

SENATE

Wednesday, June 03, 2020

The Senate met at 10.00 a.m.

PRAYERS

[MADAM PRESIDENT *in the Chair*]

PAPERS LAID

1. Ministerial Response of the Ministry of Education to the Thirteenth Report of the Joint Select Committee on State Enterprises on an inquiry into the operations of MIC Institute of Technology (MIC-IT) with specific reference to the high drop-out and failure rate of its trainees. [*The Minister of Agriculture, Land and Fisheries (Sen. The Hon. Clarence Rambharat)*]

Madam President: Minister, could you just also in the absence of the Minister of Works and Transport?

2. Ministerial Response of the Ministry of Works and Transport to the Eighth Report of the Joint Select Committee on Land and Physical Infrastructure on an inquiry into the effectiveness of measures in place to reduce traffic congestion on the nation's roads. [*Sen. The Hon. C. Rambharat*]

PUBLIC ACCOUNTS (ENTERPRISES) COMMITTEE REPORT**Trinidad and Tobago International Financial Centre****Management Company Limited****(Presentation)**

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

Twenty-Fifth Report of the Public Accounts (Enterprises) Committee, Fifth Session (2019/2020), Eleventh Parliament, on an Examination of the Audited Financial Statements of the Trinidad and Tobago International

Financial Centre Management Company Limited (TTIFCMCL) for the years 2010 to 2017.

PUBLIC ACCOUNTS COMMITTEE REPORTS

(Presentation)

Sen. Charrise Seepersad: Thank you, Madam President. Madam President, I have the honour to present the following reports as listed on the Order Paper in the name of Sen. Taharqa Obika:

Environmental Management Authority

Twenty-Sixth Report of the Public Accounts Committee, Fourth Session (2018/2019), Eleventh Parliament, on an Examination of the Audited Financial Statements of the Environmental Management Authority for the financial years 2010 to 2012 and the Authority's expenditure and internal controls for the years 2010 to 2018.

Public Accounts of the Republic of Trinidad and Tobago

Twenty-Eighth Report of the Public Accounts Committee, Fourth Session (2018/2019), Eleventh Parliament, on an Examination of the Report of the Auditor General on the Public Accounts of the Republic of Trinidad and Tobago for the Financial Year 2018.

URGENT QUESTION

Smuggling of Birds and Other Wildlife

(Actions Being Taken)

Sen. Wade Mark: Thank you very much, Madam President. To the hon Minister of Agriculture, Land and Fisheries: As regard the reports of smuggling of birds and other wildlife between Trinidad and Tobago and Venezuela, can the Minister indicate what action is being taken by his Ministry to address this issue?

The Minister of Agriculture, Land and Fisheries (Sen. The Hon. Clarence

Rambharat): Thank you very much, Madam President. Madam President, the incident yesterday demonstrates the importance of the work of the Ministry of National Security in protecting the borders and ensuring that there are patrols, in particular, that area that we have spoken so much about, the area between Trinidad and Tobago and Venezuela, insofar as it relates to the illegal trade in wildlife and the illegal trade in other commodities, and the illegal movements of persons between Trinidad and Tobago and Venezuela.

Madam President, the interception is one of several interceptions that have taken on the sea and when these interceptions are made, it is not only wildlife. In this case, it was only wildlife but sometimes it is wildlife and other things. This has been possible because of the increased attention that the Ministry of National Security has placed on this particular issue, Madam President, but it also follows the decision supported by the Parliament to increase the fines relating to illegal activity in wildlife and that was done. It was effected in January 2019 through an amendment to the Conservation of Wild Life Act.

Madam President, you would recall that recently in the miscellaneous Bill which was passed in both Houses and assented to, there was included an amendment to the Summary Offences Act which deals with the sections which deal with cruelty to animals, sections 78 to 81. And the fines in respect of cruelty were increased to \$100,000 and the term of prison to one year, and that was an increase from \$200 and two months in prison.

Madam President, we also in this House passed recently, the animal welfare Bill, which is the short title I have given it. It is also called officially, the Animal (Diseases and Importation) Bill and that is laid in the other place for debate now.

Madam President: Minister, your time is up.

Sen. The Hon. C. Rambharat: Thank you very much, Madam President.

Sen. Mark: Madam President, in light of the fact that several of these individuals who were intercepted by the coast guard and probably are now in police's hands or in the hands of the police and in light of COVID-19, I would like to ask, through you, hon. Madam President, to the Minister, whether these individuals who were caught by the coast guard have been subject or have been subjected to any kind of test as it relates to COVID-19 having regard to the fact, Madam President, they were caught on the high seas coming from Venezuela?

Madam President: Sen. Mark, that question does not arise. Next question, you have one more.

Sen. Mark: Can I ask the hon. Minister, what measures or what further measures would be taken by the Ministry of National Security to address this smuggling, not only of wildlife, as he has indicated, but also commodities. What other specific steps are being taken to tighten our borders so that we can in fact address this incursion through smuggling by various persons out of Venezuela into Trinidad and Tobago?

Sen. The Hon. C. Rambharat: Madam President, I am pleased to say in the coming weeks, not years, nor months, weeks, the Government will take delivery of one of the much maligned Cape-class vessels coming out of Australia, despite several attempts to put us in all sorts of embarrassment— us, meaning the people of Trinidad and Tobago. The vessel, appropriately, in honour of APT James, that legendary parliamentarian, [*Desk thumping*] would arrive here as planned, within budget, within specification, and unlike the fishing vessel which was brought to patrol the waters, this vessel will increase and improve our ability to respond to what is happening from Puerto Rico down to Trinidad, and that includes between Venezuela and Trinidad, and that includes wildlife and whatever else is coming from there. I thank you very much. [*Crosstalk*]

Madam President: No, no, no. Just one second. It is the beginning of the sitting, Sen. Hosein and Sen. Mark, please conform to the Standing Orders.

QUESTIONS FOR ORAL ANSWERS

Madam President: Acting Leader of Government Business. [*Crosstalk*] Acting Leader of Government Business.

The Minister of Agriculture, Land and Fisheries (Sen. The Hon. Clarence Rambharat): Madam President, in my excitement to announce the arrival of our vessels, I must admit I confused Mr. James with the border patrol vessels. There are so many vessels that are being brought— [*Desk thumping*] In my excitement— [*Crosstalk*] — you never got around to putting yours to use. But in my excitement, [*Crosstalk*] to honour Mr. James, I admit that I got the name confused.

Madam President, there are seven questions on notice for response. The Government intends to respond to six of those questions. Those are 118, 119, 130, 149, 151 and 152. I thank you.

Madam President: 149

Sen. The Hon. C. Rambharat: 149, Madam President.

Madam President: So you are asking for a—anything? No. Questions 96 and 97 are not being answered. Correct?

Sen. The Hon. C. Rambharat: No, please, Madam President.

Madam President: Question 152 is being answered today?

Sen. The Hon. C. Rambharat: So we are answering 118, 119, 130, 149, 151 and 152.

Health and Safety Issues for PTSC Workers

(Measures Being Taken)

118. Sen. Wade Mark asked the hon. Minister of Works and Transport:

Given the February 2020 protest action taken by PTSC workers over the slow pace of negotiations relating to health and safety issues and the limited availability of buses, can the Minister advise as to what measures the Government intends to take to address these matters?

The Minister of Works and Transport (Sen. The Hon. Rohan Sinanan): [*Desk thumping*] Thank you, Madam President. Madam President, in response to the matter raised, I am not aware that the protest action taken by the Public Transport Service Corporation workers in February 2020 was as a result of health and safety issues and the limited availability of buses. In fact, I have been informed by PTSC that there are no health and safety issues of concerns that would prevent the drivers/conductors from driving the buses at this point in time. Additionally, the buses currently deployed to service the routes have been inspected by the licensing division and deemed roadworthy for the drivers to operate.

In light of this, Madam President, the concerns regarding any measures that the Government may intend to take is therefore not applicable. However, it is noteworthy that the protest action is more likely as a result of outstanding collective agreements for the period January 01, 2015, to December 01, 2017, and January 01, 2018, to December 2020 between PTSC and the Transport and Industrial Workers Union which is the recognized majority union for the daily and hourly and fortnightly paid employees.

As part of the process, I am to advise, in response to the question of the Chief Personnel Officer, the PTSC has already submitted additional information for the period January 01, 2015, to December 31, 2017, to the Ministry of Works and Transport and this has been forwarded to the CPO and we await their—the next step. Thank you.

Sen. Mark: Madam President, can the Minister indicate whether the parties have

met directly on this matter, that is, the CPO representing the State and the Transport and Industrial Workers Union to deal with those outstanding collective agreements?

Sen. The Hon. R. Sinanan: Madam President, we would have submitted the necessary request to the CPO and we await further directions from the CPO. We have no control over the meetings between the CPO and the different bargaining union. So I cannot answer if they have met at this point in time. If the Member files another question through the process, I will seek the information. Thank you.

Sen. Mark: Madam President, through you, can the Minister indicate what were the items that the Ministry of Works and Transport would have submitted to the CPO with a view to having the two parties arrive at a speedy settlement given the outstanding collective agreement in question?

Sen. The Hon. R. Sinanan: Madam President, the question as asked had to do with health and safety issues and that is the information that I was provided with. Again, if the hon. Member wants questions on negotiations he will have to file further question through the required system and I will be happy to answer those questions. Thank you.

State Housing in Tobago

(Steps Being Taken)

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

Given reports that the demand of state housing in Tobago is greater than the supply, can the Prime Minister advise as to what steps are being taken to align supply with demand?

The Minister of Agriculture, Land and Fisheries (Sen. The Hon. Clarence Rambharat): Thank you very much, Madam President. Madam President, it is well known by all concerned that it is neither practical nor possible to satisfy the

demands of every housing applicant in the country, including applicants in Tobago. Accordingly, Cabinet has agreed to collaboration between the Ministry of Housing and Urban Development and the THA, under the settlements division of the THA, to support ongoing programmes geared towards increasing the numbers of safe and affordable housing solutions, primarily to lower and middle income groups in Tobago.

This is being achieved through the continuous disbursement of grants for maintaining and improving the quality of the existing housing stock by expanding the number of subsidized housing units being constructed and by expanding the development of service lots and the construction of affordable housing. Madam President, I wish to highlight the five programmes, following programmes:

The Home Improvement Programme that is very successful across Trinidad and has been extended to Tobago through the Tobago House of Assembly, and the Division of Settlements in particular. And so far, through that programme, a Home Improvement Grant has been rolled out, Home Completion Programme and a Home Improvement Subsidy. The value of these programmes has been 20 million over the last four years and over 2,500 families in Tobago have benefited.

