That would be the second amendment, number 25 on that—

Mr. Al-Rawi: Page 3.

Mr. Chairman:—page 3—thank you, Attorney General—number 25 that says, clause 38(6). That is an amendment as circulated by Sen. Mark which was further amended to correct the typo that says 38(8) to actually say 38(5). That is what we are voting on now. What you have to understand as well is that in the deliberation the Attorney General has put forward an amendment to also add a new subclause (6), which reads, Attorney General:

> Where no application is made by the Agency within 14 days of the expiration of an order under subsection (5) the property seized shall be returned to the person from whom it was seized within 14 days thereafter or as soon as is reasonably practicable.

So that is the amendment as being proposed by the Attorney General.

Mr. Al-Rawi: Which will take after the vote on Sen. Mark.

Mr. Chairman: Which would take after the vote of the amendment proposed by Sen. Mark. So the division, as we are taking it right now, is on Sen. Mark's proposed amendment. Let the division continue.

Division continued.

AYES

Mark, W.

Haynes, A. Ms.

Ameen, K. Ms.

Hosein, S.

Obika, T.

Ramdeen, G.

Deonarine, A. Ms.

NOES

Rambharat, C.

Sinanan, R.

Hosein, K.

West, A. Ms.

Le Hunte, R.

Henry, Dr. L.

Singh, A.

Cummings, F.

Dookie, D.

Young, N.

Borris, H.

Thomas, A.

Richards, P.

Chote SC, S. Ms.

Vieira, A.

Deyalsingh, Dr. V.

Seepersad, C.

Teemal, D.

Thompson-Ahye, H. Mrs.

Dillon-Remy, Dr. M.

Amendment negatived.

Mr. Chairman: Hon. Senators, the question is that clause 38 be amended as follows to add a new subclause (6) that reads:

> Where no application is made by the Agency within 14 days of the expiration of an order under subsection (5) the property seized shall be returned to the person from whom it was seized within 14 days thereafter or as soon as is reasonably practicable.

Question, on amendment, [*Mr. F. Al-Rawi*] *put and agreed to.*

Question put and agreed to.

Clause 38, as amended, ordered to stand part of the Bill.

3.55 p.m.

Clauses 39 and 40 ordered to stand part of the Bill.

Clause 41.

Question proposed: That clause 41 stand part of the Bill.

Sen. Mark: We circulated, again for the AG's consideration, amendments to 41(2), and we are suggesting that we delete the word "may" and replace it with the word "shall".

In clause 41(4) we delete the word "may" and replace it with the word "shall". In 41(4), we also delete, Mr. Chairman, the words, "on an application made" and replace with the words "on an order being granted".

There is a new subclause 41(6) that we are proposing which reads:

The Agency responsible for registration of Trinidad and Tobago ships in Trinidad and Tobago, shall on an order being granted under subsection (5) enter the restriction in the relevant register.

These are our amendments for the consideration.

Sen. S. Hosein: Before the Attorney General responds, I just have one minor change. That is at 41(1), I think it is a typo, in the second to last line, "request the Court to direct". I think that "to" is left out.

Mr. Al-Rawi: Mr. Chair, let us deal with the "may" and "shall" prescriptions. The legislative practice coming from the CPC's department is that administrative functionaries such as the Registrar General and other people are told "may". The first time we actually adjusted that language was in the Non-Profit Organization Bill where we went to the word "shall." In any event, *Bennion on Statutory*

Interpretation and parliamentary practice suggests that the court has well decided and articulated these positions "may" and "shall, "and" and "or", et cetera, which are traditional points.

Insofar as it is a direction for the Registrar General coming at the courts, so if you look at 41(1):

> "Where the Agency makes an application for a Property Restriction Order under section 33..."—in respect of land—"the Agency shall be treated as a person interested in any land..."—made under—"the application relates...the Agency may, at that time request the Court direct the Registrar General to restrict or prohibit dealings with the land."

So insofar as the court is giving that, there is no objection to changing to the word "shall", just for the sake of clarity in this position here. But for the record there is no administrative fine that can find itself other than the penal clause on the court's direction.

So we can deal with that. Shall—"may" to "shall" in subclause (2). In subclause (3) it is where we treat with the Agency making an application for a PRO under 33 in respect of a motor vehicle, the agency shall be treated as a person interested to which the application relates, made under an application, and the agency may, at that time, request the Court direct the Commissioner. [*Interruption*]

Yes, I know, I am reading (3) because it leads to (4), so I just want to put the position there. It is at (4) we say that the Commissioner of Transport "may", we can change that to "shall", because it is a direction of the court. In any event, for the record, the "may" and "shall" are read the same way in these parameters, according to the CPC's practice. Subclause (5), we say "shall" on application made under subsection (3).

What I would like to get, if I look at the words here, "on an order be granted". If I could just indicate why we have gone for "application" as opposed to "order". It is to keep it consistent with a lis pendens which is not an order of the court under our restriction, but is effectively a caveat. So that is recognized under the Conveyancing and Law and Property Ordinance Act, and also under the Real Property Act. And insofar as that is merely just the filing of a lis, a thing, a court, we need to keep it consistent. This is going no further than the existing law recognizes. It is not by way of order that the restriction happens. [*Interruption*]

Yes, but I am giving you—it happenS for vehicles, it happens, et cetera. Notice we have kept it for land, that direction, so we are going with the concept of a lis pendens, and we are keeping it similar in terms of threshold for ships and for vehicles. So, we did not want to go by way of an order, it is a lis. If I take it from the ships' aspect and I go for actions in rem, and I look at the manner in which you may arrest a ship, it is also upon the filing that the lis actually happens at the registry, for droghers and other aspects as well. So we wanted to keep it as set out in subclause (4). We agree with the changing of "may" to "shall".

Mr. Chairman: In subclause (2) and (4)?

Mr. Al-Rawi: (2) and (4), change "may" to "shall". So that takes care of line 26, line 27. If we go to line 28, we have respectfully declined line 28 for the reasons volunteered. If we get to line 29 of the proposed amendments:

> The agency responsible for registration of Trinidad and Tobago's ships in Trinidad and Tobago, shall on an order being granted under (5), enter the restriction.

So, in (5) we said:

> "Where the agency makes an application for a"—PRO—"under 33 in respect of a ship, the Agency shall be treated as a person interested in the

> ship to which the application relates or to which"—the PRO—"order"—is—"made on the application relates and the Agency may, at that time, request the Court direct the agency responsible for registration of Trinidad and Tobago ships in Trinidad and Tobago to restrict or prohibit dealings with the Trinidad and Tobago ships."

What I do not get is the distinction recommended by adding in a new subclause (6), in light of the prescriptive language of (5). Could I be assisted in that regard?

Sen. Mark: I did not get that one, Chair.

Mr. Chairman: The Attorney General is asking for the reason for new subclause (6) given that subclause (5) treats with what you are trying to treat with.

Mr. Al-Rawi: Is it to capture the positive step of entering in the register, or was it because you were asking for the order to be made as opposed to direction? Which is it? If it is to harmonize with the approach, to have the entry into the register, then there is no objection to the clause.

Sen. S. Hosein: AG, I just have a query with respect to this. Is there a registry for these ships? I am not aware—

Mr. Al-Rawi: Yes, so there is the Maritime Registry, the Droghers Registry. There are a number of registries in the system.

Sen. S. Hosein: That is under the Maritime Division under the Ministry of Works and Transport?

Mr. Al-Rawi: Yes.

Sen. S. Hosein: The second thing is there is no definition of what a ship is, because let us look at the reality—

Mr. Al-Rawi: Interpretation Act.

Sen. S. Hosein: Interpretation Act has a definition?

Mr. Al-Rawi: Well, plain and ordinary meaning.

Sen. S. Hosein: You see the thing is, if we look at our circumstances right now, a lot of pirogues would be bringing in drugs into the country. Will those smaller vessels be regarded as a ship or vessel or a boat?

Mr. Al-Rawi: What we are treating with here is ships which are on registers, as opposed to vessels which are unregistered.

Sen. S. Hosein: So my next question would be, what will constitute a ship to be registered?

Mr. Al-Rawi: That which requires registration. So the maritime laws tell you what you need to register. So when you bring a foreign vessel to Trinidad and Tobago of a particular size and class, you have to register in the various sub registries: droghers, ships, et cetera. Vessels like pirogues, et cetera, which are currently under our law, unregistered vessels, those are subject to seizure as a matter of fact, by literally impounding them. So we did not intend—

Sen. S. Hosein: Once they are within territorial sea?

Mr. Al-Rawi: Correct. You see, here is where we are just putting the lis pendens on notice to the world of somebody else's interest. You have a certificate of registration for a car. You have registration effectively for land, there is titling. Wherever we have titling, we are treating with it. If it is an untitled thing, then you treat with it by physical possession. So we can agree to the subclause as proposed, Mr. Chair, in line 29 of the amendments. So effectively "may" to "shall", "may" to "shall". The only one is the subclause (4) second amendment at line 28.

Mr. Chairman: One second, Attorney General.

Mr. Al-Rawi: If withdrawn we could then agree to the other three.

Mr. Chairman: Sen Mark?

Sen. Mark: I have no problem with that Mr. Chairman.

Mr. Chairman: So Attorney General just for clarification, clause 41(1), line 6,

after the word "Agency", you indicated that that word "may" would change to "shall" or no?

Mr. Al-Rawi: No, that stays as is, Sir.

Mr. Chairman: That stays as is. And in relation to Sen. Hosein's proposed amendment to insert the word "to" after "Court" in the next line, you speak to that?

Mr. Al-Rawi: Yes, "to" is fine.

Sen. Mark: May I, Mr. Chair, I just wanted to bring something to the Attorney General, dealing with—we are on 41, right?

Mr. Chairman: Yes, we are on 41.

Sen. Thompson-Ahye: If I may, "to" is also missing from subclause (3), three lines from the bottom after "Court".

Mr. Chairman: So "time request the Court to direct"—Attorney General?

Mr. Al-Rawi: Sure.

Mr. Chairman: Hon. Senators, I will put the question on clause 41 with a proposed amendment by Sen. Mark, having withdrawn subclause (4), and then further amended by the Attorney General.

Hon. Senators, the question is that clause 41 be amended as circulated by Sen. Mark with clause 41 subclause (4) withdrawn.

Question, on amendment, [*Sen. Mark*] *put and agreed to.*

Mr. Chairman: Hon. Senators, the question is that clause 41 be amended as follows:

Clause 41(1), after the word "Court" insert the word "to". Subclause (3), after the word "Court", insert the word "to".

Subclause (5), after the word "Court" insert the word "to".

Question put and agreed to.

Clause 41, as amended, ordered to stand part of the Bill.

Clause 42 ordered to stand part of the Bill.

Clause 43.

Question proposed: That clause 43 stand part of the Bill.

Sen. Mark: We are proposing, Mr. Chairman, that in clause 43—and we want to amend this. We want to delete "three months" and replace it with the words "an order with one year".

Mr. Chairman: Attorney General.

Sen. Mark: No, before you go to the Attorney General, Mr. Chair. I would also like the Attorney General to consider subsection (5) in line three, "where the Court is satisfied", replace the words "it may require the Agency", to "it shall require the Agency". I would like the Attorney General to remove the word "may" and replace it with the word "shall", because the Court has already been satisfied. So they shall execute the court order.

Mr. Al-Rawi: Mr. Chair, I want to remind that in civil proceedings the appellate route for a substantive appeal happens within a certain time frame, 42 days. The question is whether three months is appropriate in these circumstances. So 43 is the compensation provision. 43(3):

> "If a High Court has made a decision by which no Property Restriction…can be made in respect to the property, the application for compensation shall be made—
>
> (a) within three months, beginning with the date of the decision."

We think that that would be in keeping with the Civil Procedure Rules that we have at present. We are minded to hear the perspectives on this particular point, but that is the rationale for anchoring it the way we did.

Sen. Viera: Yes AG. So compensation is something I am sure most citizens would be very interested in knowing about, and I am making my comments from

the point of view that sometimes the citizens need to be able to read these Acts in a way that they can easily understand them, without them having to be filtered through the lens of professionals and lawyers and such.

My first question is, the way I read this, so the property is restricted, the court finds it is not recoverable property, the innocent owner or holder can apply for compensation. That is great. Does it mean that he applies for compensation before the same judge, in the same proceedings, or does it meant this entitles him to go and bring an application separate and apart after the matter? That is one question.

Second one: You must make your application for compensation within three months, either from the date of the decision or the proceedings having been discontinued. So my next question is: What happens if he makes his application four months, is he time barred? Does that mean he has no recourse?

Mr. Al-Rawi: The matter that will be intituled before the court is the matter of the court versus the property, and the application for compensation would flow in the same proceedings. The question is whether that is to be managed by way of rules of court or in expressed legislation. As we have drafted it here, it is intended to be in the same proceedings, because this is within the due process of the event.

> "If a High Court has made a decision by which no Property Restriction Order..."—so the High Court is already in locus.

Sen. Viera: That would be ideal.

Mr. Al-Rawi: Right, but it is there. It is in subclause (3):

> "If a High Court has made a decision by which no Property Restriction Order in respect of the application for the property the application for compensation shall be made".

Notice it says "the application". It is in those High Court proceedings. So we see

the language as expressed here as being quite clear in saying, look, it is in those proceedings.

Whilst it is true that persons need to understand the law, if that was true it would make a mockery of the entire civil proceedings that we currently engage in, including the civil proceedings rules and practice directions, which are unintelligible for the average human being. Take Trincan alone, the mayhem that was unleashed on Trinidad and Tobago by the Court of Appeal's decision, which was against the overriding objective and against the expressed provisions of the CPR themselves. The Privy Council determined in that case that the honourable Justices of Appeal were on a frolic of their own, and then reversed them. So that is just to ground the point that law is to be interpreted in a very strict arena.

When we get to that we have harmonized it with the civil proceedings to say effectively around the 42 day marker, which is where civil proceedings aspects come. It is open to us to say, "or within such further period of time as the court may allow", to allow someone to approach to the court in the interest of justice argument.

Sen. Viera: Because you were very happy to give the State extensions as practicable. I think the same should apply for the citizen, the innocent holder.

Mr. Al-Rawi: So what is the proposal?

Sen. Viera: I think what you have said is a good starting point for consideration.

Mr. Chairman: Sen. Mark, clause 43(8), proposed amendments. Could you elaborate on that so that the Attorney General could respond?

Sen. Mark: Just a second, Sir.

Sen. Thompson-Ahye: Chair, while Sen. Mark is pondering, (b) and (c), there seems to be a fundamental error there. It does not make sense to me.

Mr. Chairman: Which subclause Sen. Thompson-Ahye, 43(3)(b) and (c)?

Sen. Thompson-Ahye: If you read the entire thing, that chapter, it falls apart after you pass (a). Something is missing. If I know what the intention is, I can help you.

Mr. Chairman: Sen. Thompson-Ahye, one second; let the Attorney General—

Mr. Al-Rawi: I am working with the CPC's position to capture the expression for subclause (3). So it is just putting it into formula which is just a little bit of wordsmithing on this end. The intention we are working out here now, just to assure you, is that we apply a three-month limit or such further period as the Court may consider just in the circumstances. So we can go for that ability to tell the court, look, you said three, but I did not know, I came back, my circumstances now permit. Please allow me the enlarged time.

Sen. Viera: Because he could have been sick having been so traumatized already.

Mr. Al-Rawi: Understood, so now to Sen. Thompson-Ahye's point, which is how we factor subclauses (b) and (c). Subclause (b) treats with the event where the High Court made an order, but somebody was appealing. So it is to treat with that circumstance if an application is made for leave to appeal with the date on which the application is withdrawn or refused. So that takes care of making your compensation application after the end of the Court of Appeal's matter, or if the application is granted on which the proceedings on appeal are concluded. So it takes you to the end of the appeal. Notice that we are talking about appeal in the larger sense, because there is a right of appeal to the Privy Council or conditional leave to the Privy Council pursuant to the Constitution.

So I am just working on the formula of words to capture the time frame for those three particular circumstances: (a) the High Court, (b) leave and you withdraw or it is refused, and (c) the completion of the appellate process. And we are proposing that that (b) three month or such further period as the Court may

consider just in the circumstances. So I just need a small bit of space to do that.

Sen. Ramdeen: Before you do that, why would you need leave to appeal? Let me put it a different way. You do not need leave to appeal, so that should be out. This does not fall within one of the categories under section 38 of the Supreme Court of Judicature Act. These are civil proceedings, 38(2).

Mr. Al-Rawi: So the issue of leave to appeal came to me first as one of those circumstances, so I am just checking it now.

Sen. Ramdeen: It is not. It is interlocutory and cost.

Mr. Al-Rawi: It is the point of the interlocutory aspect you know. So that is the only bugbear, and what happens if it also involves costs.

Sen. Ramdeen: But no, this cannot be—

Mr. Al-Rawi: I understand but—

Sen. Ramdeen: First it has to be cost only. So this cannot be cost only, and then secondly these are not final, because it is not interlocutory, it is whether they are final proceedings. These cannot be final proceedings under the recognized Abu Bakr test under White and Bruntley.

Mr. Al-Rawi: The thing that I am looking at is (3) being grounded if a High Court has made a decision by which no Property Restriction Order can be made. If there are any ancillary proceedings within the interlocutory or cost aspects that are tagged onto that, can I reasonably contemplate that a judge would always clean separate them, or would there ever be a conflation of circumstances where they may argue—and the Judiciary is not always right, we see that every day—that there is a conflation for which leave is required?

Sen. Ramdeen: No, but that has to match back to section 38(2) of the Supreme Court of Judicature. If it is bifurcated and you have a cost order only, then 38(2) will already provide that you need leave, but that would not apply here, and these

are not final proceedings under 38(2).

Mr. Al-Rawi: So, Mr. Chair, if I could recommend so that we do not detain the House, if we can have a look at this and we will just do a little bit of surgery, because this language requires just a little bit of more contemplation.

Mr. Chairman: Hon. Senators, we will stand down clause 43. Attorney General, just for the interest of time, I am considering putting Sen. Mark's amendments first and then standing down, because you have subsequent amendments to that. We did not treat with clause 43 subclause (8) as proposed by Sen. Mark. Sen. Mark are you ready to give a brief explanation on that subclause, so the Attorney General can treat with it immediately before we move forward?

Sen. Mark: I will ask Sen. Ramdeen to do this one.

Sen. Ramdeen: Mr. Chair, the amount of compensation to be paid under this section—as it stands the provision reads:

> "The amount of compensation to be paid under this section is the amount that the High Court thinks reasonable, having regard to the loss suffered and any other relevant circumstances."

The section as it is presently framed leaves it in a very wide open discretionary way for the High Court to grant damages, and one must understand that in these circumstances where you have you have deprived someone of their property and that deprivation of property is found not to be in accordance with the terms of the Act being recoverable property. The High Court should not have any discretion as to what is the loss that has been suffered. If the loss is proved as to be a direct consequence of the deprivation of liberty, then the citizen must be entitled to recover whatever loss is directly suffered as a result of the order that has been made in the circumstances.

4.25 p.m.

Secondly, I do not think it is proper for us to put the amount that the High Court thinks is reasonable, it cannot work like that where you have depravation. To be proportionate, the law must prescribe that whatever loss flows directly as a consequence of the depravation of the property right, that the citizen be compensated for that, and it must not be anything narrower than the loss that has been suffered by the citizen, and that is the principal basis upon which the amendment is proposed.

Mr. Chairman: Attorney General.

Mr. Al-Rawi: Mr. Chair, we looked at the wider language to imply a wider category, so I do understand the pointer back to the direct losses nexus range. But what we had suggested here in subclause (8) is the amount the High Court considers or thinks reasonable. We would use the word "thinks", having regard to the loss suffered and any other relevant circumstances, and we were really trying to encapsulates a broader form of consideration rather than narrower.

There is an argument that can prosper to say well, look direct losses do not include indirect losses, and then that disaggregation could put somebody out of—I am going to use this quite inappropriately but to capture the concept of aggravation, of vindicatory and I am borrowing the compensation and I said "inappropriately" to treat with damages as opposed to compensation which is really, you know, meant to be tied to physical and actual losses.

So what we intended here insofar as we are in virgin territory on this particular aspect, or I should not say "virgin", the common law would take care of this and the rules would take care of this, but we intended to be wider rather than narrower. And we thought that, having regard to the loss suffered and any other relevant circumstances, would then all be enveloped under "reasonableness", so we thought that we would go on the wider approach as opposed to the narrower approach.

Mr. Chairman: So, I would now put the question on clause 43 on the proposed amendments by Sen. Mark.

Question, on amendment, [*Sen. W. Mark*] *put and negatived.*

Mr. Chairman: Hon. Senators, I will now stand down clause 43 to allow the Attorney General to do some more preparatory work on his proposed amendments for clause 43. As such, we will now move on to clause 44.

Clause 43 deferred.

Clause 44.

Question proposed: That clause 44 stand part of the Bill.

Mr. Mark: Mr. Chair.

Mr. Chairman: Sen. Mark.

Mr. Mark: Mr. Chairman, in this clause we are moving from Property Restriction Order to a Civil Asset Forfeiture Order, and the language here tells us that the applicant, which is the agency, and/or their representative can proceed to make this application to the courts or to the High Court, and the language is not explicit. But what comes out clearly at us is that this can be done ex parte. So you are moving from one level to another level, from freezing, you go on now to restriction and now you are going now to forfeiture.

Mr. Chairman: So, Sen. Mark—

Mr. Mark: So what I am proposing for the AG's consideration, once you are tampering with this level, I would like that it be made explicit that it must be inter partes.

Mr. Chairman: Attorney General.

Mr. Al-Rawi: Mr. Chair, if I could just first for some sense of order, not deprecating anything that Sen. Mark has said—we are at the end of the Opposition's recommendations for amendments to the law, which is wonderful, we

are at the smooth passage now. The only recommendation for clause 44 is that of the Government which we have not put, so I have circulated an amendment. So for housekeeping purposes, could I just offer that?

Mr. Chairman: So before you do.

Mr. Al-Rawi: We propose in section 44 (4) that the application be supported by affidavit, not from an investigating police officer, but the three categories of investigating officers who are charged with that responsibility under the Comptroller of Customs, the Chairman of the Board of Inland Revenue and the Commissioner of Police within the defined ranks.

In those circumstances we propose that we delete the word "police" as it appears in the third line in subclause (4) of clause 44, and that is the rationale for the recommendation.

Sen. Mark: I understand.

Mr. Chairman: So, the Attorney General has put forward his amendment as circulated. Does anyone have comments in relation to that particular amendment? So, I will treat with the question in relation to the Attorney General's amendment.

Question on amendment, [*Mr. F. Al-Rawi*] *put and agreed to.*

Mr. Chairman: Attorney General, you want to respond quickly to Sen. Mark's comments?

Mr. Al-Rawi: Could I, please? Correct me if I am wrong. I understood that Sen. Mark's position in clause 44 as it relates to the move now to the permanent side of it which is the Civil Asset Forfeiture Order, that there was a question as to whether this thing can be done ex parte and an insistence that it ought to be inter partes. Well, respectfully there are going to be circumstances where there is a blend between the two. This law as crafted requires that all steps are taken to ensure inter partes and more.

We also include third-party attendances, interested party attendances, and when we tie it into the definition at clause 7(9) as to what is "recoverable property", and clause 50 which treats with what is legitimately owned, we ensure via publication in the *Gazette* and in the newspapers that all persons are made aware so that they can, at least, have some degree of actual notice as opposed to just constructive notice of proceedings. In those circumstances, we are confident that we are broader than inter partes.

Where the blend comes with the ex parte approach is in circumstances where that person cannot attend notwithstanding those aspects, and those, of course, happen for instance, with absconding debtors, et cetera. So we respectfully cannot agree to an insistence of pure inter partes because there will be circumstances of facts that would frustrate that aspect.

Sen. Mark: Mr. Chairman—

Mr. Chairman: Sen. Vieira.

Sen. Mark: Okay.

Sen. Vieira: Thank you, Chair. And I think the three gears, as I had suggested, "seize, explain, forfeit". The critical point here is that nothing is going to be taken away from anyone until a court has made a determination. So the ex parte application at highest just means that it has been frozen, but it is going to be there, it is going to be examined and interrogated and that is the safeguard.

Mr. Al-Rawi: Thank you.