The second programme is the Beneficiary Owned Land Programme. It is a subsidy for starter homes. It targets new home construction and it seeks to supply suitably qualified applicants with financial support to construct a starter home. Over the last five years \$11.9 million has been disbursed and that has benefited 550 families.

The HVIP, another successful programme in Trinidad, has been rolled out through a collaboration between the Ministry of Housing and Urban Development and the THA, and that is expected to benefit a significant number of families through the aided self-help approach which will target those residents living in

what we described as derelict homes.

Fourth, the new home construction. The Tobago executive— the THA Executive Council agreed in 2019 to develop two new areas, the Riseland and Adelphi Housing Developments. Riseland involves 54 housing units and Adelphi involves 240 housing units.

And finally, the Shirvan Development Project, Madam President, is between the THA and a developer that the THA is looking to recruit, to design, finance and construct an integrated development with approximately 250 housing units in the first instance. I thank you.

Sen. Mark: Madam President, can the Minister indicate in the case of the Shirvan Development Project between the THA and some developer, can the hon. Minister elaborate as to the current status of this project?

Madam President: Sen. Mark, I would not allow that question. Any other questions?

Sen. Mark: [*Inaudible*]*—*arising out of answers given, you ask questions.

Madam President: Yes, but answers—

Sen. Mark: I am guided, Madam. I am guided.

Madam President: Okay, good, because I would have given you an explanation.

Sen. Mark: Thank you, Madam. Madam President, can the hon. Minister indicate how many people have benefited from the two new projects— No, may I recast that? He mentioned something called the H—is it the HI—some new programme with self-help.

Sen. The Hon. C. Rambharat: HVIP.

Sen. Mark: HV—

Sen. The Hon. C. Rambharat: —IP.

Sen. Mark: HVIP, Madam President. Can you share with the Senate, how many

persons in Tobago, residents in Tobago, would have benefited from this particular project or programme that you have outlined?

Sen. The Hon. C. Rambharat: Madam President, since I myself made a mistake earlier, I understand my colleague would be confused so I will go through it very quickly. The Home Improvement Programme which involves the grant, completion programme or the subsidy has benefited 2,500 families and has cost 21.1 million. The Beneficiary Owned Land Programme, that is a subsidy for starter homes, it cost 11.9 million and it has benefited 549 families. When completed, the new home construction programme which involves Riseland and Adelphi will benefit 300 families in the first instance; that is 54 at Riseland and 240 approximately at Adelphi.

The Shirvan, which is currently being designed for the purpose of seeking a developer, would benefit 250 families in the first instance and finally, the Housing and Village Improvement Programme, which was very successful so far in Trinidad, is being introduced in Tobago and would benefit those residents who are in need of aided self-help for their existing homes. Thank you.

Sen. Mark: Madam President, can the Minister indicate any time frame for the operationalization of this programme he mentioned, village and community programme? Is there a time frame—he said it is being introduced, so I am asking him—

Madam President: Minister?

Sen. Mark:—whether he can share with us a specific time frame for its implementation?

Madam President: I think we get it, Sen. Mark. Minister.

Sen. The Hon. C. Rambharat: Madam President, as I said, it is in the process of being introduced and I am sure that the COVID-19 Regulations has restricted what

could be done, but it is in the process of being introduced and now that the Government or the State has moved to be fully operational, I am sure that it would be accelerated for the people of Tobago to benefit from this programme which has worked very well across Trinidad and we are all happy that it has now been introduced in Tobago. Thank you.

CEO of Tobago Regional Health Authority

(Reason for Dismissal)

130. Sen. Wade Mark asked the hon. Minister of Health:

Having regard to the February 2020 dismissal of the CEO of the Tobago Regional Health Authority (TRHA), can the Minister advise as to the reasons for said dismissal?

The Minister of Agriculture, Land and Fisheries (Sen. The Hon. Clarence Rambharat): Madam President, I know my colleague, the hon. Minister has responded to this question in various ways. So for absolute clarity, I will do it again. Madam President, under section 5(2) of the Regional Health Authorities Act, Chap. 29:05, the Tobago Regional Health Authority is subject to the provisions of the Tobago House of Assembly Act, Chap. 25:03 and consequently falls under the jurisdiction of the Secretary of Health, Wellness and Family Development in Tobago. So, in relation to this first part, I would remind my colleague that this RHA is under the jurisdiction of the THA and the Secretary of Health, Wellness and Family Development in Tobago.

Secondly, as the hon. Minister has said himself, he has been advised by the Tobago House of Assembly, as has been reported in the public domain since March 2020, that the Tobago Regional Health Authority has said that it has lost confidence in the ability of the CEO to effectively perform his duties and that was the reason for his dismissal. I thank you, Madam President.

**Early Childhood Centre in Southern Gardens, Point Fortin
(Timeline for Completion)**

149. Sen. Taharqa Obika asked the hon. Minister of Education:

Can the Minister provide the timeline for the completion of the Early Childhood Centre in Southern Gardens, Point Fortin?

The Minister of Agriculture, Land and Fisheries (Sen. The Hon. Clarence Rambharat): Madam President, my colleague, the Minister of Education has dealt with this matter on many occasions.

Hon. Senator: Many times.

Sen. The Hon. C. Rambharat: So I know, as happened earlier with me, I got confused. So to remove any confusion I will say again, the Early Childhood Care and Education Centre at Southern Gardens, Point Fortin was completed in the last quarter of 2013. At that time, Madam President, a decision was taken by the then Minister of Education to decant the Chatham Government Primary School into the newly constructed Southern Gardens Early Childhood Centre. This was done to facilitate the reconstruction of the Chatham Government Primary School on that school's existing site.

Madam President, because of the onset of the COVID-19 pandemic, the construction of that primary school, the Chatham Government Primary School was on schedule before—it was scheduled to be completed in July 2020. The Ministry of Education is currently doing an assessment to determine the extent to which there has been slippage in some of the expected completion dates in relation to schools across the country and once that exercise is done, the Ministry would be able to say two things: when the Chatham Government Primary School would be completed and when the Early Childhood Centre, which is completed but occupied by the pupils of Chatham Government Primary School, when that would be

available to function as an Early Childhood Centre.

So I emphasize, Madam President, because we all made mistakes in our understanding and recollection as I did earlier, I emphasize that the Early Childhood Centre is completed and occupied when school is taking place by the students of Chatham Government Primary School since the last quarter of 2013. And this Government has proceeded with the completion of that school. There has been an interruption, there would be a resumption, and once Chatham Government Primary School is completed, it would be occupied by those students who are currently at the completed Early Childhood Centre in Southern Gardens, Point Fortin and those children earmarked for early childhood centre will then have a school which was completed since 2013 to attend. Thank you very much.

Sen. Obika: People are suffering, people of Chatham for five years with a 95—

Madam President: Senator, Sen. Obika, no preamble. Ask your question.

Sen. Obika: After the Minister's embarrassing statement—

Madam President: Sen. Obika, no preamble, ask your question.

Sen. Obika: The question still stands. When will the people of Southern Gardens in Point Fortin be given access to their Early Childhood Education Centre? That has not been answered.

Madam President: Sen. Obika, I will not allow that question based on the question that has been posed. Next question. Next supplemental question.

Sen. Obika: You have failed.

Hon. Senator: What?

Sen. Obika: Question No. 151—

Madam President: Sen. Obika.

Sen. Obika:—to the Minister of Works and Transport.

Madam President: Sen. Obika, withdraw what you just said and you will

apologize because I do not want—[*Crosstalk*] I have said repeatedly ask your question; ask the question without comment, please.

Sen. Obika: May I enquire as to the reprimand for the Minister of Trade and Industry—

Madam President: All right. Sen. Obika, take your seat, take your seat. [*Crosstalk*] Take your seat, Sen. Obika!

Sen. Obika: I was asking a question, Madam President.

Madam President: Sen. Obika, in light of your refusal to comply with my instructions, I will ask you to leave the Chamber now for the rest of this sitting.

[*Desk thumping*]

[*Sen. Obika exits the Chamber*]

Sen. Obika not being present, the following questions stood on the Order Paper.

Direct Airplane Route Africa to Barbados

(Details of)

- 151.** Given reports regarding the establishment of a direct airplane route from Africa to Barbados, can the hon. Minister of Works and Transport indicate whether Trinidad and Tobago has been or will be participating in the discussions regarding the proposed route?

Bilateral Air Services Agreements

(Details of)

- 152.** Can the hon. Minister of Works and Transport indicate whether consideration has been given to establishing bilateral air services agreements between Trinidad and Tobago and Ghana, Nigeria, and Ethiopia?

PERSONAL EXPLANATION

Non-payment of Land Purchase Stamp Duty

(False Allegations)

The Minister of Finance (Hon. Colm Imbert): Thank you very much, Madam President. Yesterday in the Senate, Sen. Wade Mark made several false allegations under the cover of parliamentary privilege regarding the alleged non-payment of millions of dollars in stamp duty due on the purchase of a piece of land in Port of Spain for a building project which he linked to me.

Sen. Mark also insinuated that as Minister of Finance I was somehow involved in money laundering and land fraud. These false accusations have received wide publication in the media. So kindly allow me therefore to express my dismay that the Senate has been abused in this way to unjustifiably defame my character and to spread untruths.

For the record, all of Senator Mark's allegations are false.

10.30 a.m.

Contrary to Sen. Mark's outrageous insinuations, I did not, in my capacity as Minister of Finance or otherwise, purchase any such land in Port of Spain at an undervaluation, nor did I deprive the Treasury of stamp duty, nor did I engage in land fraud. The truth is that in December 2012, when I was in the Opposition and the UNC was in Government, I acquired the shares in a company that owned a parcel of land in Port of Spain. The applicable law relating to the stamp duty to be charged on the transfer of shares in a private company makes it clear that in such a case the stamp duty is the greater of \$5 per \$1,000 of the consideration given—that is, the payment for the shares—or \$5 per \$1,000 of the value of the shares transferred as determined by the company's auditor. That is the law.

The company was not transacting any business at the time in 2012 and the company's auditor, a chartered accountant, valued the 30,000 issued shares in the company at \$1 per share at par value, which would yield stamp duty of \$150 if the

value of the shares was the determining factor. However, the company owned land in Port of Spain, which was its only asset and the company was being offered for sale, therefore, at a price of \$7.5 million. Being ever mindful of the behaviour of certain individuals in the political arena and other mischievous individuals who are prone to making scandalous and baseless accusations about me, I commissioned a valuation of the market value of the land on Picton Street, and in November 2012 the land was valued by a reputable chartered valuation surveyor at \$7.5 million.

One month later, in December 2012, I purchased the 30,000 issued shares in the company for the asking price of \$7.5 million. I did not, as Sen. Mark has falsely alleged, buy the land or company in question for \$1.75 million. Since the payment for shares was greater than the nominal value of the shares, the stamp duty for the share transfer was subsequently assessed by the Board of Inland Revenue at the statutory rate of \$5 per \$1,000 of the consideration given—the price paid—and paid by my attorneys to the Board of Inland Revenue, one month later, in January 2013, when the share transfer transaction was registered with the Board of Inland Revenue.