Sen. Mark: Mr. Chair, if I may. Whilst that is still to be determined by the courts, the mere fact that the Attorney General has said, once this procedure kicks in ex parte, it can find its way in the *Gazette*, it can find its way in the newspapers, publications. Remember this matter has not been determined, but it is being publicized. Reputational damage is real in those circumstances.

Mr. Chairman: Sen. Mark, as much as you are engaging and explaining your point of view—

Sen. Mark: So, I am asking—

Mr. Chairman: One second.

Sen. Mark: I am asking—

Mr. Chairman: I understand what you are asking. Remember that there must be a proposed amendment. You have put forward a point, the Attorney General has responded, Sen. Vieira has added. Are you adding any proposed amendments specifically at this point in time?

Sen. Mark: No.

Mr. Chairman: Good. Sen. Mark, so the Attorney General has responded. I am going to continue to put the question in relation to—

Sen. Mark: I have specific amendment, Sir.

Mr. Chairman: Do you have specific amendment?

Sen. Mark: Yes. I am proposing—

Mr. Chairman: I just asked that question—

Sen. Mark: I am proposing that in clause 44 we place—and I am leaving that up to the Attorney General—we want to proceed with an inter partes.

Mr. Chairman: And the Attorney General—I understand that, so you— [*Interruption*]

Sen. Mark: So that is my amendment.

Mr. Chairman: Good. So, you are formally putting forward and amendment?

Sen. Mark: Yes. I am formally putting forward.

Mr. Chairman: You would like a question put?

Sen. Mark: Yes.

Question on amendment, [*Sen. W. Mark*] *put and negatived.*

Question put and agreed to.

Clause 44, as amended, ordered to stand part of the Bill.

Mr. Chairman: Hon. Senators, for the most part have come to end of the circulated amendments put forward by Sen. Thompson-Ahye, Sen. Mark and the Attorney General. What remains are new clauses as proposed by Sen. Hosein which will be treated at the end of dealing with the original clauses. At this point in time, moving forward we will take the clauses by way of parts as organized and outlined in the Bill.

Sen. Mark: Mr. Chairman, please. We have been going very nicely and you have exercised patience. We do not want to rush. So even though we have not put formal amendments, it does not mean to say that in each clause we may not want to share with the Attorney General some areas where we would like him to consider for purposes of amendments. But I think if we rush to just dealing in parts, I do not think it is—I want to give you the assurance that we are not going to delay any process. There are some clauses that we are just going to go through, but there are others, Mr. Chairman, that we will want to engage the Attorney General.

Mr. Chairman: And, Sen. Mark, let me assure you that it is not my intention to rush anything. What I am treating with and have treated with for the day thus far primarily is the amendments as circulated by all those who wished to circulate amendments. What we have is that we have to come to the end of that process. I am going to take it in parts as I have indicated, assuming that everyone has had sight of the Bill, and having gone through that Bill, was able to propose amendments and did do so in the time allotted to do so. If you have an amendment to any clause that comes up in any of the parts, you can voice such concern, but we will be taking it in parts from this point forward. Clerk.

Sen. Mark: But, Mr. Chairman—

Mr. Chairman: Sen. Mark, I am taking it in parts from this point forward. Moving forward, Sen. Mark. Clerk.

Sen. Mark: But we are not in a dictatorship here, you know.

Mr. Chairman: I know you are not in a dictatorship, Sen. Mark.

Sen. Mark: It is a democracy.

Mr. Chairman: Sen. Mark, I am not engaging in back and forth with you. I have indicated as the Chairman of these proceedings how we are going to proceed. You will be allowed to raise concerns on a particular Standing Order as put forward. Sen. Mark, that is my ruling. Clerk.

Sen. Mark: Is there a public meeting in the next hour? [*Crosstalk*]

Clauses 45 to 57.

Question proposed: That clauses 45 to 57 stand part of the Bill.

Mr. Chairman: Sen. Hosein.

Sen. S. Hosein: With respect to clause 45, Chair, through you to the Attorney General, AG, we had defined "specified offences" in the definition section. When you look at 45(2)(a) and (b), I see the word or the term "a particular offence" appearing. I do not know if that should be changed to "a specified offence" seeing now that we have tied down the Bill to the second schedule of the Proceeds of Crime Act, because with the criminal property is defined based on a specified offence and the instrumentality also.

Mr. Al-Rawi: So, 45(1) treats with the general power to grant a Civil Asset Forfeiture Order.

Sen. S. Hosein: Right.

Mr. Al-Rawi: "The High Court may, where it is satisfied on balance of probabilities that the recoverable property should be forfeited, grant such a Civil Asset Forfeiture Order to forfeit such property."

Subclause (2) is where we treat with the specific types of property.

> "(a) criminal property…
> (b) an instrumentality…
> (c) terrorist property…"

Insofar as these types are treated separately, it is to drill down into the nature of property.

Sen. S. Hosein: No. I—

Mr. Al-Rawi: I know. I am coming to the point of "specified offence"; I got you when you said it. Right? So the criminal property is not necessary to should:

> "that the property is derived directly or indirectly, In whole or in part, from a particular offence…"

Your question is whether that is to be—whether there is a danger or risk in saying "particular offence" insofar as we have specified that it must be a "specified offence".

And my answer to that as we go through (a) (b) and (c) is that we are talking specifically about only specified offences under POCA, but if you go to the Second Schedule of the Proceeds of Crime Act where we treat with money laundering or we treat with breaches of the Anti-Terrorism Act, there are offences under the Anti-Terrorism Act which then all become specified offences. So this is intended to treat with that. They all are enveloped in the meaning of the manner in which the investigation can happen, and for the things that are specified offences. So we do not think that there is an incongruity between the two.

Sen. S. Hosein: By using the word "particular"—

Mr. Al-Rawi: Correct. Because they are enveloped in the concept of "a specified offence".

Sen. S. Hosein: So it forms part of the subset. That is what you are saying?

Mr. Al-Rawi: Yes.

Sen. S. Hosein: But what is the danger in just removing the "particular" and using "specified"?

Mr. Al-Rawi: Because if you go to the second schedule of POCA—

Sen. S. Hosein: Yes.

Mr. Al-Rawi:—and we see the reference to breaches of the Anti-Terrorism Act.

Sen. S. Hosein: The ATA is covered in (c) specifically because when you look at (c)(i) it deals with "property was derived from specific terrorist act;" which is defined, so I am comfortable with that. My issue is with respect to (a) and (b) using "particular offence".

Mr. Al-Rawi: And it comes within the definition of "criminal property" and "instrumentalities of crime" insofar as they effectively from predicate offences which must always be within the parameters of this law "specified offences".

Mr. Chairman: Attorney General, completed?

Mr. Al-Rawi: Yes, Sir.

Question put and agreed to.

Clauses 45 to 57 ordered to stand part of the Bill.

Clauses 58 to 67.

Question proposed: That clauses 58 to 67 stand part of the Bill.

Sen. Mark: Mr. Chairman—

Mr. Chairman: Sen. Mark.

Sen. Mark:—there is in the *Hansard* where the Attorney General gave an undertaking that he will deal with a number of clauses here that he could not have dealt with downstairs. I would hope that he would honour his commitment.

Mr. Al-Rawi: Mr. Chair, I am perfectly prepared and capable to do that. What the Leader of the Opposition indicated is that the Senate would circulate

amendments, so we have been in our second day of committee stage.

Sen. Mark: Nowhere here did the hon. Leader of the Opposition say that.

Mr. Chairman: Sen. Mark.

Sen. Mark: No. I am just saying. You see, it is either we are operating—

Mr. Chairman: Sen. Mark.

Sen. Mark:—on principle or we are not.

Mr. Chairman: Sen. Mark.

Sen. Mark: You were going good all the time with your—

Mr. Chairman: Sen. Mark.

Sen. Mark:—but you have just gone.

Mr. Chairman: I have indicated how we would proceed, and that is how we are going proceed. So unless anyone has comments in relation to clauses 58 to 67—

Sen. Mark: We have many comments, Sir.

Mr. Al-Rawi: Okay. Let us deal with them.

Sen. Mark: In 58, Sir, we are saying that we would like to propose a specific amendment that under 58 that we deal with, first of all, matters that are being heard in the courts should not be, again, be considered ex parte. We believe that this can damage people's reputation, and we agree wholeheartedly with the Law Association on this matter that we should move from ex parte to inter parte.

Mr. Chairman: This is clause 58?

Sen. Mark: This is clause 58. So I am proposing for the Attorney General's attention that we should move from ex parte to inter partes.

Mr. Chairman: Attorney General.

Mr. Al-Rawi: Mr. Chair, the position is that there is a need for both ex parte and inter partes and we do that. On the preliminary Unexplained Wealth Order aspects we provide for, of course, the ex parte route which is quite frankly normal. The

existing common law as it is embodied in Anton Piller regime in particular, and in other areas, involves ex parte grants by the court.

Where the caution and proportionality is to be found is that there can never be an Unexplained Wealth Order in final form until the inter partes process has been properly carried out in the circumstances set out in the Bill. There is a publication requirement, there is a notice requirement, third parties have certain interest there, the court acts in the interest of justice.

It is in all of those circumstances therefore that we unfortunately cannot agree to making this all inter partes because it would make it extremely difficult to operate the law that way because it just cannot be done that way in certain circumstances.

Sen. Mark: Mr. Chairman, may I continue?

Mr. Chairman: Sen. Mark. Yes.

Sen. Mark: I am saying in 58(2)(a), (b) and (c) and more so (b) and (c), we would like to propose amendments to (b) "beyond any reasonable doubt", and this thing about "reasonable suspicion" which is the principle that is guiding this section (2). We would like the Attorney General to have this thing reconsidered, because as you know we have a certificate that we are coming with as part of the preamble, where we are saying that this Bill requires a three-fifths majority. So consistent with that particular submission, we are proposing in this section that the Attorney General begin to carve and craft this clause to reflect "beyond reasonable doubt".

Mr. Chairman: Attorney General.

Mr. Al-Rawi: Well, Mr. Chair, that just makes absolutely no sense with the greatest of respect. This is clause 58. It is the application for order of declaration. 58(2) says:

"An application under subsection (1) shall be accompanied by an

affidavit stating—

(a) the identity of respondent;

(b) the grounds by which the applicant reasonably suspects…"

If you take what Sen. Mark just said, Sen. Mark is asking the Parliament to accept a recommendation that the applicant must have proof beyond reasonable doubt of something. I mean, that happens in a court process as a standard of proof, so it just has no home or place in the application.

Sen. Mark: May I invite the Attorney General to journey with me, journey with me to 61—

Mr. Al-Rawi: Sure.

Sen. Mark:—and see if what I have said can be grounded—rooted—here?

Mr. Chairman: Attorney General.

Sen. Mark:—from "on reasonable grounds"—

Mr. Al-Rawi: Sure.

Sen. Mark:—to the "beyond reasonable doubt".

Mr. Al-Rawi: Sure.

Mr. Chairman: Attorney General.

Mr. Al-Rawi: Grant of a preliminary Unexplained Wealth Order, this is preliminaries provided for at clause 61. Clause 61 says that:

"Where the High Court shall be satisfied that there are reasonable grounds to suspect…"

And it is at the point that the court then invites someone to come to court to basically be the subject of interrogatories, to file a declaration in a prescribed form and then to be subject to interrogatories. This is no different from section 32 of the Proceeds of Crime Act where you can be summoned for the same purposes on reasonable suspicion.

For the record, Mr. Chairman, if you turn to section 32 of the Proceeds of Crime Act and you go to specific language in subsection (6) as it appears there.

"The conditions referred to in subsection (2) and (3) are—

(a) in the case of subsection (2), that there are reasonable grounds for suspecting…

(b) …reasonable grounds for suspecting…

(c) …reasonable grounds for suspecting…

(d) that there are reasonable grounds believing that in the public interest,"—certain other matters.

And this is where:

"A police officer may, for the purposes of an investigation…into—

(a) a specified offence;

apply to judge for…"—certain parameters.

So, we are grounded squarely within the parameters of the existing law which is the Proceeds of Crime Act. We take comfort in the fact that there must be a satisfaction by the judge. But this is only at the preliminary stage. It does not lead to anything more than an obligation to fill out the form and then to be subjected to interrogatories.

Sen. Mark: Mr. Chairman, I would like to also propose that in 60 that we be consistent with what has gone on before.

Mr. Chairman: 60?

Sen. Mark: Yeah. That is clause 60 of the very unexplained section.

Mr. Al-Rawi: So we gone back?

Sen. Mark: Yeah. What you mean, "we have gone back", we are dealing with the whole section; not so? I was told by the Chairman—

Mr. Chairman: Sen. Mark.

Sen. Mark:—it is the whole thing we are dealing with.

Mr. Chairman: All right, Sen. Mark.

Sen. Mark: It is like yesterday, all, all, all. [*Crosstalk*]

Mr. Chairman: Sen. Mark.

Mr. Al-Rawi: So clause sixty-what?

Sen. Mark: No. I am dealing with clause 60, Mr. Chairman, and I am just asking the hon. Attorney General that we ought to be consistent, because earlier on we said "knowingly or" is it not "or" you had used, Mr. Chairman?—through the—

Mr. Al-Rawi: Sure.

Sen. Mark:—so I am just saying that we have to be consistent.

Mr. Al-Rawi: Previously we dealt "recklessly" or "wilfully" as opposed to "knowingly and wilfully". There is a proper conjunctive association in this mens rea, "knowingly and wilfully", so there is no need to put the "or".

Sen. Mark: Oh, there is no need. Okay. Let us go on to the other page, Mr. Chair. Yeah. Mr. Chairman, again, under 65 we just want to be consistent. Again, under (a), we have the balance of probability which is a very low threshold. Again, we would like the Attorney General to consider that this should be "beyond reasonable doubt".

Mr. Chairman: Sen. Mark, let me just interject here at this point because it seems that you have a proposed amendment or a line of proposed amendments that could be applied within the Part to certain clauses. So you are asking in relation to the balance of probabilities and changing the threshold. Where that is the case, would it be easier for you just identify within the Part that I have identified as we are treating with, where that particular line of proposed amendment applies to certain clauses. So in other words, you do not have to search out each clause and then repeat the same amendment, but indicate that this is the amendment that want to

propose, where it applies within the Part or to certain clauses. It makes it much easier than going through one by one proposing the same amendment.

Sen. Mark: Well, I think that I am appreciative what you are saying, but I do not think this Part has many, let us say, clauses. I think we should be through with, it is just only about what?—about seven or nine clause.

Mr. Chairman: So, Sen. Mark—

Sen. Mark: Can we go one by one, Sir?

Mr. Chairman: No. We are not going one by one. I have put the question in relation to the Part. All I am asking is that in as much as you have one singular line of proposed amendment which is a common thread throughout that you indicate it is a common threat throughout, so that we can treat with it as such. Attorney General, clause 65, same proposed amendment as has gone before.

Mr. Al-Rawi: Mr. Chair, this is a balance of probabilities aspect. This is, again, pegged upon the order in rem. We, from a policy point of view, cannot go to "proof beyond reasonable doubt", we are maintaining the civil standard.

Sen. Mark: And, Mr. Chairman, may I also invite a new subclause 65(3)(a) for the Attorney General's consideration and it reads:

> Where the Court makes an order under subsection (3), the Court shall specify the time within which the amount ordered shall be paid into the seized assets.

So, I would like, that is a subclause, a new subclause that I am proposing for your consideration.

Mr. Chairman: Attorney General.

Sen. Mark: Through the Attorney General that is.

Mr. Al-Rawi: Well, Mr. Chair, the obligation in 65(3) is stated in the positive.

"Where the High Court makes an order under this section, the order shall

specify that the respondent is liable to pay…"

And then we categorize what that unexplained wealth amount is, "…equal to the amount satisfied…", et cetera.

The time to pay is usually a matter of the attorneys representing the respondent in that application, the defendant in an application to say, "Well, we wish to have an enlarged time, we wish to have conditions", et cetera. So that is really a matter for the court to consider.

We do not want to necessarily prescribe that. There may be circumstances where the court may say, "you shall pay it forthwith" because there may be other circumstances before the court. So, we prefer to reside within the traditional mechanisms that prevail in the court, where the court will upon the invitation of attorneys for the respondent indicate whether it is prepared to enlarge time or not.

Sen. Mark: Well that is a specific subclause.

Sen. Vieira: Well, you could have a practical problem like just getting foreign exchange.

Mr. Al-Rawi: Correct.

Mr. Chairman: Sen. Hosein.

Sen. S. Hosein: Thank you very much, Chair. Just for record I would like to register my dissent with respect to clause 65(4). I do not believe that the burden should be on the respondent, but that it should be on the applicant; so that is just for the record, please, Chair.

4.55 p.m.

Mr. Al-Rawi: Mr. Chairman, for the record, I reside in the comfort of section 5(2)(f) of the Constitution which says that there is nothing odorous or onerous in respect of someone having to prove a fact in a reversal of burden. And that is to be found in a plethora of cases, and in this circumstance here, who better to explain

someone's position than the person themselves. So, we hear this constant mantra right now of people being called upon to explain themselves. That is exactly what we are asking, because you have the facts yourself. You are faster out of that dance by your own hand and mouth.

Question put.

Sen. Mark: I do have specific amendments, Sir.

Mr. Chairman: Oh, you have more amendments?

Sen. Mark: No, I made—you see, because we are doing it in "grappe" you are not paying attention. When I say you are not paying attention, I know everybody is under pressure, but I did in fact put an amendment.

Sen. Baptiste-Primus: I am not under pressure so speak for yourself.

Sen. Mark: So, I think that it is important that we do things properly otherwise we are going to be in trouble, you know.

Mr. Chairman: So, Sen. Mark, I am at pains to understand that I have a sheet in front of me with amendments put forward by your good self on behalf of the Opposition bench, 31 in number, all the way up to clause 43 subclause (8), as—

Sen. Mark: For example, Mr. Chair—

Mr. Chairman:—as amendments, I assume, in its entirety, given the time frame that was given. If we are treating with the clauses as we are moving forward based on the premise that we have dealt with the amendments put forward by all, and we are taking them in batches at this point, I am not inclined at this time, unless you have it written, to put forward the amendment as per a question. You have put forward a suggestion by way of a proposed amendment to the Attorney General, who has responded either in the negative or the affirmative, and then I will move forward by putting the proposed question on the clause in the original Bill.

Sen. Mark: Can I be invited, Sir?

Mr. Chairman: Sure.

Sen. Mark: Mr. Chairman, in clause 67(2), the Attorney General did give an undertaking in the other place that we would look at this very carefully, because I think the Leader of the Opposition had proposed the deletion of 67(2), but because of time constraint downstairs, we were told that it would be dealt with upstairs. So, I do not know if the Attorney General would like to give his final views on this particular proposed clause.

Mr. Chairman: Attorney General, there is no need to respond to that. What I am saying, Sen. Mark, is that we have followed a procedure where all Members, not just Members opposite, were able to put forward amendments for two days. Amendments were put forward as I have indicated. I am not going to repeat it again. I have all of the amendments here. We have been going through them and we have been treating with them as the day has proceeded. I have indicated that we are moving in batches after we have treated with all of the amendments save for the new clauses as put forward by Sen. Hosein as we proceed forward in this exercise. Everyone, as we are moving forward in those batches, I am assuming, has read the Bill, and if you have other amendments within that batch, you are being allowed to voice said amendments on the floor, to which the Attorney General is responding to those amendments. Where he is not accepting those amendments, I am putting the question on the clause in the original Bill. That is what we are doing. So, at this point in time the last amendment that was voiced was to 65. We have up to 67 in this batch, do you have anything to voice by way of the original clauses and proposed amendments between 65 and 67?

Sen. Mark: Of course.

Mr. Chairman: Proceed.

Sen. Mark: Mr. Chairman, may I just indicate to your good self and to colleagues

here, the Government took four years, almost, to prepare this Bill. We got this Bill to deal with in 96 hours. So, you cannot expect us—

Mr. Chairman: Sen. Mark, I do not, I really—

Sen. Mark:—to have gone through this Bill in the detailed way that we would have liked to.

Mr. Chairman: Sen. Mark, I am not inclined to haggle—

Sen. Mark: All right. Mr. Chair.

Mr. Chairman:—nor do I want to get into a "tet, tet, tet" or a tit for tat.

Sen. Mark: Yeah, but you are saying—

Mr. Chairman: No, Sen. Mark. Can we proceed? You have comments in relation to 65 to 67—

Sen. Mark: Mr. Chairman, may I suggest for your consideration and as an amendment that we delete 67(2) as a specific amendment.

Mr. Chairman: 67(2)?

Sen. Mark: Yeah, clause 67(2). We are proposing that that be deleted completely.

Mr. Chairman: Attorney General, 67(2), the proposed amendment is that it be deleted entirely.

Mr. Al-Rawi: "Enforcement of Unexplained Wealth Order", subclause (2) provides that the order "against the respondent may be enforced as if it were an order made in civil proceedings instituted by the applicant under section 58(1) against the respondent to recover a debt due by him to the State." It is just the method of application, and it is standard law. Unfortunately, we do not agree that it should be deleted.

Mr. Chairman: Sen. Mark.

Sen. Mark: Can you put it, Sir? I am not responding. Just put it and let us go

forward. I am sticking to my guns, so put it to the vote and we will vote for and they will vote against it.

Sen. Thompson-Ahye: Could I look at something before that in 65, the second line, to change "had" to "has".

Sen. Mark: This is not a parlour we are running here, you know. This is a Parliament. [*Crosstalk*]

Sen. Thompson-Ahye: 65(1), line 2. I think you are dealing with an existing order, so change "had" to "has".

Mr. Al-Rawi: So, "Where the High Court has made a preliminary Unexplained Wealth Order"—

Sen. Thompson-Ahye: The next one.

Mr. Al-Rawi:—"had not been revoked".

Sen. Thompson-Ahye: "which has not been". It is still existing, so you want to do certain things; "has".

Mr. Chairman: So, Sen. Mark, you have proposed the amendment to the Attorney General who has made his response in the negative. I am going to put the question on the batch and follow the procedure as I had it. Hon. Senators, the question is that clauses 58 to 67 now stand part of the Bill.

Mr. Al-Rawi: Mr. Chair, Sen. Thompson-Ahye raised an amendment to clause 65(1), at the second line. She asked whether the word "had" in the second line should be "has", and I believe she is correct, Mr. Chairman.

Mr. Chairman: "Had" should be "has".

Mr. Al-Rawi: The word "had" should be "has". So, delete the word "had" and replace with the word "has".

Mr. Chairman: Hon. Senators, what I am going to do, because there is an accepted amendment to clause 65, I would put the question for clauses 58 to 64,

propose the amendment by way of procedure for clause 65, and then move forward from there. Attorney General, understood?

Mr. Al-Rawi: Yep.

Question put and agreed to.

Clauses 58 to 64 ordered to stand part of the Bill.

Clause 65.

Question proposed: That clause 65 be amended as follows:

At subclause (1), delete the word "had" and insert the word "has".

Question put and agreed to.

Sen. Mark: Mr. Chairman, because you see we are moving at such a pace, I just wanted to bring to your attention, clause 65(2)(b):

> "whether the property was obtained by a respondent before or after the coming into force of this Act."

Remember I had brought to your attention, Sir, that we are not supporting retroactivity or retrospection in that regard, so we will want to, we will not support this particular proposal. If you go in "grappe" you might want to, so this is a separate one I would like to read back.

Mr. Chairman: So you are proposing to delete 65(2)(b)?

Sen. Mark: Yes, Sir.

Mr. Chairman: And, Attorney General—

Mr. Al-Rawi: Mr. Chair, we have already accepted clause 4, which treats with the general retrospectivity, so it would make a mockery of clause 4, if we were to treat with clause 2. So you could say, you could look at the menu but you just cannot eat, effectively. So, we reject the submission put for those reasons.

Mr. Chairman: Okay, so I am now going to put the question again. The question is that clause 65 be amended as follows:

In subclause (1), delete the word "had" and insert the word "has".

Question put and agreed to.

Sen. Mark: You put in my amendment there?

Mr. Chairman: No, he did not. Sen. Mark!

Sen. Mark: No, here he rejected it.

Mr. Chairman: I understand he rejected it, so I am putting the amendment.

Sen. Mark: No, even if he rejected it, Sir, that is the hon. Attorney General. The hon. Attorney General has rejected it, which I have no problem with, but we on this side saying we want it put to the vote, and we have a democratic right here to ensure that. I think that people are tired, and I think you all rushing to go to a public meeting in Barataria.