I have in my hand, Madam President, the 2013 receipt from the Board of Inland Revenue for the stamp duty that was paid in accordance with the law on the purchase price for the shares of \$7.5 million, and it is noteworthy that all of these transactions took place when the UNC was in Government. It is also noteworthy that neither the property nor the company has ever been valued at \$12 million by anyone. That is a bogus and inflated figure pulled out a hat by Sen. Mark, and it is regrettable that the media saw it fit to repeat and republish the untruths uttered by Sen. Mark. As should also be obvious, I also had nothing to do whatsoever with any transaction relating to the sale, purchase or conveyance of title of the land in question from or to any other person or company before I acquired the shares in the

company that owned the land.

In summary, there is no truth whatsoever to Sen. Mark's false allegations of tax evasion, land fraud and money laundering with respect to the acquisition of this company by me or its associated land. In addition, there is no hidden trust deed or secret trust of any kind concerning the ownership of the land or the shares in the company. Indeed, the ownership of the shares in the company is open to public scrutiny in the Companies Registry and has been so since 2010, when the company was formed by its previous owners. Further, as a person in public life, I have declared my ownership of the company to the Integrity Commission and its value since 2013.

Sen. Mark has made false and defamatory acquisitions about me without a shred of evidence and without any factual basis whatsoever. As has occurred before in my case, he cannot produce a single document to back up his false allegations, whereas I have the documentary evidence that confirms that what he has said is simply untrue. I thank you, Madam President. [*Desk thumping*]

DOMESTIC VIOLENCE (AMDT.) BILL, 2020

Bill to amend the Domestic Violence Act, Chap. 45:56 to provide for emergency protection orders and for related matters [*The Attorney General*]; read the first time.

JOINT SELECT COMMITTEE

(APPOINTMENT TO)

The Minister of Agriculture, Land and Fisheries (Sen. The Hon. Clarence Rambharat): Madam President, I beg to move the following Motion:

Be it resolved that this Senate agree to the following appointment to the Joint Select Committee appointed to consider and report on the Representation of the People (Amdt.) Bill, 2020, Nigel De Freitas, in lieu of

Mr. Robert Le Hunte.

Question put and agreed to.

INTERCEPTION OF COMMUNICATIONS (AMDT.) BILL, 2020

House of Representatives Amendments

The Attorney General (Hon. Faris Al-Rawi): Madam President, before I begin, may I ask if the speaking time for these Motions is also 30 minutes? It is?

Madam President: Yes.

Hon. Al-Rawi: And unlike the procedure in the House, may I also ask before I begin, usually in the House we take them clause by clause, is this that we take them in one group as suggested here?

Madam President: It is proposed that it will be taken as one.

Hon. Al-Rawi: Much obliged, Ma'am. May I then ask you to start the clock now?

Madam President: The clock has started.

Hon. Al-Rawi: Much obliged. Madam President, I beg to move the following Motion standing in my name:

Be it resolved that the House amendments to the Interception of Communications (Amdt.) Bill, 2020 listed in Appendix II be now considered.

Question proposed.

Question put and agreed to.

House of Representatives amendments read as follows:

Clause 2.

~~Chairman substitute the following~~ Amend and substitute the following into operation on such date as is fixed by the President by Proclamation.”

Clause 5.

Insert after the definition of “prison”, the following definition:

““proceedings” means proceedings referred to in section 4A;”

Clause 6(b)(v).

In the proposed paragraph (h), insert after the words “authorised officer” the following words:

“-

- (i) in the interest of national security;
- (ii) for the prevention or detection of an offence—
 - (A) under this Act; or
 - (B) for which the penalty on conviction is imprisonment for ten years or more, and includes an offence where death, imprisonment for the remainder of a person’s natural life or life imprisonment is the penalty fixed by law;
- (iii) for the purpose of safeguarding the economic well-being of the State; or
- (iv) for the purpose of giving effect to the provisions of any international mutual assistance agreement.”.

Clause 7.

In the proposed section 6B(1), insert after the words “authorised officer” the following words:

“-

- (a) in the interest of national security;

- (b) for the prevention or detection of an offence-
 - (i) under this Act; or
 - (ii) for which the penalty on conviction is imprisonment for five years or more, and includes an offence where death, imprisonment for the remainder of a person's natural life or life imprisonment is the penalty fixed by law;
- (c) for the purpose of safeguarding the economic well-being of the State; or
- (d) for the purpose of giving effect to the provisions of any international mutual assistance agreement.”.

Preamble.

Delete.

Hon. Al-Rawi: Madam President, I beg to move that this Senate agree with the House in the amendments to clauses 2, 5, 6(b)(v), 7 and the Preamble of the Interception of Communications (Amdt.) 2020.

Madam President, we have as a Parliament engaged in significant work throughout our tenure in this Eleventh Republican Parliament. One of the critical aspects of reform has been in ensuring that that criminal justice system, in all of its parts, works in tandem with all other pieces. You have heard me on numerous occasions say that we must focus upon the operationalization of law, and I use the formula plant and machinery, people, processes and law. Today we come on the fourth limb, which is purely law, and permit me to say that the amendment before us right now has been caused by virtue of a written opinion, procured by the Office

of the Attorney General, coming from no less a person than the hon. Fyard Hosein of Senior Counsel. Mr. Fyard Hosein is in my opinion one of the best constitutional lawyers in the Republic of Trinidad and Tobago who has been to Privy Council and back. Apart from the opinion of Mr. Fyard Hosein, I have also received other opinions.

Now, of course, Madam President, the holding of opinions is one that has to be carefully managed. In the comprehensive opinion requested of Mr. Hosein, as Attorney General I asked him to take a second look at my own perspective on the law and specifically to focus upon whether this law can be passed without a special majority. In summary, Mr. Hosein in producing his opinion has confirmed that subject to certain amendments of the Bill, that we are fully permitted to amend the Bill by removing the requirement for a three-fifths majority in clause 2, and therefore, the Preamble. But so as to avoid any challenge to constitutionality and specifically to avoid any allegation that may come about in the breadth of the law being too wide in what Senior Counsel Hosein has cautioned against a standardless sweep of the law, Mr. Hosein has recommended, and the Government has accepted, that we cause a further amendment to the Bill—which was achieved in the House—in clause 6(b)(v) and clause 7 of the Bill.

Permit me, therefore, to address these issues now for the purposes of the record. I would like to say that the genesis of this law comes from a concern expressed by no less a person than the DPP himself, Mr. Roger Gaspard of Senior Counsel and also, Mr. Edward Jenkins of Queen's Counsel who has advised the DPP that the Interception of Communications Act—that is the Act in 2020—is open to criticism as it relates to its existing structure, and that out of a requirement of certainty and constitutionality that we must cause amendments to the law. The

amendments to the law that we proposed are squarely rooted to the amendments now before us coming from the House. They concern in particular and I am going to refer to the sections now of the law as proposed to be amended, section 6B, section 6(1)— section 6 of the parent Act, section 6B as we proposed to insert, section 17, section 17A, section 19 and section 20 of the parent law as it stands and as is proposed to be amended by the law. There is also a concern in relation to section 4A as we propose to be inserted. So permit me to treat with that in the context of the amendments en masse clauses 2, 5, 6(b)(v), 7, and the Preamble. Madam President, it is unconstitutional to oust the jurisdiction of the court.

In legislation there ought not to be a provision where the court's exercise of its jurisdiction is separated and stopped. That is called a breach of the separation of powers principle which our Constitution recognizes ought not to happen. The parent law as it stands right now, section 17 and section 19, there is an ouster of the court's jurisdiction because it says that the evidence obtained in interception shall be admitted in court. It does not say that it may be admitted and leave it to the jurisdiction of the court to consider the admissibility of evidence. It says it shall be admitted. That means that the admissibility of the interception evidence itself is in problem, that means that the admissibility of interception evidence falls into the realm of hearsay issues, that means that the issue in the Constitution of a fair trial and due process falls into odium and the amendments that we passed in this Senate, took to the House and passed with amendments and now come back here, are designed principally and fundamentally to remove the unconstitutionality of the 2010 law which says that the court has no discretion. That is the major point in this aspect.

The law as we proposed in section 4A that we propose to be inserted says

that the law applies to all evidence captured prior as we relate to communication data, intercepted material, and the general round of information including stored data. Why? Because the law specifically asks us to look at the procedural amendment of law, not substantive amendment of law. The question is: Do you need a three-fifths majority because of an allegation of retrospectivity? And the answer to that is: that you do not have an issue of retrospectivity in the new section 4A because you are not treating with a substantive law. You are treating with a procedure of admission of evidence. Stick a pin. The evidence is evidence which you could have obtained and did obtain. The law just recognizes that the evidence was obtained under existing law. What is the existing law? The existing law is the Proceeds of Crime Act, sections 32 and 33, by which production orders can be obtained.

The existing law is also to be found in the preliminary enquiries route where we deal with the Indictable Offences (Preliminary Enquiry) Act—section 5 of that Act—by which you can get a warrant to obtain communication data or stored data and, of course, it also includes the Indictable Offences (Committal Proceedings) law where section 6 of that law allows for you obtain warrants for obtaining evidence that has been intercepted, stored or collected. So section 4A, as we proposed, does not require a three-fifths majority. It is a procedural amendment, and all that it does is to analyse and accept the existing law.

The other sections of the law, which touched the removal of clause 2 and the Preamble, root themselves in the following principles. Section 4(a) of the Constitution that is due process of law, section 4(b) of the Constitution protection of the law, section 4(c) the right to private and family life, section 4(b) the right of a fair trial. Madam President, what time is full time?

Madam President: 10 minutes past 11.

Hon. Al-Rawi: Much obliged. Let us see if we touch and concern any of these rights in the amendments that stand in the law that we have already included here. So put in summary, we are looking at whether one needs a special majority to do the following things: one, to intercept prison's communication: communicating from a prison or communication coming a prison, or communications between prisoners in a prison's vehicles. Two, do you need a special majority to have evidence obtained by warrant; evidence that is not obtained by warrant, by way of interception; evidence that is obtained in stored communication or communication data; evidence that is sensitive in nature, sensitive evidence as defined in section 17 and section 19 of the Act because the sensitivity is an important aspect of evidence?

Do you need a special majority for those things? Whether you need a special majority is rooted in the test of proportionality and there are two types of proportionality that one can consider: the vires or the testing of the constitutionality in the narrow sense of Trinidad and Tobago's looking at proportionality is: have you a trifacta; do you have a legitimate aim; is there a rational connection that the amendments have to that legitimate aim; and is it proportionate, do you go any further than you are required to go?