Mr. Chairman: Sen. Mark, enough!

Sen. Mark: Thank you, Sir. So, Mr. Chairman, could you kindly put my amendment. [*Crosstalk*]

Mr. Chairman: Okay, so what I am—Sen. Mark, so I am going to finish the AG's question and put the question as amended by Sen. Mark. So the question is clause 65, once again, be amended as follows:

In subclause (1) delete the word "had" and insert the word "has".

Question, on amendment, [*Mr. F. Al-Rawi*] *put and agreed to.*

Question, on amendment, [*Sen. W. Mark*] *put.*

Sen. Mark: A division, Sir.

The Committee divided: Ayes 8 Noes 21

AYES

Mark, W.

Haynes, Ms. A.

Ameen, Ms. K.

Hosein, S.

Obika, T.

Ramdeen, G.

Chote SC, Ms. S.

Seepersad, Ms. C.

NOES

Khan, F.

Gopee-Scoon, Mrs. P.

Baptiste-Primus, Mrs. J.

Rambharat, C.

Sinanan, R.

Hosein, K.

West, Ms. A.

Le Hunte, R.

Henry, Dr. L.

Singh, A.

Cummings, F.

Dookie, D.

Young, N.

Borris, H.

Thomas, A.

Richards, P.

Vieira, A.

Deyalsingh, Dr. V.

Teemal, D.

Thompson-Ahye, Mrs. H.

Dillon-Remy, Dr. M.

Ms. A. Deonarine abstained.

Mr. Al-Rawi: Mr. Chair, sorry, was there a yes or a no? I got Sen. Chote as yes.

Hon. Senator: Sen. Seepersad said yes, no property retroactive?

Sen. Seepersad: No. [*Crosstalk*]

Mr. Chairman: Hon. Senators, in the interest of accuracy and proper record we will do the division again.

Hon. Senator: I agree with you.

The Committee divided: Ayes 8 Noes 21

AYES

Mark, W.

Haynes, Ms. A.

Ameen, Ms. K.

Hosein, S.

Obika, T.

Ramdeen, G.

Chote SC, Ms. S.

Seepersad, C.

NOES

Khan, F.

Gopee-Scoon, Mrs. P.

Baptiste-Primus, Mrs. J.

Rambharat, C.

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West, Ms. A.

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Dookie, D.

Young, N.

Borris, H.

Thomas, A.

Richards, P.

Vieira, A.

Deyalsingh, Dr. V.

Teemal, D.

Thompson-Ahye, Mrs. H.

Dillon-Remy, Dr. M.

Ms. A. Deonarine abstained.

Amendment negatived.

Sen. Mark: Mr. Chairman, I know that the AG would want to make sure, and you, and all of us, that whatever is agreed upon, the language is proper and it is consistent. So, with that, if I could ask or crave your indulgence, Sir, I would ask the Attorney General to look at—once you grant me leave, Sir—65(9), where there is "leave", you have been consistent, and you put "permission", and there is "leave" here. So, I think that you want to be consistent and use the word "permission", and on page 56, subclause (10), it starts off with "leave", again you

would want to put "permission", and then in (10)(c), the last word in that sentence, is "leave" again, I think you would want to put "permission". For your consideration, Attorney General.

Mr. Al-Rawi: Mr. Chair, I draw a distinction between the previous occasion where we changed "leave" to "permission", because here we are actually asking for a step prior to. So we want in the normal aspects of what "leave" involves for the rules to develop as to how you approach the court in this fashion. So we intend to use the word "leave".

Sen. Mark: Okay. All right.

Question put and agreed to.

Clause 65, as amended, ordered to stand part of the Bill.

Mr. Chairman: Hon. Senators, I think now is a good time to take the tea break. As a result, this House would now stand suspended until 10 to six.

5.17 p.m.: *Sitting suspended.*

5.50 p.m.: *Committee resumed.*

Mr. Chairman: Senators, just a bit of organizational procedure. So as indicated, we would take the remaining clauses in batches, as we have been doing. And what I would do is, as we treat with the batches, I would ask Senators to identify the particular clause that they may have amendments to within the batch. So we have completed by way of procedure, clause 65 and within that batch we have clauses 66 and 67 remaining. [*Crosstalk*]

Sen. Mark: Mr. Chairman, where are we?

Mr. Chairman: Clauses 66 and 67.

Clauses 66 and 67.

Question proposed: That clauses 66 and 67 stand part of the Bill.

Sen. Mark: Thank you very much, Mr. Chairman. Mr. Chairman, in terms of

clause 67, subclause (2), we would like that entire section removed from the legislation. We did in fact pursue this matter elsewhere and we had been given an undertaking that it would have been addressed in this House by the Attorney General, but having regard to what he has already indicated, I would suggest that we put it to the vote on this one.

Mr. Chairman: Just to clarify, 67(2), you are proposing an amendment to—?

Sen. Mark: Deletion, Sir.

Mr. Chairman: Deletion of 67, subclause (2)?

Sen. Mark: Yes, subclause (2).

Mr. Al-Rawi: Yes, Sir. Just for the record, in the House the debate included, coming towards the end, the Leader of the Opposition indicated that the Senate would pick up certain concerns as and when we got to the Senate, and I did undertake to look at any concerns when they came to the Senate. That was eight days ago when we sat in the House of Representatives. After that, we had the benefit of sitting in this House for the debate for two days, and we then we have sat in Committee for two days and we have welcomed the suggestions coming from the Senators sitting here this afternoon.

We understood that, of course, the amendments would come to us in written form, because there has been ample time for that. So just for the record, they not having come other than that ending with clause 43(8) from the Opposition, that is the reason why we could not guess what the Opposition would come with.

In any event, with respect to the deletion of 67(2) as proposed by Sen. Mark, we think it important that there is an enforcement attachment potential, which is what 67(2) does; 67(2) treats with that particular response and we think it is a necessary feature of the legislation.

Mr. Chairman: So Sen. Mark, what I would do now—so I will put the question

on clause 66, dispense with, and then on 67 Sen. Mark, your proposed amendment, and then we move forward as such.

Question put and agreed to.

Clauses 66 and 67 ordered to stand part of the Bill.

Sen. Mark: Mr. Chairman, again, just for clarification and ensuring that our language is clear, through you, I will ask the Attorney General, if he goes to 67(4), this word "exercisable", is it enforceable or is it exercisable? What are we trying to say here, just for clarification?

Mr. Al-Rawi: It will be read in the context of enforcement. So it may be exercised or enforced. They are synonymous terms.

Sen. Mark: It does not matter if it is exercisable or enforceable?

Mr. Al-Rawi: Yeah.

Sen. Mark: Okay. You are happy with the language as is, eh?

Mr. Al-Rawi: Yes, Sir.

Sen. Mark: Okay, thank you. Thank you, Mr. Chair.

Mr. Chairman: Okay. Sen. Mark, just in the interest of time as well, so when you indicate that you have an amendment on a particular clause within a batch, if you also seek clarification, just indicate as such and put it all in one, so that it could be dispensed with, so we do not have to keep re-putting the question. So I will put the question again. [*Crosstalk*] No? Okay.

Clauses 68 to 73 ordered to stand part of the Bill.

Clause 74.

Question proposed: That clause 74 stand part of the Bill.

Mr. Chairman: Sen. Mark, you want to identify the particular clauses that you have amendment to?

Sen. Mark: In terms of clauses 75 and 76.

Mr. Chairman: Clauses 75 and 76. So Sen. Mark, let me just—given that indication, let me just put the question for clause 74, one time.

Sen. S. Hosein: I have a query.

Mr. Chairman: Amendment or a query?

Sen. S. Hosein: I do not know. It could be a potential amendment for the AG.

Mr. Chairman: For 74.

Sen. S. Hosein: For 74. Attorney General, on the third line of 74(1) it spoke of experts. I do not know if you want to use the same formula that you used back, I believe, in the section that we dealt with, that dealt with consultants and the other officers that were specifically named, that fall as staff under the agency.

Mr. Al-Rawi: It should be under 19:

> "…Agency may engage experts, advisers and consultants…"

Sen. S. Hosein: So we will have to even change the reference to the clause, there is no 18(2).

Mr. Al-Rawi: One second, eh.

Sen. S. Hosein: So it will be 19(2).

Mr. Al-Rawi: Yeah, that is correct and I think it advisable to add those species of persons. Including experts—

Sen. S. Hosein: Advisers and consultants.

Mr. Al-Rawi: "Yep". Advisers.

Mr. Chairman: "Experts, advisers and consultants?"

Mr. Al-Rawi: Well, it really should be "advisers, experts or consultants". So if you put "advisers" before "experts", "advisers" then "," "experts and consultants" and that 18(2) should be 19(2).

Sen. S. Hosein: Yes.

Mr. Al-Rawi: So change 18 to 19. Thank you.

Sen. Mark: Mr. Chairman, before you put the question, on this same one. Attorney General, in subclause (3), I would like to propose an amendment that the summary conviction for those persons who breach confidentiality, the fine is too low. I am proposing $500,000 and 15 years in jail. And secondly, on conviction on indictment, $1 million and 20 years in jail. Because this is very serious business and remember all these employees are on contract, so you do not know what they will do and what they will not do.

And, Mr. Chairman, if you look at clause 19 of the Bill you would see with conflict of interest, the kind of fine that is being proposed as well. So I just want the AG to be consistent and remember, Mr. Chairman, in terms of 60, if somebody wilfully provides wrong information it is $100,000 and 20 years in jail, you know. So I just want the AG to consider consistency here.

Mr. Al-Rawi: Yes, Mr. Chairman. So the cross reference if I may just ask again, is to 19, which aspect of it? The offence which was created with respect to a breach—

Sen. Mark: The one with conflict of interest.

Sen. Ramdeen: Subclause (5).

Sen. Mark: Clause 19, subclause (5), with conflict of interest.

Mr. Al-Rawi: So that is subclause (7), so:

> "…to a fine of five hundred thousand and to imprisonment for a term of five years…"

Sen. Mark: And then when you go to 60, clause 60, anybody who wilfully and recklessly and knowingly does something contrary in terms of declaration, it is $100,000 and 20 years in jail. So we just believe that there should be consistency.

I have some other amendments, Mr. Chairman. Do I deal with my amendments now?

Mr. Chairman: Seventy-five? Yes, I will treat with 74 first.

Sen. Mark: Okay, thank you.

Mr. Al-Rawi: Mr. Chair, I think that consequent upon this discussion that subclause (3) of clause 74, should firstly be amended in the third line of clause 74, subclause (1) as it appears at page 61.

After the word "including" insert the word "advisers," and then after the word "experts" insert the words "and consultants". In the fourth line, delete the word "18"and insert instead "19".

In subclause (3), insert after the word "who" in the third line, the words "recklessly or knowingly". In subparagraph (a) delete the word "one" and insert instead "two" and insert after the word "hundred" the words "and fifty". In subparagraph (b), delete the word "one", insert the word "five" and delete the words "and fifty". And then delete the word "five" and insert the word "seven".

So subparagraph (3) should read in full:

"A Trustee, the Property Manager, employee of the Agency or any person concerned with the administration of the Act, who"—recklessly or knowingly—"discloses documents, information or any other matter relevant to the administration of this Act in contravention of this section commits an offence and is liable—

(a) on summary conviction to a fine of"—two hundred and fifty—"thousand dollars or to imprisonment for"—five—"years; and"

Hon. Senators: You did not say—

Mr. Al-Rawi: Yes, I am now saying delete the word "three" and insert the word "five".

"(b) on conviction on indictment to a fine of"—five hundred thousand—"dollars and to imprisonment for"—seven—"years."

Now, we have looked at this against clause 19 as Sen. Mark referred us to it and the difference between the two, the difference in treatment is occasioned—we had a chance to look at the Integrity in Public Life Act to see what the prescriptive offences there were. There being a difference, I think, logically between benefiting from a conflict of interest as opposed to a disclosure which is protected by the aspects of sealing of documents which we have already put inside of the Bill elsewhere.

Sen. Mark: Mr. Chairman, if I may ask for a further clarification from the hon. Attorney General. Attorney General, if you go to clause—and Mr. Chairman if you would allow me because it is connected, if you go to clause 60 of the Bill, hon. Attorney General, can you justify why somebody makes a mistake knowingly and recklessly or wilfully? Why are we putting away that person for 20 years and $100,000, but somebody who gave my private information to another person that ought not, they get five. I do not understand the disproportionate—

Mr. Al-Rawi: So, in clause 60 by way of comparing it to clause 74, 60 is the declaration which you give to the court, which is the spring board from which the Unexplained Wealth Order can happen. And you will note that in clause 60 we are saying, "knowingly and wilfully", we are not including "recklessly". Because people may make an innocent position which, even though reckless, is not innocent, it is certainly of a lesser type than knowingly and wilfully. So we have gone with a higher mental intention in clause 60. And because this is the launching pad to tell you to come forward and tell the truth in the Unexplained Wealth Order, we have sought to penalize this in a larger fashion.

When we come to clause 74, the issue of secrecy, we are providing—because these documents are inside an eco-system as Sen. Vieira usefully coined that phrase in the context of this Bill, because they are in an eco-system and there

may be reason for the information to pass amongst people who have the oath of secrecy or even to the court or expert advisers, the risk of disclosure of that information becomes quite significant. Look at Cabinet Minutes and Notes, they are all secret and confidential and the Freedom of Information Act prescribes against their disclosure subject to the public interest equations, et cetera. So I think it appropriate to have treated this in a slightly lesser category than the "knowingly and wilfully" breach of the underpinning of the Unexplained Wealth Order Declaration.

Sen. Vieira: AG, thank you because I am much more comfortable with this crafting that you have done than it was before or with Sen. Mark. Just to give Sen. Mark some additional comfort. These are penal provisions and the way it was originally cast, it is was a strict liability offence and a person could disclose accidentally and then still find themselves running afoul of this Bill, because you think you are giving it to one person and the envelope is mistakenly given to somebody else. But the other thing I wanted to say is, a person who has suffered because of a disclosure also has the right of a civil redress action against the agency. This fine does not put anything in the victim's pocket and so you want to leave a little "cacadah" for the—

Mr. Al-Rawi: May I just add one further amendment please, Mr. Chair? In subclause (3)(a) you will note that there is the word "or"—this is the summary conviction, it should be "and".

Mr. Chairman: Say again, Attorney General?

Mr. Al-Rawi: So instead of the word "or" in (3)(a), delete the word "or" after the word "dollars" and put the word "and" instead to keep it in sync.

Mr. Chairman: So Sen. Mark, with (b) and Sen. Hosein—

Mr. Al-Rawi: And thank you for the "cacadah".

Mr. Chairman: If I am following correctly, I think what Sen. Hosein had proposed was incorporated, Sen. Mark to some extent, the Attorney General incorporated what you are indicating. So I am assuming the proposed amendments that you were putting forward are withdrawn so that I can—

Sen. Mark: Only 74.

Mr. Chairman: Yes, for 74. Clause 74 is what we are treating with. So I will put the question. The question is that clause 74 be amended as follows:

At subclause (1), after the word "including" insert the following: "advisers,". After the word "experts" insert the words "and consultants". After the word "section" delete the No. "18" and insert the No. "19".

At subclause (3), after the word "who" insert the words "recklessly or knowingly". At subparagraph (a), delete the word "one", insert the word "two". After the word "hundred" insert the words "and fifty". After the word "dollars" delete the word "or" and insert the word "and", and after the word "for" delete the word "three" and insert the word "five".

At subparagraph (b), delete the word "one" and insert the word "five". After the word "hundred", delete the words "and fifty", and after the word "for" delete the word "five" and insert the word "seven".

Question put and agreed to.

Clause 74, as amended, ordered to stand part of the Bill.

Clause 75.

Question proposed: That clause 75 stand part of the Bill.

Sen. Mark: Mr. Chairman, I would like to, because of the serious nature and the fact that this, as the hon. Attorney General said, it is novel and you want to ensure that at first go we have as much protection and it involves people's properties and I do not think, Mr. Chairman, that we can escape the need for 75(2) to be subject to

an affirmative resolution of Parliament. So I am suggesting, because of the nuclear nature of the legislation, that we need to really police as much as possible what is being done, what is being proposed in regulations to govern this piece of legislation.

Mr. Chairman: The amendment, Sen. Mark, is "negative" to "affirmative", yes? Take out "negative" and put "affirmative".

Sen. Mark: Yes, Sir.

Mr. Chairman: Is that all on clause 75?

Sen. Mark: No, on clause 75 I go further in subclause (4). It is said in that clause:

> "Notwithstanding section 63 of the Interpretation Act, Regulations…under this section"—which is section 63—"may prescribe penalties for breaches of those Regulations of up to five hundred thousand dollars."

So new regulations are going to be made to deal with breaches. I am suggesting an amendment to that section:

> Regulations made under this section shall be subject to an affirmative resolution of the both Houses of Parliament.

Mr. Chairman: So the amendment is to delete "may prescribe penalties for breaches of those Regulations of up to five hundred thousand dollars" and insert the words—

Sen. Mark: Well, first of all, Mr. Chairman, may I ask the Attorney General for clarification? Is the regulation in 75(3) or (2) I should say, is the same as in 75(4) that is being proposed or are we talking about two different sets of regulations? One with the omnibus regulations and the second set dealing with penalties, et cetera, et cetera. I believe they are separated and that is why I propose two sets of regulations.

Mr. Al-Rawi: They are one and the same, both regulations.

Sen. Mark: One and the same. Okay.

Mr. Al-Rawi: And the Regulations being subject to a negative resolution are no different from the manner in which the rules of court are made which are subject to negative resolution as well. This is also no different from the manner in which the Proceeds of Crime Act which treats with certain property issues are there. I have referenced the rules of court by negative resolution because they too treat with prescriptive measures that affect property and rights on a daily basis. And if I take that as the golden standard, the rules committee rules and the fact that they are done by negative resolution, we believe that this really ought to be done in this fashion.

Secondly, the rationale for the variation from section 63 of the Interpretation Act is that in default of varying section 63, the regulations are confined to a maximum of $500 by way of penalty for breach of the regulations and therefore have no persuasive effect by being proportionate to the kind of breaches—to the kind of offences that ought to visit breaches.

Sen. Mark: Because of the novel nuclear nature of the proposed legislation it is incumbent upon parliamentarians to do a kind of supervisory and perform a supervisory role over this institution. And it is against that background I am really seeking to encourage the Attorney General for this piece of legislation to go with the affirmative so that we can all be exposed to those regulations and they will be subject to a debate in the Parliament rather than I have to come with a negative—with a Motion to annul or not to annul as the case may be. So I believe that the AG would understand the importance of this legislation and I would like him to reconsider his position on not going with an affirmative.

Sen. Vieira: I totally get where Sen. Mark is coming from and ordinarily I would say absolutely, yes, but when I look at the kind of regulations we are talking about

they are not quite nucleic. Storage, management and disposal, procedures for the exchange of information, designing forms, I think if it were something a little invasive I definitely would be supporting Sen. Mark for affirmative, but I think I could live with negative on this one.

6.20 p.m.

Mr. Al-Rawi: Mr. Chair, I respectfully maintain the same position advanced earlier.

Sen. Ramdeen: Mr. Chair—

Mr. Chairman: Comments on what Sen. Mark has said or in relation to something new?

Sen. Ramdeen: No, something new.

Mr. Chairman: Something new?

Sen. Ramdeen: Yes. Attorney General, I see that in relation to subclause (3)(a) and (3)(ii), you have been very specific as to:

"the procedures for the—

(i) storage of—"—and—

(ii)for the management…of—"

And then you have different types of property that are listed there. Having regard to the various ranges and the unlimited nature of the type of property that would be subject to these kinds of orders, do you not think that you should give yourself the power—well not yourself, but the office—the power to have an omnibus provision after both sections, so that what is not captured by the legislation—because while I speak, it is difficult to list all the different types of assets that can be caught by it. I just think that limiting yourself without—

Mr. Al-Rawi: Understood, fear of ejusdem generis rule in operation, which is why we separated subclause (2) from (3). So we put in general terms and then we said

specifically in (3), if you wanted to point the officeholders' mind to the matters which we have in (3). So that is why we did (2) standing entirely separate from (3).

Sen. Ramdeen: It is the same provision. This is 3(a) you are talking about, (i) and (ii)?

Mr. Al-Rawi: Yes. And just for the record, I think that the most invasive law that we have, full-stop, is the Interception of Communications Act—the most. And the regulations are negative resolution. [*Interruption*] Sorry, I was just referring to the previous point, just for the record.

Sen. Ramdeen: But AG, I thought the reason why you have separated (i) from (ii) is because (i) deals with storage and one deals with management. That is why you have real property in (ii) and not in (i).

Mr. Al-Rawi: Sorry, I meant (1) to (3). Forgive me. Not for (2). I apologize. So that is why I referred in (3) to (1). Forgive me. I was saying (2) and (1). It really was 75(1) and 75(3). So there is a generality of regulations provided for in section 75(1) without the ejusdem generis tail, and then subclause (3) provides for:

> "Notwithstanding the generality of…(i),"—you—"may make regulations"—specifically—"for"—these matters.

Mr. Chairman: Okay. So I will now put the question on Sen. Mark's amendment first—

Mr. Al-Rawi: Chair, CPC is recommending by way of improvement to section 75(1) that we can delete the words appearing in the second line at 75(1). Delete the words "anything required to be done under".

Mr. Chairman: That is it?

Mr. Al-Rawi: Yes, Sir.

Mr. Chairman: Okay. So I will put the question on Sen. Mark's proposed

amendment first and then subsequently on the Attorney General's proposed amendment.

Question, on amendment, [*Sen. W. Mark*] *put and negatived.*

Question, on amendment, [*Mr. F. Al-Rawi*] *put and agreed to.*

Question put and agreed to.

Clause 75, as amended, ordered to stand part of the Bill.

Clause 76.

Question proposed: That clause 76 stand part of the Bill.

Mr. Chairman: Sen. Mark?

Sen. Mark: Do I have one, Sir.

Mr. Chairman: You indicated that you did. If you do not, that is quite fine.

Sen. Mark: Did I indicate to you, Sir?

Mr. Chairman: Yes, you did.

Sen. Mark: When, Sir?

Mr. Chairman: It is right here, 75 and 76, when I asked you in the batch. But, again, it is not a problem.

Sen. Mark: No, no. I would not detain you, Sir.

Question put and agreed to.

Clause 76 ordered to stand part of the Bill.

Clause 43 reintroduced.

Mr. Al-Rawi: Mr. Chair, if I could indicate that we would also, with your permission, like to revisit clause 14. I believe that Sen. Ramdeen had an enquiry to that. I do not quite understand the scope of it yet, but I would be minded to listen, subject to your guidance.

Mr. Chairman: So we will revisit clause 14 first and then 43.

Mr. Al-Rawi: Sure, as you please.

Mr. Chairman: We will take it in order. 14 first and then 43.

Clause 14.

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

Mr. Chairman: So, Sen. Ramdeen, you want to—

Sen. Ramdeen: I am obliged, Mr. Chair. Mr. Chair, in clause 14, if you go to subclause (3) you would see that one of the functions—

Mr. Chairman: Sen. Ramdeen, I assume subclause (2).

Sen. Ramdeen: Sorry, sorry, subclause (2)(iii).

Mr. Chairman: (d)(iii), right?

Sen. Mark: (d)(iii)? Is this it?

Mr. Al-Rawi: "to manage criminal property including"?

Sen. Ramdeen: Yes, (c) at the top—(c).

Mr. Al-Rawi: There is no (iii) in (c).

Mr. Chairman: Not Roman, 14(2)(c).

Mr. Al-Rawi: 14(2)(c), yes.

Sen. Ramdeen: "to incur expenditure for the purpose of—

(i) acquiring any part of the criminal property or any interest in it..."

And what I was indicating, Attorney General, was that the criminal property here, you would be restricting yourself to "criminal property", when what it really should be is "recoverable property" because as it is drafted here, it would exclude—that is the word, exclude—terrorist property and instrumentalities of crime. And the same will occur for (c)(ii), which is:

"discharging any liabilities, or extinguishing any rights to which…"

Mr. Al-Rawi: I think you are right.

Sen. Ramdeen: So can I just point out all of them so that you can just take them?

Mr. Al-Rawi: Yes, please.

Sen. Ramdeen: So it will be (c)(i), (c)(ii), the heading of (d) which is: "to manage". It should be "recoverable property". Agreed?