There is, outside of the Trinidad and Tobago, something called extended proportionality. An extended proportionality comes from a bank of cases that really are persuasive to us but do not apply to us. An extended proportionality is basically a small extension of the three prongs into four prongs and we, Madam President, are absolutely certain that sections 6B(1), 6(2)(h), 17A, 17(2B) and 19(1) of the law do not offend the extended proportionality test as set out in *R v*

Oakes, in *de Freitas*, in that wider sense of Canadian jurisprudence on the narrow sense of proportionality in *Barry Francis*, in *Suratt*, in *Northern Construction*. On the three limb test, we are well within proportionality. Why? What is the legitimate aim?

The legitimate aim is to balance the use of communication in criminality against the fight against criminality. Let me explain that. Prisoners are using communication in the prisons right now, people are being called upon to kill other people with those instructions coming from the prisons. We know that there is a criminality and it is not unique to Trinidad and Tobago, it exists in other jurisdictions. What are the other jurisdictions? Canada, New Zealand, Australia, the United Kingdom, to name a few, apart from other parts of the Commonwealth. In other parts of the Commonwealth, is there a rational connection with the use of law to use evidence obtained from interception in a prison warranted or unwarranted? In England, the United Kingdom sets out in a case called *R v Bailey* and in another case called *R v Sang*—S-A-N-G.

In *R v Sang*, those cases say that the common law in the United Kingdom is such that, in the absence of a statutory prohibition, it does not matter how evidence is obtained. If even obtained illegally, the evidence can be used in a court of law provided that the evidence is scrubbed by certain conditions and we, in the conditions proposed in the legislation, achieved that balance by adding what we call the *Bailey* principles. And specifically, where we say that you are allowed to use evidence obtained by recordings in a prison van or recordings in a prison—in other words then, bugging, because it is not interception of communication, because it is not over a telecommunications network—or if you are using intercepted communication over a telecoms network and you do not have a

warrant, but you are exercising that interception pursuant to section 6 of the Act, section 6 has the fact that you can intercept if it is in the interest of national security for the purpose of safeguarding the economic well-being of the State, for giving effect to mutual assistance, et cetera. The principles which are balanced against that which are contained in the Bill brought before us are as follows—the rational connection and whether we go any far than we ought to are given as follow: number one there must be a notice to prisoners. Number two, there must be exception for legal professional privilege. That is in section 6A, section 6B. Number three, you must preserve the sanity of the interest of justice, and when you look to the interest of justice, you have to make sure that you are not going further or derogating from protections which the Constitution ought to accept. And what are those?

Those are found, Madam President, when you look to the amendments in clause 17 and 17A we say the contents of communication, all of them may be admitted into a court provided, look at section (2C) of 17:

- “(a) nothing was done to induce or trick the accused or defendant into saying something;
- (b) the integrity of any recording or interception is sound;
- (c) the use of the recording or interception device was proportionate to the gravity of the alleged or suspected offence;
- (d) the use of the method was appropriately authorized by an officer independent of the investigation; and
- (e) no recording or interception of any...legal professional privilege...”—conversation took place—“in a place specified...”—as being accepted.

Those statutory anchorings of what we call the Bailey principles are there but further, we give further protection. We say that for the disclosure of sensitive information, i.e., so as to not to get into the dance of having evidence of intercept inadmissible. It is inadmissible if you cannot say who made it, the defence is entitled to probe the prosecution's case. They are entitled to ask questions such as: May I see the warrant; may I know who made the intercept; can I know the identity of the officer who was sitting there; can I know the workings of the system? Otherwise the evidence falls into hearsay and will be excluded.

So we say you cannot simply say, as the 2010 law did, that you shall admit the evidence. No, Sir. You will end up in an abuse of due process and a lack of a fair trial, and you must allow a judge to consider the admissibility of the evidence. So what we say, if you want to test that evidence, use a special advocate in a special measure where a judge will hear from the defence why that ought to happen and you can protect the lives of people involved in the intercept. Because the last thing that you want to do is to expose the mechanisms of national security to the attacks and the murderous intent of criminals in this country. Is the special advocate known as a creature to common law? Yes. Is the special advocate known in the Commonwealth? Yes. Is a special measure known in the Commonwealth? Yes. Has the European Court of Human Rights, has the Supreme Court in the United Kingdom, has the Privy Council upheld the position of special advocates and special measures? Yes. Has the European context and the English context told us that statutory enactment of special advocates and special measures is preferred over the common law? Yes.

In a case using someone with my same name, in the Al-Rawi case, as it came forward, which concerned the admissibility of evidence in civil proceedings,

the court then said that it is preferred that you engage in statutory enactment of what the common law permits in the criminal law into statute. So I put it this way, the proportionality of what we do, why we do not need a special majority, is anchored by the fact that the existing common law in criminal matters allows for special advocates, if necessary, special procedures, if necessary. We have gone further and we have said, “Let us take the advice in the Al-Raw case, albeit on civil, and let us statutorily include that into the law.”

Section 20, as we propose it to be admitted, is another important safeguard and that is when we get to the concept of the amendments proposed to section 20 where we introduced the concept of the public immunity and the public interest immunity. The public interest immunity is that you will not destroy evidence that is intercepted in the new subsection (9):

“Information which may reveal the commission of other offences by other people or which may jeopardize other enquiries shall be disclosed to the accused but shall be retained and be the subject of a public interest immunity application to the Court by the prosecution.”

What does that mean? Can you potentially disturb the fair trial by not disclosing information to someone? Yes. But is it now balanced by due process? Yes, it is.

11.00 a.m.

Public interest immunity where you make an application, the prosecution must make an application to the court that there will be no disclosure, a court of law must consider that and of course, you know you have the right of appeal all the way to the Privy Council in the round. Obviously, there is no procedural appeal in criminal matters but it causes a ground of substantive appeal.

So, Madam President, what we have in the measures before us is a legitimate

aim. We have a rational connection of the amendments to the legitimate aim. We go no further than the existing law: the Proceeds of Crime Act, the Indictable Offences (Preliminary Enquiry) Act, the Indictable Offences (Committal Proceedings) Act, the common law as is set out in the United Kingdom, the public interest immunity as is set out from the jurisprudence coming in the Commonwealth, from the European Court of Human Rights. All of these things say that we go no further and are proportionate in the measures.

Now the question is well, why pass law in this House with a Preamble and with a requirement for a three-fifths? And the answer to that is we did so because we did not include, until we went to the House, the amendments that are proposed to clause 6(b)(v) and clause 7. We are not coming here today to simply strip this Bill of a special majority. We are coming here to amend the Bill which was passed in this House, in this Senate with a special majority, amending it substantively in clause 6(b)(v) and clause 7. And what are we proposing to do there? We are proposing to avoid what Senior Counsel Hosein has said, the risk or vulnerability to challenge on the basis that if those clauses, the new section 6B(1) and 6(2)(h) which clauses 6 and 7 refer to, if those clauses are not further refined by measures, you can be open to a risk.

So we took Senior Counsel's advice and we specifically said that as it relates to prisoner intercept, if you look at clause 6(b)(v), when we are in paragraph (h) treating amendments, paragraph (h) is where you introduce the fact that evidence in a prison can be used against you in a court of law and what we say is we ought to further narrow the protections by saying that that must be done:

- “(i) in the interest of national security;
- (ii) for the prevention or detection of an offence –

- (A) under the Act; or
- (B) for which the penalty on conviction is...more”—than 10 years—“includes an offence where death, imprisonment for the remainder of...natural life or life imprisonment is the penalty fixed by law;
- (iii) for the purpose of safeguarding the economic well-being of the State; or
- (iv) for the purpose of giving effect to the provisions of any international mutual assistance agreement.”

In other words then, we take the caution offered in section 6 as it was passed in the 2010 and we lift it specifically into prisoner intercepts.

It is the same thing that we do in clause 7 in the amendments to the new section 6B(1) and when you look to the 6B(1), Madam President, 6B(1) says:

“Communications within a prison or a vehicle used...may be recorded...”

So 6(2)(h) is interception of communication over a telecommunications network. 6B is recording. You are not using a telecommunications network, you are bugging the prison and what we do is we improve the constitutionality by prescribing, as the amendments as circulated to clause 7 and to clause 6, the interest of national security, et cetera provisions that I have just read out. Put in a nutshell therefore, this is not just simply removing the Preamble and removing the three-fifths majority requirement. This is a substantive amendment to clauses 6 and 7 where there may have been a risk of constitutional challenge on the basis of a sweeping enquiry or a risk of that. This cannot just be a fishing exhibition. A court must be jealous, a court must be careful in its position.

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

Mr. Al-Rawi: Much obliged. A court must be careful in the admissibility of evidence. That evidence is now being done under the Bailey principles, 17 as amended (2A), (2B), (2C). It must be in the interest of justice, it must be proportionate. You cannot entrap people, you have to make sure that legal professional privilege is not an issue in the matter. And who decides this? A judge of the court decides this. Where does that fit in with the law as it stands in Trinidad and Tobago today after decades? The Privy Council, Baroness Hale, paragraph 58, in *Suratt* says and I quote *Suratt* because it is the law which is most supreme in our country right now, we are bound by the Privy Council's decisions in these matters. Baroness Hale in paragraph 58 of her judgment in *Suratt* specifically said not every section 4 right or section 5 right—because there is a section 5 right that you could contemplate, the right to a fair trial—not every right is absolute.

Secondly, Baroness Hale says not every right that is touched upon or managed or even alleged to be intruded by law requires a section 13 amendment. Because if you are within the parameters of a legitimate aim, a rationale connection of the amendments to the legitimate aim and if the measures are proportionate and in particular, if proportionality is fed by due process. And what is due process? It is not the Parliament saying so, it is not the Executive saying so, it is a court of law under the separation of powers principle saying so. And Baroness Hale's decision in *Suratt* which guides us today, which has been upheld in Trinidad and Tobago Court of Appeal in *Northern Construction* and also in *Barry Francis* and a number of other cases, Baroness Hale's decision, which is in our courts post-*Suratt*, says that you can achieve these amendments provided you have proportionality. The amendments to clause 6, the amendments to clause 7 are there.

Now, Madam President, I anticipate all kinds of allegations will be made. I want to put it straight today, we are, as a society, at war with criminality. The Opposition in the House refused to support these amendments. I reminded the Opposition of the risk of collapse of the entire Interception of Communications Act that they passed, they were not moved to save intercepted matters. They instead said that they preferred to have it collapse, they would not give the three-fifths majority support. And therefore, I remind hon. Senators that when I piloted this Bill and when we passed it in the Senate before it went to the House, I cautioned that the Bill could be managed without a three-fifths majority, provided there were amendments made to the law. We made those amendments to the Bill in the House of Representatives to clause 6 and to clause 7.

And, Madam President, I want to put it starkly as I wind up now. If this law does not pass, every matter which involves interception of communication evidence is at risk, every single matter. And I, on behalf of this Government, will not watch the DPP “cokey eye” and tell him he does not know what he is saying. I will not watch Edward Jenkins QC “cokey eye” and tell him he does not know what he is doing. I will not watch Fyrd Hosein, Senior Counsel, eminent counsel, “cokey eye” and tell him his 88-page opinion does not make sense. I will not watch, Madam President, Baroness Hale or Mr. Justice of Appeal Nolan Beraux in Barry Francis in a jaundice way to tell them that constitutionality is something that the Opposition says.

Madam President, I look forward to the contributions of hon. Members and I beg to move. [*Desk thumping*]

Question proposed.

Sen. Mark: Thank you, Madam President. Before I go into these amendments

which are very dangerous to our democracy, I would like to have your ruling on Standing Order 72(4) that deals with Bills that passed in our House with the constitutional majority and it is then revisited. We are now being called upon to revisit these amendments that we passed in this legislation which is contrary to Standing Order 72(4) of our Standing Orders. So I would like, before I speak, to get your ruling on this particular matter because it is very, very serious.

Madam President: Sen. Mark, not that I am aware that I was—the fact that I am allowing this debate is therefore consistent with Standing Order 72(4) because the Standing Order says the amendments, if in the opinion of the President, appear—whatever. Clearly, I am allowing the debate and I think the amendments can be put to the Chamber.

Sen. Mark: Thank you very much, Madam President. What is being attempted by this Government is absolutely dangerous to our democracy and we can use any argument in an effort to frustrate, to compromise and to breach section 4 of our Constitution, because the key amendments to this list that I have before me, Madam President, are in fact addressing the removal of the certificate that has been inserted when we debated this Bill in the Senate.

And what we have been given this morning is an Attorney General who is upset with the Opposition. He cannot have his way when it comes to the rights and freedoms of the people as outlined in sections 4 and 5 when you are bringing measures to infringe and breach those rights, so the Attorney General decides to remove the special constitutional provision. Madam President, this is not a parlour, this is not a “Mickey Mouse arrangement” that we are dealing with. We are dealing with people’s fundamental rights and freedoms, and like Hitler in Germany, you can use legal mechanisms in an effort to establish a dictatorship, and we have to be

very careful that we do not allow the Government of Trinidad and Tobago to gut, slaughter and destroy our fundamental rights and freedoms. That is what is at stake here today.

So I would like the hon. Attorney General—we are not taking his word for anything. We would like the Attorney General of this country to come clean and to table now, today, before any other Senator speaks, the constitutional opinion rendered to him and the Government by Mr. Fyard Hosein. We cannot take for granted anything that is being said here by the Government, we have to see what Fyard Hosein has said. So I call on the Attorney General to make available promptly to this Senate so that the Senators here can have access to this opinion.

Madam President, I also would like the Attorney General to make available to this Parliament, the CPC's opinion. Because it is clear that the Chief Parliamentary Counsel would have recommended to the Attorney General and the Government that this Bill that came in its manifestation when we first debated it in the Senate would have had the opinion of Chief Parliamentary Counsel, Mr. Macintyre. So I ask the Attorney General to table the Chief Parliamentary Counsel's legal advice on the insertion of the three-fifths majority and why that insertion was necessary.

Madam President, the Attorney General in his statement a short while ago said he cannot face the DPP and he cannot face Edward Jenkins QC because they said all sort of things about this Bill that we have before us and what we have to do and what we do not have to do because things are unconstitutional. Madam President, that could not come in exchanges simply across the table. These would have come from these two illustrious legal luminaries via legal opinions. I call on the Attorney General of this country to table Roger Gaspard's legal opinion and

views on what he shared with us, that is the hon. Attorney General, earlier.

I also call on the Attorney General, Madam President, to make available the legal opinion showing the unconstitutionality of the parent legislation in the ousting of the courts in this country by Edward Jenkins QC. We need to get these pieces before us because we are dealing with fundamental rights and freedoms of the citizenry of our country and we just cannot take the word of the Attorney General.

Madam President, I heard the Attorney General on a 95.5 FM programme when this Bill was passed in the House; 26 for, six against. And you know what the Attorney General told Trinidad and Tobago? He has a surprise coming for the Opposition in the other place. So the Attorney General of this country from the word “go” had an intention and his intention from his public utterances, from his statement on the parliamentary records and what he has just said a short while ago, the intention of the Attorney General was to gut, slaughter and butcher and remove in the process the three-fifths majority that this Bill requires for it to become law. That was the intention of the Attorney General.

Madam President, may I say very early that this invasion of the citizens’ right to privacy is protected under our Constitution. The right of the right to privacy is a fundamental human right guaranteed in our Constitution. You cannot bring a Bill here where the parent legislation of this piece of amendment that we have before us required a special constitutional majority. And the reason, Madam President, the parent Act now requires a special constitutional majority is because that Bill, which is now an Act, invaded the privacy of citizens in Trinidad and Tobago and it violated sections 4 and 5 of the Constitution. It was a clear incursion, intrusion of one’s privacy rights which is entrenched and enshrined in

the Constitution.

Madam President, the Attorney General in these amendments that we are dealing with would have gone further where he has expanded the remit under this legislation. So not only is your privacy rights, Madam President, being affected by the amendments that we are dealing with and the removal of the sections 4 and 5, what is also at stake is property rights. Property rights are breached in this legislation that is before us. What is also at stake is our freedom of expression. That is also at risk and at stake with what the Government is attempting to do here. This is an assault on our democracy and every journalist, every member of the media, every media house in this country, whether you be print, radio or you are television, all of these media houses are going to be in trouble with this piece of legislation that we are being told does not infringe on the people's constitutional rights and freedoms.

Madam President, what is also at stake in this legislation is what I call "ah Gestapo court". It is a secret court.

Madam President: Sen. Mark, let me caution you a little bit and perhaps all who are going to speak on this matter should listen. You are re-debating the entire Bill. You need to confine your observations to the amendments that are before this House. Okay?

Sen. Mark: Madam President, may I seek your guidance again? The Attorney General of this country spoke and we are dealing with sections 4 and 5 of the Constitution.

Madam President: And Sen. Mark, I have given you tremendous leeway in your contribution thus far but I think I have to caution you now and for all those who are coming after, this is not a re-debate of the amendment Bill.

Sen. Mark: Yes, Madam President, I understand it is not a re-debate. What I am saying, in my response to the Attorney General in piloting these amendments. is that when we look at what is being deleted and what the Attorney General is referring to as cases to bolster his submission here today, I am submitting to this Senate that there are many other cases that would bolster our submission to this honourable Senate today. Because if you are going to remove these very important insertions as it relates to the certificates of the three-fifths majority, may I remind this honourable Senate, through your good self, that the United Kingdom and Trinidad and Tobago are two different societies when it comes to constitutional supremacy versus parliamentary supremacy.

So when we go and we are being told that this has taken place in that society in the instance that we are discussing, I would like to bring to your attention, even in a country where you have a parliamentary supremacy, we have a case that bolsters what I am advancing to tell you that the amendment that we are dealing with here and now, that to remove the three-fifths majority because of the invasion of your privacy through interception of your communication was in fact addressed some time on the 13th of September of 2018 by the European Court of Human Rights when it issued a judgment in what is called *Big Brother Watch and Others v the United Kingdom*. This was a judgment that dealt with Article 10 of this convention and it dealt with Government of the United Kingdom introducing and invading the spaces through mass electronic surveillance the communications of citizens of the United Kingdom and this matter went to the European Court of Human Rights and it was struck down as illegal and unconstitutional in this very important case called *Big Brother Watch and Others v the United Kingdom*.

And in this case, Madam President, which I am using to strengthen my

opposition and our opposition to these amendments, the European Court of Justice indicated in their judgment that the law at that time, that is the RIPA—that is almost the similar kind of legislation that we are dealing with now—they had it in the United Kingdom and that was struck down. They called it RIPA. And the European Court of Human Rights stated that this mass surveillance—that is what we are getting involved in here now—violated the rights to privacy and freedom of expression of the citizens of the United Kingdom and that law, Madam President, was struck down. It was said it was illegal what they were doing and what this Government is seeking to do is exactly what was struck down as being illegal and unconstitutional, and it violated the human rights of the citizens of the United Kingdom to what is called their rights to privacy as well as their freedom of expression. That is contained in what is called Article 8 of the European Convention on Human Rights and that convention states, among other things, that everyone has the right to respect for his private and family life and his home and his correspondence.

11.30 a.m.

So what this is telling us, Madam President, is that yes, we agree that no right is absolute, Madam President, no right is absolute. But Madam President, if you are going to abridge, if you are going to violate, if you are going to compromise and undermine the rights of our citizens, you must do it properly. Come with the requisite constitutional majority and not because, Madam President, you do not have the three-fifths majority because the people of this country voted the PNM as Government with 23 seats and gave us 18. So, Madam President, you cannot be against the masses for their choice. But what the Government is bent on doing, Madam President, is overturning or attempting to overturn the democratic

decisions of the people to freely choose their Members of Parliament. That is what the Government is attempting to do in these amendments here.

Because to tell us today, Madam President, that because the Opposition said they were not supporting the measure, you took a decision—when I say “you”, Madam President, the hon. Attorney General I am speaking to—he took the decision, the hon. Attorney General, to get what he called an “independent legal advice” from a gentleman whose name he has called. And up to now, Madam President, nobody in this Senate—I am sure, Madam President, you have not seen that constitutional advice and you are the Presiding Officer of this honourable House, but we are being asked to go on what the Attorney General tells us, and tell us who voted, and who voted for, and who voted against, that we must accept his word, Madam President. How can that be real? As I said, Madam President, this is not legal trickery that we are involved in here, we are not engaging in parlour politics. This is dealing with life and death.

Madam President, when your communication is intercepted by someone who you do not know, Madam President, by some so-called authorized officer, who you gave no authority to record your conversation or to snatch your emails from your computer or your iPad so that they could “maco”, or they can in fact view what you have said, and what you have done, and who you have communicated to, and what you have said. Madam President, that is an invasion of one’s privacy, Madam President, and the Attorney General knows it, he knows it, Madam President. But yet still he comes to this Parliament, Madam President, and giving the impression to this country and to this honourable Senate that what he has done is constitutional, what is being proposed is proportional, what is being done is rational, what is being done is legitimate. Madam President, he is right you

know, he is right. This matter will not end here, Madam President. It will not end here.