Mr. Al-Rawi: Yes.

Sen. Ramdeen: "Recoverable property including—

(i) selling or otherwise disposing of assets comprising the recoverable property."

Mr. Al-Rawi: And (e), yes.

Sen. Ramdeen: (d)(ii):

"where recoverable property comprises assets of trade…"

"(iii) incurring capital expenditure in respect of recoverable property"

"(e) to sell recoverable property."

I am going too fast, Mr. Chair?

Mr. Al-Rawi: No, no.

Mr. Chairman: Go ahead.

Sen. Ramdeen: (f), same, "criminal" to "recoverable". (g), "recoverable"; (h) "recoverable" and (i) "recoverable".

Sen. S. Hosein: (g) to (i) "recoverable".

Mr. Al-Rawi: Mr. Chairman, I thank Sen. Ramdeen for these observations. I think they are perfectly in order.

Hon. Member: (d)(i) as well.

Mr. Al-Rawi: Yes, we have got (d)(i) as well, yes.

Mr. Chairman: That is it on clause 14?

Mr. Al-Rawi: Yes.

Question put.

Mr. Al-Rawi: That is not entirely correct. If you were to say, you would say—

Mr. Chairman: Okay. I will go through one by one.

Mr. Al-Rawi: No, no, no. It is easy. You can say:

Wherever the word 'criminal' appears in paragraphs (c) through (i), inclusive, replace with the word "recoverable".

Sen. Ramdeen: You have a (c) in 14(1). So it will be "where it appears in 14(2)(c).

Mr. Al-Rawi: Thanks. That is it. Correct. 14(2)(c)through (i) inclusive.

Question agreed to.

Clause 14, as amended, again ordered to stand part of the Bill.

Clause 43 reintroduced.

Mr. Chairman: Attorney General?

Mr. Al-Rawi: Yes, Sir. I would like to thank Sen. Thompson-Ahye and the hon. Senators that made the observations with respect to clause 43. We propose that clause 43 be amended in the manner circulated. We have had the opportunity to actually reduce it to writing. So, in effect, we are amending clause 43(3), such that what appears at subclause (a) goes up into the chapeau, so that it would read—if I read from the top of page 38:

"the property, the application for compensation shall be made—

(a) within three months, beginning…"

I am just explaining what is circulated. So that (a) would be merged in that fashion before the word, "—", with subsequent deletions. And then what we would do is to tidy up (3)(a) that is left there, deleting the words "within three months, beginning", because we put that into the chapeau.

In (3)(c) we would insert after the words "is granted", the words "with the date". So if you look at (c): "if the application is granted"—with the date. So "beginning" is up in the chapeau. So "with the date". So if you were to read the chapeau with subclause (b) it will be:

"If the application is granted with the date on which…"

That is circulated there. And then in subclause (3)(c), we are adding in, after (c):

"or within such further period as the court considers just in the circumstances."

That really forms a chaussure, a footer to it, so that all of them, (a), (b) and (c) are read both in the context of the chapeau and the chaussure , the head and the foot, to make sense of the paragraph which would take care of the concerns raised by Sen. Thompson-Ahye.

In subclause (4), we are proposing to insert after the words:

"the discontinuance", the words "or within such further period as the court considers just in the circumstances."

And then in subclause (6), we will insert after the words:

"that section", the words again, "or within such further period as the court considers just in the circumstances."

So we allow for the enlargement of time in each of the respective circumstances that can trigger this event.

Mr. Chairman: Just for a point of clarification, everyone has this circulated amendment by the Attorney General?

[*Assent indicated*]

Question put.

Mr. Al-Rawi: One of my colleagues slipped me a note and I am trying to figure out who that colleague is. Is it you, Sen. Rambharat?

Sen. Rambharat: Yes.

Mr. Al-Rawi: Could I ask for Sen. Rambharat to raise a concern that he may have?

Sen. Rambharat: AG, I am just asking, when we replace "criminal property" with "recoverable property" if we deliberately left it in, in 14(2)(a) in the second line.

Mr. Al-Rawi: Yes, because we were dealing with the species there. So we had disaggregated "criminal property" from instrumentalities and terrorist property.

Sen. Rambharat: Sure. Okay, thanks.

Mr. Al-Rawi: Thank you, Mr. Chair.

Question agreed to.

Clause 43, as amended, ordered to stand part of the Bill.

New clause 43A.

All documents filed pursuant to a Property Restriction Order under this Part by the applicant or respondent shall be sealed by the Court Office until further order by the Court.

New clause 43A read the first time.

Question proposed: That the new clause 43A be read a second time.

Sen. S. Hosein: Thank you very much, Chair, and the Senate for your indulgence for this new clause 43A and 57—Chair, I will deal with the both because the both are the same. So, basically, the reason why we are asking for this new clause to be inserted is so that—

Mr. Chairman: My apologies. We have to treat it one by one.

Sen. S. Hosein: Okay, I will just adopt the submission in the other clause.

Mr. Chairman: That is right. So 43A.

Sen. S. Hosein: With respect to this new clause that we are proposing to be added into the Bill, the reason is that because persons will now be subject to disclosing their assets before the court, and we believe it might be more prudent that these hearings be closed, especially the orders made by the court be sealed orders,

because most of the sittings are in camera. We propose that the court orders be sealed so that it does not fall into the wrong hands, and also the persons who this order may affect, their reputation is also at stake here, Mr. Chair. And this is really to protect, one, the privacy of the person, keeping with the proportionality of the Bill that the Attorney General would like to move forward. So these are the very short submissions based on this new amendment.

Sen. Ramdeen: Mr. Chair, thank you for the opportunity before the Attorney General answers. I think that to tighten what Sen. Hosein has presented, I think it should be:

> All documents filed pursuant to an application for a Property Restriction Order under this Part…

Because documents will be filed before. You can have documents filed before the order is actually made, which is the restriction of property aspect of it. So that you would want to capture more so, the documents that would be filed before and the documents that would be filed in answer to the application for the Property Restriction Order. In the unexplained wealth part of the legislation, you have already agreed, Attorney General, that it is not in the best interest to have these proceedings sealed for the simple reason that, first, we can craft the amendment in such a way that the proceedings are sealed when filed and still allow the court to have the discretion, in any event, to treat with it to satisfy the principles of open justice, but leave the discretion within that of the court.

Sen. S. Hosein: And there is one more I think we could probably tighten a little further, because we have third parties who we may file proceedings in these matters. So instead of saying "by the applicant or respondent" can we say then, "by all parties to the proceedings"?

Mr. Chairman: Just before the Attorney General responds, walk me through the

proposed further amendments to your new clause 43 here. So"

> All documents filed pursuant to an application for a Property Restriction Order under this part—

Sen. S. Hosein: Chair, if the AG could respond first so that we will know what the Government's position is.

Mr. Chairman: We have all the proposed amendments.

Mr. Al-Rawi: Yes. Well, it is really, we are anchored now in policy and logic upon policy. We felt it prudent to include the restriction for publication by way sealing in the Unexplained Wealth Orders, which are a different part, because that really does involve access to sensitive personal information which someone may be required to treat with in a court of law to explain their positions prior to an Unexplained Wealth Order being made.

In the civil asset route, the Civil Asset Forfeiture Order route, which is under this part, via the trustee's application after the DPP's purpose, we very specifically require two things: One, notice to the whole world, so that anybody that has an interest in the property has a shot of knowing about it. And not just actual notice, but the constructive notice that happens by way of publication to the public, which is why in clause 40 you will see:

> "Where the High Court has made a Property Restriction Order, the order shall require the Agency to—
>
> (a) give notice of the orders to public or private institutions; and
>
> (b) publish a notice of the Property Restriction Order in the *Gazette* and for two days within a two-week period in two newspapers in daily circulation in Trinidad and Tobago."

So that publication requirement is intended to catch third parties, parties within the ambit of clause 50 of the legislation, or persons who wish to exercise

their rights to say this is not recoverable property within the context of clause 7(9) of the legislation.

The second reason why I would be slow to accept the recommendation is that under the Proceeds of Crime Act, section 32 of the Proceeds of Crime Act, in particular, there is no sealing of provisions. In fact, the only real restriction that we find on this type, which is an axiomatic restriction which comes in the order publication, really comes about in Norwich Pharmacal applications, where the purposes of the Norwich Pharmacal are only granted to limited persons entitled to see the orders. So if you wanted to get an investigative tool by way of a Norwich Pharmacal application in the civil route procedure, get someone's bank accounts without their knowledge, have a third party give it to you, the court only grants those orders in very limited circumstances saying, "You cannot disclose to anyone else". So there is an order which prohibits the publication, et cetera.

To put that these records would be sealed in the civil asset route, not the unexplained route, we have sealed them in the unexplained route, would collide with the need for publication and notice to the whole world, because we are affecting property. It would reduce the proportionality argument and it would be contrary to the existing law which we have, which has been recognized by the Privy Council as one of the proportionate rationale reasons in legitimate aim connection, minimum method of intrusion. But when you get to the fourth limb, the proportionality argument is really amplified by publication of these types, and it would collide with section 32 of the Proceeds of Crime Act.

So for all of those reasons, I think it, respectfully, imprudent to seal the records on this side of the equation, not the explain your wealth side. That side is properly sealed.

Mr. Chairman: Sen. Vieira, you have a comment?

Sen. Vieira: I understand what you are saying about the sealing and I agree, but I think there may be a way in which we can protect citizens' information going out there. In the Matrimonial Property and Proceedings Act there is a restriction of publication of reports of judicial proceedings. So maybe that could be something that at least we could achieve by saying, "Well, look, you cannot". Because you cannot just go to any court file now and access it. So if we could put in there, something along those lines where—

Mr. Al-Rawi: The anonymization? But then, again, at this stage, the anonymization. Now, let me accept the point immediately. In the United Kingdom, the leading case on Unexplained Wealth Orders involve the court volunteering to do an anonymization order by way of an application from the parties to the litigation. So it was done by way of the parties asking for the anonymity to prevail. We are colliding here now with the need for the public to know, because there may be propriety rights which third parties have versus the anonymization. And sometimes people do not ring a bell in their mind until they know a little bit more than that.

Sen. Vieira: So the reason why I went to matrimonial is because it was not carte blanche. There was a range of permitted reporting. This is an important point because I think, again, you are balancing—

Mr. Al-Rawi: But we did that by rules of court. As I squarely remember, there was a time when there was this very stellar judgment produced by Madam Justice Mira Dean-Armorer, for instance, which every lawyer who was in the matrimonial court went to and all the parties' names were there and it was online. It was the Judiciary's own discretion to exercise anonymization of records that caused that to change and it was not in the primary legislation.

Sen. Mark: Mr. Chair?

Mr. Chairman: Sen. Mark.

Sen. Mark: Attorney General, because the threshold is extremely low in the civil asset forfeiture portion of this legislation on the balance of probabilities and unreasonable suspicion, we could be damaging, irreparably, the reputation of innocent citizens in Trinidad and Tobago. And because this is dealing with property rights and privacy, and enjoyment of property, I am wondering what harm—unless there is some political mischief afoot—what harm would it bring to our Parliament if, just as how we did it for the unexplained wealth, you seal these proceedings rather than have people's names dragged through the mud in Trinidad and Tobago. Because what you are saying, Mr. Chairman, is that once you go that route, this thing is going to be in the newspapers. It is going to be *gazetted*. And I am telling you, Mr. Chairman—and I want to advise this AG very carefully, because, you see, sometimes your intentions might be good but how you proceed might be very bad. And I would like the Attorney General to reconsider his position. Because why the inconsistency? Why, for the Unexplained Wealth Orders, you have one position, but when it comes to the civil asset forfeiture provision, you have another position?

Mr. Chairman: Sen. Mark, understood. The Attorney General did respond. Unless the Attorney General has final comments of that position, I would want to believe that it is—

Mr. Al-Rawi: I have explained it comprehensively. There is a material distinction between the two and we cannot, as a matter of policy, agree to it.

Mr. Chairman: At this point, Sen. Ramdeen, there has been quite a bit of discussion on this new clause 43A. What I want to do is just make sure I get the amendments, or whether Sen. Hosein is proceeding with the amendments that you

are—

Sen. S. Hosein: Yes.

Mr. Chairman: Great. So could you call out the amendments for me so we could get it? I got after "pursuant to an application for a Property Restriction Order", but you also said something after "the". So "by the"—

Sen. S. Hosein: "under this Part by all parties".