Madam President, we are a Senate, Madam President. We sat in this honourable Chamber and we debated something, Madam President, we debated a Bill. We are the decision makers of our Parliament, and therefore I have the greatest respect for this constitutional lawyer called Mr. Fyard Hosein. I have the greatest respect for him, but, Madam President, can you expect us to abdicate our role as Members of this Senate because one lawyer, one Senior Counsel told the Attorney General, Madam President, that what we pass in this House is unconstitutional, literally. There is no need for a three-fifths majority and therefore we are being advised by the Attorney General based on this gentleman's legal submission that we, 31 of us, must bow to the superior wisdom—

Madam President: Sen. Mark.

Sen. Mark: Madam President.

Madam President: You have five more minutes.

Sen. Mark: Thank you very much, Madam President. So, Madam President, this is totally unacceptable. We cannot accept what the Attorney General is proposing. It is dangerous—and Madam President, we cannot go further than these amendments. But, Madam President, I would like you to recognize an emerging trend when it comes to the Government removing the special certified inserted constitutional three-fifths majority. This thing is now becoming a habit on the part of the Attorney General, because he wants to have his own way. Madam President, he cannot stand opposition. Madam President—

Madam President: Sen. Mark, you are personalizing the Attorney—yes.

Sen. Mark: All right, sorry, I withdraw that, Madam President. The hon. Attorney

General, all right, I withdraw that. Madam President, so I have a few seconds left.

What I would like to say, Madam President, we are not prepared on the Opposition, to accept blindly any submission made by any Senior Counsel. He could be the brightest bulb in Trinidad and Tobago, we are not prepared to accept blindly, any submission made by this particular Senior Counsel with the greatest respect. I can get a Senior Counsel right now, and I have one waiting to show that this measure that we are dealing with right now, Madam President, is unconstitutional and illegal.

So, Madam President, having looked at these authorities, Madam President, I have looked at the one that I shared with you a short while ago, but Madam President, apart from the one I just spoke to you about, there is another very important judgment that came out of the United Kingdom and it dealt with what is called *Big Brother Watch and Others v The United Kingdom*, Madam President. That again, Madam President, dealt with the invasion through interception and a breakdown and a breach of human rights of the citizens of the United Kingdom.

And again, Madam President, these are two important cases that we are bringing to your attention, *Malone v United Kingdom* as well as *Big Brother Watch v The United Kingdom* to show you where the European Court of Human Rights or the same interception of communication legislation ruled that the law that invaded those citizens' private spaces, were illegal and unconstitutional, Madam President. That happened in Europe; that happened in the European Court of Human Rights, Madam President.

So, Madam President, we have provided to this honourable House, our submission. We have given you references to two important cases, *Malone v United Kingdom* and *Big Brother Watch v The United Kingdom*. And, Madam

President, one of the things I want to tell you, in the United Kingdom that they did after those judgments, they have established, Madam President, what I call robust safeguards for the citizens of the United Kingdom against potential misuse and abuse of this Interception of Communications Act.

In Trinidad and Tobago, Madam President, there are no safeguards put in the legislation that is now being reduced from a constitutional majority to a simple majority. There are no robust safeguards in place to protect journalists, to protect lawyers, to protect parliamentarians, Madam President, so I have made my case. We cannot, we will not support these amendments that the Government has tabled here and I served notice on the AG, I told him yesterday we are just awaiting them to sign off on this measure and you will meet us in court. I thank you, Madam President. [*Desk thumping*]

Madam President: Sen. Richards.

Sen. Richards: Thank you, Madam President, for recognizing me and allowing me to make a brief interjection into this Bill to amend the Interception of Communications Act, 15:08. And let me start by saying I am certainly not an attorney-at-law nor a constitutional expert in any way, so the issues that have arisen regarding this in terms of the delivery from the hon. Attorney General and certainly followed by Sen. Mark, have raised quite a bit of interest in my mind, and the debate is specifically on clauses 2, 5, 6(b) and, 7, and of course the Preamble. So I will narrow my contribution to those. And I will say that the issue of the special majority—needed or not—and the fact that the Attorney General went to quite pains to outline his argument in terms of the advice he has gotten from Mr. Fyard Hosein, to me, underscores what I would support in terms of Sen. Mark's call for the opinion by Mr. Hosein to be provided for us to take a more clinical

look at it, because we may have different interpretations, though I am not an attorney, but certainly there are attorneys who may be willing to look at it and have a particular perspective of it because of the gravity with which the hon. Attorney General presented that aspect in terms of his opinion on the relevant issues. So, I would petition respectfully if the Attorney General could also provide that so we could take a look at it in terms of making up our own minds as to whether we also interpret it in the same way.

I will say however, that in today's present context even within the limited remit of the clauses that we are debating today and the Preamble, 2, 5, 6(b) and 7, the issue of privacy and privacy rights in the context of prison communication and inside of prisons and in prison vehicles is a no-brainer around the world. However, a lot of emphasis has been placed on the issue surrounding the warranted requirement—the requirement for warrants sorry, in addition to the judicial overview and oversight in terms of applying to judges or judicial officers for those warrants, and very narrow remits upon which those warrants are presented or approved.

In particular, the UK, I was able to get quite a bit of information even in the first debate on this which was much wider in terms of the protections offered to the individuals who are the subject of these warrants, in terms of the admissibility of the evidence, the duration of the warrants which I have not seen mentioned in these amendments. In many cases they limit it to a specific time frame, three months or six months because of the possibility for abuse in many jurisdictions.

In addition to the protections offered to—and yes I will declare my interest—media practice, journalists, who as I would have mentioned before, should not be initiating communication to inmates inside of prisons or in vehicles

which could compromise the security arrangements for keeping those inmates because they may be unwittingly drawn into communication that may be facilitating criminal activity without even knowing it.

So I am totally on board with the protections where that is concerned, but there must be specific and stated exemptions for journalists working in the public interest who may be working, who may receive information, may not have solicited or initiated that information, working to unearth atrocities inside prison walls or inside of prison vehicles where we have known that atrocities take place. We have heard several allegations about prisoners or inmates being beaten inside of prison vehicles and behind prison walls. So I think it is quite justifiable that in some instances with the proper oversight that journalists should have certain protections when it comes to communications that come to them in a legitimate form, not breaking the law, not they initiating or breaking the law, but certainly in the public interest. And of course the issue which is covered in the Bill in terms of legal professional privilege.

There is also another overriding issue when it comes to privacy and that is the commercial aspect of it and I know my colleague Sen. Vieira is more of an expert—I am not an expert—is an expert in this regard, where trade secrets are concerned and have we gone far enough in terms of that. And I hope the Attorney General can address that in terms of his winding up when he is presenting his winding up.

And also the issue of even in these clauses that we are debating today, what is described in best practice, the Council of Europe Budapest Convention on Cybercrime and international and regional trends and best practices, is the issues related to communication involving data and information about children, and how

that should be treated with and dealt with in terms of the protection. I know we have our Children Act, but when it comes to information from inmates that may be intercepted that may involve information about their children and that information will be sensitive because they are communicating though illegally outside, that information will be captured by the interceptions, and that should be protected in an outright manner in the clauses in the Bill. And I have not seen that even wider than the 2, 5, 6(b) and 7 as outlined in this proposed amendment.

Madam President: Sen. Richards, just based on what you just said, I really have to caution that we do not go beyond the parameters of the amendments that are before us.

Sen. Richards: I am guided, Madam President, thank you. In specifically dealing with 6B, in the revised presentation today and I really have to say that I have some concern with the—and I am quoting:

“6B. (1) Communications within a prison or a vehicle used to transport prisoners may be recorded by an authorised officer.”

And I did not see a reference as to the rank of the officer. And I know there are other parts of the Bill that would have identified the Commissioner of Prisons identifying that officer, but I think it should be made clearer unless I missed it. I apologize if I did, and yes, in part 6B:

“(4) Notwithstanding any law to the contrary, communications referred to in subsection (1) are not subject to legal professional privilege, unless the communications occur within such places within a prison as may be specified by the Minister...”

And I am trying to figure out what the intention is there. And I think while as Sen. Mark indicated, no right is absolute, I think professional legal privilege unless it is

identified as breaking the law, should be protected zealously.

In conclusion, Madam President, I think the overriding comfort I would have with this even in the absence of clarity on whether or not a three-fifths majority is required, is the provisions that have been outlined where judicial officer and warrant are mandatory, and I would be very loath to commend this to my approval in the absence of those. They are provided for in some measure, and I am hoping the Attorney General can elucidate that more upon his winding up. What circumstances is he referring to because he mentioned this in his delivery in terms of he mentioned “warranted” or “unwarranted”, and what circumstances would be unwarranted. And if he could comment on the retroactivity of this in the interest of the cases that he cited in a cursory manner that may or may not collapse in the absence of this kind of legislation.

So, those are the kinds of clarity and once again I petition for the—if he could find approval in providing the document that Mr. Hosein gave his opinion on. And with those few words, Madam President, I thank you.

Madam President: Sen. Deyalsingh.

Sen. Dr. Deyalsingh: Thank you, Madam President, for allowing me to partake in this debate, on the Bill to amend the Interception of Communications Act, Chap. 15:08.

Madam President: Sen. Deyalsingh, just because I do not want your contribution to go off, we are actually just debating the amendments that are before us to the Bill. We are not going into a full debate, we did that already, okay?

Sen. Dr. Deyalsingh: Thank you, Madam President. Madam President, I must say that even though we went through this debate recently and there are new parts of this Bill that the Attorney General brought to the front, I am saying, Madam, that

yes as the Attorney General did mention there is a need for this Bill, there is a need for the interception as we see worldwide, globally, there was the disclosure by the Minister of National Security before, of the fact that even in United States certain areas there was a need to go after the contraband phone use in prison. And even there, there were problems to cement this piece of legislation, to attack this problem.

So, as I look at these new pieces here, I realize it is really trying to cement what we did before to ensure that—the Attorney General mentioned the fact that he has gotten certain opinions from esteemed attorneys and because of that opinion there may be some loopholes or some areas where there are sections which may be challenged. So it seems that clauses 6 and 7, you know, we are looking to see how could we cement what was passed before. And it reminded me, Madam President, as a cricketer who came out to bat and when he is batting he realized he forgot his pads. So very quickly you have to put your pad on to prevent any sort of damage. So I am saying that in this case, you know, we hope that these pieces that we are looking to amend will in fact assist us in managing this Bill.

Madam President, I must say I looked at the fact that, you know, the interest of public safety and security is needed, and the balance between the public interest and safety in—and you are balancing that with the privacy issues and we saw the need for that. I listened to the contribution of Sen. Mark where he made mention that sometimes it may be like a—he mentioned Hitler, and the fact is that there is a concern that the legislation may, you know, lead to some abuse of power. There may be political mischief afoot and he did mention to that. And I quote Lord Browne-Wilkinson who even mentioned:

“The dossier of private information is the badge of the totalitarian state.”