Mr. Chairman: So delete "the applicant or respondent" and put in "by all parties".

Sen. S. Hosein: Chair, and we will also delete the words from "pursuant" to the word "order".

Mr. Chairman: So you are deleting "pursuant to a Property Restriction Order"?

Sen. S. Hosein: Yes. So it reads:

> All documents filed under this Part by any parties shall be sealed by the court office under further ordered by the Court.

Mr. Chairman: "any" or "all parties"? "any"?

Sen. S. Hosein: "any party".

Mr. Chairman: So new clause 43A as amended reads:

> All documents filed under this Part by any parties shall be sealed by the court office until further order by the court.

Yes?

Sen. S. Hosein: Yes.

Question put, That the new clause, as amended, be added to the Bill.

Sen. Mark: Division, Sir.

The Committee divided: Ayes 11 Noes 17

NOES

Khan, F.

Gopee-Scoon, Mrs. P.

Baptiste-Primus, Mrs. J.

Rambharat, C.

Sinanan, R.

Hosein, K.

West, Ms. A.

Le Hunte, R.

Henry, Dr. L.

Singh, A.

Cummings, F.

Dookie, D.

Young, N.

Thomas, A.

Borris, H.

Teemal, D.

Thompson-Ahye, Mrs. H.

AYES

Mark, W.

Haynes, Ms. A.

Ameen, Ms. K.

Hosein, S.

Obika, T.

Richards, P.

Chote SC, Ms. S.

Deyalsingh, Dr. V.

Deonarine, Ms. A.

Seepersad, C.

Dillon-Remy, Dr. M.

Mr. Vieira abstained.

Question negatived.

6.50 p.m.

New clause 57A.

All documents filed pursuant to a Civil Asset Forfeiture Order under this Part by the applicant or respondent shall be sealed by the Court office until further order by the Court.

New clause 57A read the first time.

Question proposed: That new clause 57A be read a second time.

Mr. Chairman: I think the noes have it.

Sen. Mark: "Yeah, buh yuh hata go over that again because we win, eh know. We win eh know."

Mr. Chairman: Members, pay attention, I will put the question, again, just for proper procedure and again accuracy in reporting. The question is that new clause 57A be read a second time.

Question put and negatived.

Schedule 1 ordered to stand part of the Bill.

Schedule 2.

Question proposed: That Schedule 2 stand part of the Bill.

Mr. Chairman: Sen. Vieira.

Sen. Vieira: Sorry, Chair. I had raised with the AG a point on Form 1. The name of declarant's dependants, but the way the Form is, it only lists children and as we had said in the course of the debate, a dependant could be an ailing aunt, a relative, it could be wider. So I was wondering whether—because the Forms—

Mr. Al-Rawi: We could delete the word "child".

Sen. Vieira: Just say "dependants" and then you could state the relationship?

Mr. Al-Rawi: Yep. So what we can do is to delete the words "dependant child" and instead put "dependants" wherever they appear.

Mr. Chairman: Attorney General, you agree to the amendment?

Mr. Al-Rawi: Oh yes. "Dependants", it will include the child and aged or infirmed or others, wherever they occur. Delete the words "dependant child" and replace with "dependants" wherever they occur.

Mr. Chairman: Hon. Senators, the question is that Schedule 2 be amended to remove the word "dependant child" where it appears and replace with the word "dependants".

Question put and agreed to.

Schedule 2, as amended, ordered to stand part of the Bill.

Schedule 3 ordered to stand part of the Bill.

Mr. Chairman: Sen. Mark and hon. Senators, I now refer to the list of amendments as circulated by Sen. Mark in relation to the new Preamble. I am assuming, Sen. Mark, that you are still pursuing that?

Sen. Mark: But, of course, Sir. [*Crosstalk and laughter*] This is my nuclear weapon, Sir. You talked about nuclear weapon, this is my nuclear weapon. [*Laughter*] Mr. Chairman, would you like me to proceed?

Mr. Chairman: No, no, just one moment.

[*Confers with Clerk*]

Sen. Mark, in relation to the proposed amendment by Sen. Mark on the Preamble, I deem this proposed amendment to be out of order as it relates to Standing Order 68(3)b. It is inconsistent with previous clauses agreed as it seeks to introduce a special majority provision when the previous clauses approved by

the Senate did not require such a provision. So the ruling is that that particular amendment as proposed for a new Preamble is out of order and therefore will not be proceeded upon.

Sen. S. Hosein: Chair, what is the Standing Order?

Mr. Chairman: 68(3)(b).

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

Senate resumed.

[*Crosstalk and laughter*]

Mr. Vice-President: Members, Members, I am back in my Chair. [*Continuous crosstalk*]

[*Mr. Vice-President remains standing*]

Members. Sen. Ameen. [*Continuous crosstalk*] Sen. Mark, please.

Sen. Mark: "Dis ah serious matter, Sir, ah very serious matter."

Bill reported, with amendment.

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

Sen. Khan: Division, Mr. Vice-President.

The Senate voted: Ayes 29

AYES

Khan, Hon. F.

Gopee-Scoon, Hon. P.

Baptiste-Primus, Hon. J.

Rambharat, Hon. C.

Sinanan, Hon. R.

Hosein, Hon. K.

West, Hon. A.

Le Hunte, Hon. R.

Lester, Dr. H.

Singh, A.

Cummings, F.

Dookie, D.

Young, N.

Thomas, A.

Borris, H.

Mark, W.

Haynes, Ms. A.

Ameen, Ms. K.

Hosein, S.

Obika, T.

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.

Question agreed to. [*Desk thumping*]

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, Mr. Vice-President. I beg to move that this Senate do now adjourn to a date to be fixed.

Mr. Vice-President: Hon. Senators, before I put the question on the adjournment, leave has been granted for one matter to be raised on the Motion of the adjournment of the Senate. Sen. Mark.

Sen. Mark: Mr. Vice-President, in the interest of the Holy Week, I did not consult with my colleague in the front nor in the back, but I wanted to pursue a matter on the Motion for the adjournment but having regard to the length of time that we have been here this evening, I bow to my other colleagues who will bring greetings but I will not pursue my Motion this evening. [*Desk thumping and crosstalk*]

Mr. Vice-President: Sen. Mark, your commentary is duly noted and recorded.

Easter Greetings

Mr. Vice-President: Hon. Senators, I now invite you to bring greetings on the occasion of Easter.

The Minister of Trade and Industry (Sen. The Hon. Paula Gopee-Scoon): Thank you very much, Mr. Vice-President. Last Sunday, Palm Sunday, we recalled Jesus' triumphant entry into the city of salvation, Jerusalem, and this marked the beginning of Holy Week. On Thursday coming, Christians will begin to take part in the liturgical ceremonies of the solemn Easter Triduum sharing in the final hours of Jesus Christ's earthly life, our Lord's crucifixion, death and resurrection. And as Christians, we undertook a journey of preparation over the Lenten period reflecting on creation, on the destructive power of sin and above all, the healing power of repentance and forgiveness.

Colleagues, God's love and mercy are real and we welcome Christ's victory over sin and death into our own lives. Colleagues, Easter is not a weekend but a

season. A period of 50 days leading to Pentecost, a season of grace and a time of joy and thanksgiving. Beyond the religious festivities, Easter is for all, a most wonderful time of the year with good weather, blooming flowers and with kids looking forward to the Easter bunny and Easter eggs.

On behalf of the Government Bench, may I wish each and every one of you, and you as well, Mr. Vice-President, and to all your families, a most happy and holy Easter and may God continue to bless us all and our beloved country because He reigns. Thank you. [*Desk thumping*]

Sen. Gerald Ramdeen: Mr. Vice-President, thank you. It is a privilege on behalf of the Leader of the Opposition and the Members of the Opposition Bench in the Senate to bring Easter greetings to Trinidad and Tobago.

The celebration of Easter, Mr. Vice-President, is really encapsulated in the scripture that says:

> "For God so loved the world, that He gave His only begotten Son, that whosoever believeth in Him shall not perish, but have everlasting life."

And we, as Christians, for the last almost 40 days, started our Easter with Ash Wednesday where we were reminded on Ash Wednesday that, remember "you are dust and to dust you shall return". And for 40 days post, we celebrate our Lenten season with prayer, fasting and repentance and we come to this week that we refer to as Holy Week, which begins with Palm Sunday and the celebration of Jesus coming into Jerusalem. And the significance of Easter to us Christians, Mr. Vice-President, it really represents the foundation of our religion. It represents the greatest act of love that one can identify with because God, through the celebration of Easter, gave his Son to save the world and to save us from sin.

And in the Easter story and the celebration of Easter, throughout the 40 days and most importantly, through Holy Week, there is a lesson for all of us to be

learnt in every aspect of the celebration of Easter. There is the aspect of Jesus in seven days being proclaimed and the triumphant celebration of him coming into Jerusalem with palms being put on the ground and in less than a week thereafter, the same people who were placing the palm leaves on the ground were asking for Barabbas instead of Jesus. And when we celebrate Holy Thursday, Glorious Saturday and Easter Sunday, you have us celebrating the passion of our Lord going through the suffering that represents—for us who are Roman Catholics—too, the sorrowful mysteries that we signify and the glorious mysteries that we celebrate.

And the real celebration of Easter, Mr. Vice-President, for all of us, is that it represents the triumph of light over darkness, which is represented throughout all our religions and it represents the fact that, like I said before, God gave to us His Son to go through that passion, to carry that cross, to be crucified and to then rise from the dead so that we will all understand that we can all benefit from everlasting life in the life hereafter.

To Trinidad and Tobago on behalf of the Opposition, I want to say that the significance of what we go through during our Easter celebrations is something that each and every one of us can associate with. We all have our crosses to bear, we all have people in our lives, like Simon of Cyrene, who will help us carry those crosses. We all go through the suffering of our own individual passions but what we must not ever lose sight of is that no matter how much darkness we may encounter in life, there is always the light of the world, that resurrection, and we must always never forget that sacrifice that God made for us to save all of us from sin so that we can all enjoy everlasting life.

On behalf of the Opposition, all of my Members on the Opposition Bench, to all of the Members of the Government and to all of the Members on the

Independent Bench, and to you, Mr. Vice-President and to Madam President in her absence, and to the members of the parliamentary staff, the police, protective services and all of the citizens of Trinidad and Tobago, I wish to extend a happy, holy and safe Easter to all of you. Thank you very much. [*Desk thumping*]

Sen. Charrise Seepersad: Mr. Vice-President, in a few days, the Easter weekend will be with us. At this time, the period of Lent comes to an end and Christians who were observing the Lenten 40-day period will have the satisfaction of the reward of their sacrifice in a symbolic relationship with the teachings of Christ. Easter also serves to remind us of God's graces such as unconditional love, compassion and understanding. On this weekend, Christians will also spend time in church following the Stations of the Cross as Christ is led to his crucifixion. The symbolism and message are universal in that faith conquers all and even in death, there is hope.

Others look forward to the long holiday weekend to spend with friends and family. In family traditions, there may be an Easter bunny, Easter decorations, vision in a glass, lots of chocolates and the simple meal of salted salmon and provisions. Whatever Senators choose to be involved in, it is my honour to bring Easter greetings to this honourable House and to Trinidad and Tobago on behalf of all of us on the Independent Bench. May you find hope, health, love and faith in God. Happy Easter. [*Desk thumping*]

Mr. Vice-President: Hon. Senators, I also wish to join with you in bringing greetings to the Christian community and the nation on the celebration of Easter, A commemoration of the death and the resurrection of Jesus Christ resulting in the fulfilment of God's promise to us. The events of Easter lead us to realize that:

> "He so loved the world that He gave His one and only Son, that whoever believes in Him shall not perish but have eternal life."

The celebration of the resurrection of Jesus Christ is the most important day in the Christian calendar as it embodies not only the message of love but one of hope and renewal of life. As such, we must all strive to show love to one another as Jesus Christ and God love us. It is through the repetition of the simple act of passing love on that we can truly reach our full potential. It is this capacity for love that God placed his faith in us and the realization of his that we put ours in Him.

To the Christian community and all of Trinidad and Tobago, I wish you a holy and happy Easter and may God continue to bless us all.

Question put and agreed to.

Senate adjourned accordingly.

Adjourned at 7.17 p.m.