So therefore, there are concerns that, you know, we may not be able to challenge this Bill if these pieces of legislation are passed today. It may further give a hindrance to persons out there who are waiting in the wings to say, “Well, this piece of legislation is really a piece of legislation that goes against our Constitution”.

Be it as it may, the fact that the AG went at pains to say that there are safeguards in this legislation, Madam, safeguards and he made mention to the fact that there is a judge who would have to hear this evidence to see if it is admissible. He made mention to the fact that police officers would be, you know, evidence gotten by police officers and I heard my fellow Senator, Independent Senator Mr. Richards make mention to the fact, what rank of police officers? So even though the Attorney General gets comfort that here is a judge now going to look at this evidence, yes, that it is police officers and we need to clarify the rank as Mr. Richards said.

I still am not getting comfort in this matter, because, Madam, if you realize, if you are thinking the logic goes political mischief, we had someone in the past who was a judge one week and then ended up being a Member of Parliament. We had police officers up to recently who I am seeing, high ranks, who have ended up putting themselves up for candidates for a political party. So you may have the concept here that yes, you have safeguards in but then those persons there who are there to administer this law they may—the past has shown that questions arise about those persons. Even when they were in office may have political ambition and may misuse this piece of legislation. So we have to really ensure that this piece of legislation is not misused by persons who we think are independent and really did not show their spots yet.

So, I look at the fact that under proposed section 6A, that the idea that prisoners will now have to be notified that they would be under surveillance which is—that is good law, you have to notify me that if I am in a prison, my phone may be used as evidence. But what I am saying even this, you know, if I am now in prison, Madam President, I would now use a new way to get my information out, because here I am totally now warned and forewarned about this. So therefore, we could be passing legislation that may be redundant in the sense that—

Madam President: Sen. Deyalsingh, forgive me but I need to caution you to look at the amendments that are before us and not to go into the full extent of the amendment Bill which has already been passed, sent to the other place, and is back here limited to the amendments.

Sen. Dr. Deyalsingh: Thank you, Madam President, but Madam President, I am just responding to the fact now that the AG made mention about the special advocate that he made mention to the fact that that was a safety, a safeguard, a measure, and clause 16 and 17A look at the safeguard. So therefore, if we are looking in response to what the AG said this morning about the special advocate, Madam President, I am thinking we have that person in that position, that person is a safeguard because we made mention of the safeguards. That person actually would be the person who would be appointed by the court. That person usually under the British system would be a person under 20 years' experience. And also what I would probably like from the Attorney General even though he mentioned the fact that the special advocate is there to assist the prisoner, I am thinking that we would need a little clarification of the fact that where would the moneys come from to help to hire this special advocate because we already see there are deficiencies—

Madam President: And Sen. Deyalsingh, no, I do not think that that at all even though the Attorney General may have made mention to certain things, the fact of the matter is in your contribution you really have to focus on the particular amendments and not raise matters that are extraneous now to the amendments. Okay?

Sen. Dr. Deyalsingh: Thank you, Madam President. So, Madam President, I would like to make mention to the fact that the—according to the clause 4A we see the need in terms of the criminal proceedings, the extradition Act, the Anti-Terrorism Act, the civil asset forfeiture, we saw that need for that. We saw the fact that even under the civil proceedings, Madam President, you do have the interception of communications already there.

12.00 noon

So I am saying even though this seeks to introduce areas where we could intercept communication, under the civil proceedings it was there already and I am just thinking this is the piece of legislation that the—and even done without warrants. So I am seeing even under section (2B), the interception of communication, you already have that without a warrant and this just gives a furtherance to the ability now, to go after these criminals, go after the evidence that they may have, the retroactivity is something that I think was made mention by Sen. Mark this morning and this is again, I think the Attorney General will probably expand on that.

So I looked at the fact that the safeguards were there, Madam, in 17(a) (b), 19, 6B(1), 6(2)(b), the admissibility of evidence, you know. You know, all the safeguards are there and even, when I looked at the fact that the Attorney General

mentioned the fact that the—he seeks—he actually sought to, you know, prevent the oyster of the courts in certain matters in this legislation.

So all those are aspects I am thinking he is trying to tie in, all those are matters I think he wants us to try and see if we could plug this legislation there, this legislation which I have supported before. And as I sit here, I am saying that if in a sense these other pieces of legislation could serve to plug whatever loopholes we had, to at least, you know, go after the criminal element or go after the cases that we have that we are unable to get at, do to help the public interest.

I am saying in such a manner, I would want to support it, however, I am still to listen to the contribution to the other Members to see if there is any sort of a danger in the retroactivity aspect, if it could be used as political mischief by the present regime and what safeguards, you know, could be put into place. I am still there waiting to listen to the debate. And I am saying, Madam President, I thank you for allowing me to contribute.

Madam President: Minister of Agriculture, Lands and Fisheries.

Sen. Rambharat: Thank you very much, Madam President, for the opportunity to contribute to this debate. Madam President, I anticipated that my colleagues would have some difficulty in being able to focus on the matter that is before us and that essentially relates to five amendments made in the House of Representatives.

I want to address two areas in particular, Madam President. The first is to say my colleague Sen. Mark, in his contribution, of course, Madam President, Sen. Mark's contribution, and now essentially comprised of the same elements over and over. We always hear about infringement, treaty obligations, human rights violations, constitutional right violations, and today we heard about property rights and freedom of expression, and it usually ends up with the Gestapo allegation and

the overthrowing of the democratic right. And in doing that in thirty minutes, Madam President, he has found little or no opportunity to focus on the amendments which have come to the house—come from the House.

He has also, Madam President, raised a question on the propriety of what is before us and what we are debating. And I just want, Madam President, to refer to four of the Standing Orders which are relevant to us. The first is Standing Order 32, which deals with the business which may be conducted by this Senate and sets out in Standing Order 32, Madam President, certain exceptions. So there are exceptions to what the Senate can do, and the most famous exception of course, is a debate on a money Bill. So, there is nothing before us today that offends Standard Order 32.

The second Standing Order I would refer to, Madam President, is Standing Order 35. And the matter of the approval of a motion for debate is a matter for the Presiding Officer. The Standing Order is very clear that it is the President that determines or approves a motion for debate. We are here on account of that, an approval. Standing Order 61 is specific to Bills brought from the House, where that Bill was laid and debated in that House. And Standing Order 61 does not apply to this Bill. This Bill was laid, debated, passed with the requisite majority and referred to House for debate there.

But most importantly, Madam President, is Standing Order 72, and Standing Order 72 is the Standing Order to guide us on what we should be doing in this House today. And Standing Order 72 requires us to consider the amendments which were made in the House. So this is not a brand new debate on what we debated before. You do not get a second bite of the cherry. And I do not anticipate anything different from my friends on the Opposition Bench. They voted against

the original Bill. So we do not expect support on this one in any form or fashion. But we expect knowledge, understanding, appreciation and most importantly, respect for the Standing Orders.

And Madam President, Standing Order 72(3), very specific, when it says that when the Senate proceeds on the consideration of the House amendments, each amendment would be considered. And it is only the amendments which ought to be considered. And if the President believes that those amendments should be considered immediately, then that is a decision for the Presiding Officer. And if the belief is that it should be done on a later date, then that is a decision. So, we are properly here in accordance with the decision to proceed in relation to the amendments brought from the House.

And there is another element, Madam President, which I consider to be equally important and that is a provision in Standing Order 72(4), and 72(4) makes it clear, in fact 72(4) recognizes the possibility that in a Bill leaving this House and going to the other place, the House itself may make amendments which are inconsistent with the work of the Senate. The Standing Orders recognize that that is a risk that the House in conducting its duties in relation to a Bill may act in a manner which is inconsistent. And 72(4) makes it clear that it is for the Presiding Officer, the President, where it appears in the opinion of the President that amendments made in the House, are inconsistent with sections 13 and 54 of the Constitution, and inconsistent with the work of the Senate, those amendments may not be put today to the Senate.

So, Madam President, the combination of Standing Orders 32, 35, 61, 72, and in particular 72(4) tells me, tells us on this side that these amendments are

properly before this House for debate today and they relate to five matters addressed in the House.

Madam President, the second area I would address is in relation to the amendments themselves. And I have listened very carefully. Now, let me dismiss the notion of the amendment which is listed as number five, which is the insertion of a definition. I do not believe that that is objectionable in any form:

“‘proceedings’ means proceedings referred to in section 4A;”

And that is simply because from time to time we have to define, especially since we are dealing with so much criminal law legislation, that we have to define what is covered and what is not covered. In some cases we have to be specific, and you would see even in the original Bill, you would see where we had to define what are things included in proceedings. So, I do not consider that to be objectionable.

I did not hear, Madam President, so far, anyone recognizing the importance of what is proposed in relation to 6(b)(v), and 7, and that, Madam President is very important because Sen. Mark and I am sure others to come, make it sound as though we have stripped, the word “stripped” has been used, stripped the constitutional majority requirement and violated, in the words of Sen. Mark, we have infringed treaty obligation, human rights and all of those things.

Madam President, what is proposed as 6(b)(v) and 7 are really constitutional safeguards which we did not have previously in the Bill in the version that went to the House. And Sen. Richards touched on it but in a different way, by asking about the rank of the authorized officers, but I would say to Sen. Richards, the issue of authorized officer would have been addressed in the original Bill which we passed itself. But more importantly, the words which flow after authorized officers, inserted in the other place, are words that are vital to the safeguard of constitutional

rights, in so far as we are dealing with the important issue of interception of communication.

But, Madam President, I have not heard, apart from the Opposition, I have not heard, I would not say significant, I have not heard objection to this issue of interception of communication. Cause let us not fool ourselves, the prisoners are communicating. And I remember on the debate in the original Bill, I remember referring to a *Guardian* newspaper article that has not been contradicted by anyone. And in relation to 6(b)(iv), 6(b)(v) and the proposed amendment, I want to say this. That *Guardian* article, Madam President, set out in detail, communications that apparently or allegedly took place between a prisoner and somebody on the outside, which the article alleges led to the execution of the lady who was holding her son's hand outside the graduation in Santa Cruz.

That is what the *Guardian* said and I followed very closely to this day, looking for contradictions or denials and so on, and I have not seen anything. So it should be taken as fact. And this matter of, I have listened to everybody talk about constitutional rights and infringements and so on, and nobody would descend to what is a simple fact, communication devices are not allowed in the prison. So while you are busy and I made the point in the debate on the original Bill.

12.15 p.m.

Madam President: Minister, I have to interrupt you here just to say that let us not re-debate. Let us be specific to the amendments at hand.

Sen. Rambharat: Thank you very much, Madam President. Madam President, what has happened in the amendment to 6(b)(v) is that the safeguards have been inserted where the authorized officer, the person who can intercept a communication from or to a prison vehicle, or from or to the prison itself, can only

do so in prescribed circumstances which did not exist in the Bill that left the Senate, and those are important safeguards.

- “(i) in the interest of national security;
- (ii) for the prevention or detection of an offence...
- (iii) for the purpose of safeguarding the economic well-being of the State;
- or
- (iv) for the purpose of giving effect to the provisions of any international mutual assistance agreement.’.”

Those are four important safeguards. So the authorized officer is not going to be able to intercept communication from or to a prison or from or to a prison vehicle except in those circumstances which are prescribed.

The other main amendment, Madam President, comes in the proposed 7. And, again, similarly what left this House to go to the other place did not have that safeguard which is similar to what I just described, except that the communications being addressed in the proposed 6(b)(v)(i), that communication is communication within a prison vehicle or within a prison. And, again, I would say, Madam President, in relation to those wailing and crying for constitutional rights of the prisoners, that you should not have a communication device in a prison vehicle or in the prison. The only communication device you should have in a prison vehicle—I remember when I was a much younger lawyer walking to the court, and the prisoners would be screaming and calling out from the prison van, that is the only communication device. So, clause 7, the proposed insertion of language in 6(b)(v)(i) circumscribes the power of the authorized officer in relation to communications within the prison and communications within the prison vehicle.

And lastly, Madam President, consequential amendment is the deletion of

the Preamble which comes because the removal of the language which we normally insert when a constitutional majority is required has been removed on account of the deletion of clause 2 and the replacement of language relating to the proclamation.

Madam President: Minister, you have five more minutes.

Sen. Rambharat: Madam President, Sen. Richards touched on legal professional privilege, and he used the expression, it needs to be protected zealously. I have expressed my own opinion on this issue of legal professional privilege. It is something that was once described—it was one of those cloistered virtues that we call them in the profession “sacrosanct” and it has been chipped and chipped away and rightfully so. And, Madam President, it is no secret that the Commissioner of Police and other persons in the society have talked about the prospect, the possibility of officers of the court, including attorneys, being involved in conduct which is inconsistent with what the profession requires of them and on account of that, even in relation to communications between attorney and client, there have been instances in the law where that professional privilege has been interfered with.

Of course, we have different opinions of it. I have mine, but Sen. Richards talks about protecting zealously. I would just say protection to the extent that it needs to be protected so that a client can have access to counsel and be provided with the professional advice that a client requires. Madam President, I thank you very much.

Sen. S. Hosein: Thank you very much, Madam President, for acknowledging me and allowing me to rise in this august Chamber to debate on this Motion which is a list of amendments that were made in the House of Representatives to the

Interception of Communications (Amdt.) Bill, 2020. And, Madam President, normally, I listen attentively to the Minister of Agriculture, Land and Fisheries when he debates in this Parliament but today, I must say, Madam President, that he has not lived up to his standards that he usually debates in. I was very disappointed in that he made very light of our argument on this side with respect to the protection of constitutional rights and privileges, especially having spent several years in Canada where especially the rights of privacy that we are going to be dealing with here now, are being affected.

And, Madam President, I know that this debate is very limited in scope and from the outset, I will indicate that my contribution will only be restricted to the special majority requirement and the removal of same with respect to this amendment Bill. And I am going to look at it from the angle of the jurisprudence in which the Attorney General would have given to this particular Senate in the absence of the legal opinion that he did not provide to us by Mr. Hosein SC, and, Madam President, just to address a few points in which the Attorney General had made in terms of the purpose of this particular Bill.

The purpose seems that the goalpost has been shifting from the time the Bill was laid, in that we were told that the legislative aim—and we are addressing proportionality—firstly, was that we need to stop communication in the prisons. Now, secondly, we are now hearing a new argument that this Bill is required to protect intercepted communication based on representation made to the Attorney General by the Director of Public Prosecutions and Mr. Jenkins. Again, we do not have the luxury of those communications in this Senate. So we are debating this blindly based on the representation given to us by the Attorney General.

Madam President, I want to look at that argument that this is to protect the

intercepted communication, and the Attorney General spoke of the directory admissibility of the evidence with respect to intercepted communication found at clause 17 of the Bill, which he said that this Bill requires passage. Now, two points on that Madam President, is that one, the parent Act was passed with a constitutional majority, so it is even more protected in that parent Act as compared to this particular amendment Bill that we are doing. And secondly, there was no amendment made to that particular section which requires a mandatory admissibility of the evidence because it still reads that the evidence shall be admissible. So that particular argument by the Attorney General does not hold water with me, Madam President.

Secondly, we are looking at the other arguments that the Attorney General would have used in terms of *Suratt v Attorney General*, *Northern Construction v Attorney General* and *R v Oakes*. Now, Madam President, I looked at those cases, but I have also looked at the case of *Hinds v The Queen* and I have also looked at the case of—the Barry Francis case, sorry—the minority judgment in the *Francis v The State* case and I want to spend some time on that particular point, Madam President, because I think it is very critical that we look at the context of this particular debate with *Suratt*, because the Attorney General used *Suratt* as the constitutional springboard in which to bolster this particular amendment in terms of removing the requirement for a special majority.

Now, our Constitution at sections 4 and 5 provides for several rights, privileges and freedoms that are constitutionally enshrined and protected. At section 13, the Constitution outlines the procedure that if it is the will of the Parliament, the will of the people, to infringe or abrogate those rights, then the Parliament must pass that particular piece of legislation with a three-fifths majority

as outlined in section 13 of the Constitution.

Now, what does the case of *Suratt* say? The case of *Suratt* said that not all rights are absolute rights, that they are qualified rights and Baroness Hale in that judgment indicated that notwithstanding a particular piece of legislation—in that case they were looking at the Equal Opportunity Act—was not passed with a special majority—if it is proportional then it can still need constitutional muster and be protected from being struck down by the courts. That is what the Privy Council said in the case of *Suratt* and that is the principle which the Attorney General is using in order to bolster this particular amendment.

Now, Madam President, in the case of *Barry Francis v The State*, there is a majority decision given and they followed the principles as outlined in *Suratt* that there is no requirement in terms of passing the legislation with a three-fifths majority for it to be immune from constitutional challenge. But the minority judgment, Madam President, is very important in that case, because the two judges that sat in that minority judgment—

Madam President: Sen. Hosein, you are taking me back to my university days and that is way back, and you are actually doing a better job of making me understand some aspects of the law. But I need you to really, in presenting what you are presenting, you need to tailor it to the amendments. Okay? You need to. You need to get to it very quickly what you are saying about the amendments.

Sen. S. Hosein: Madam President, the argument that I want to present is that the case of *Suratt* is not applicable in this case which is the principle used by the Attorney General in bolstering these amendments, and I say that because *Suratt* cannot always be used in order to bring legislation to this Parliament without the use of a special majority, because at section 13 of the Constitution, which is the

supreme law of Trinidad and Tobago and not the Parliament, we are required to follow prescriptively what the Constitution outlines.

So what did Justice of Appeal Jamadar at that time and the Chief Justice say? They said that Suratt cannot always be applicable in Trinidad and Tobago. They distinguished Suratt on various grounds, Madam President, in terms of, they spoke of Lady Hale did not give any consideration to the context, text, policy or precedent of Trinidad and Tobago. Now, it is the same thing here, because we are asking this Senate that passed the Bill with a special majority, to now come and agree to the removal of that special majority. No amendments were put in place in order to remove the offending provisions of the Bill, but now we are asked to approve that the Attorney General and the Government declared that it was unconstitutional, is somehow now constitutional? And that is what I am saying that we cannot just apply these principles willy-nilly. You have to make distinctions and you have to look at the law, because Suratt is not the only case.

You have another case called, Madam President, *Hinds v The Queen*, which Suratt only looked at for the principle of separation of powers and not with respect to special majorities. In this case, Madam President, again, we have to make a distinction between rights that we just affect as compared to rights that we derogate from. And my submission is, Madam President, based on what is being proposed, we are derogating from rights.

In Suratt, they spoke about affecting rights. That is the distinction that the Chief Justice and Justice of Appeal Jamadar made in the Barry Francis case. And they also went on to say, Madam President, that to equate proportionality with consistency of legislation in terms of 4 and 5, you cannot do that, because you have section 13 of the Constitution which you are required to follow. Now, Madam

President, I want to look at—

Madam President: Sen. Hosein, so you have given all of that information analysis, please apply it to the Bill. Tell me, at least, why what you are saying is relevant to these matters at hand.

Sen. S. Hosein: The relevance of this, Madam President, is to say, firstly, Suratt is not applicable. I am using the argument of *Hinds v The Queen* whereby the Privy Council said that we have to pass the legislation with the special majority. Now, let us just presume that if this Bill is challenged, that the court does not accept the argument of the section 13 majority and they go on to follow the principles as outlined in Suratt, just as the Attorney General did the balancing exercise using the principles as outlined in the Northern Construction case, I too would like to balance that and I make the submission to you and the hon. Senators in this House is that this legislation is not proportional. It is not proportional to the legislative aim. The Attorney General argued otherwise. Now, the three principles we have to look at when exercising—

Madam President: Sen. Hosein, I know you have limited time, but simply saying that, you are still continuing your little mini lecture on law. What in clauses 2, 5, 6(b)(v) and (7), please tell me—relate all that you are saying to these clauses please, Sen. Hosein.

Sen. S. Hosein: Madam President, I am outlining the law. I am going to then apply the law to the facts and then I am going to conclude. And, Madam President, if I am given the opportunity, the legislative objective of the Bill, as outlined by the Attorney General, which is the first prong that we are examining in the Northern Construction case, what is the objective? The objective is for national security. It is a fight against criminality. It is to stop communication between prisoners and the

outside world. So we are good with the objectives. Let us look at the measures, because Northern Construction asked us to look at the measures being used. The measures being proposed by the Bill, a warrantless interception, you have the use of special advocates. You have the intrusion of privacy in terms of persons looking at private communication. So let us also examine the rights that are going to be—

Madam President: Sen. Hosein, okay, you need to be specific to the amendments that are at hand, please.

Sen. S. Hosein: Madam President, with all due respect, I do not know if I am making myself clear enough.

Madam President: I always get nervous, always get nervous when a Senator starts up by saying, “with all due respect”. I hear you. I am asking you to tighten up your contribution.

Sen. S. Hosein: Madam President, I am not disobeying your ruling. Just permit me, if I may explain, that in order to determine proportionality, we have to examine what is being proposed. If I am standing here and just saying that the measures are not proportional, I am not doing my job. What I am saying is that you have to look at what is being proposed in the legislation, measure that against the legislative aim in order to determine the proportionality, and that is what I am doing. I am looking at all of the measures outlined very briefly and succinctly, because I do not want to go back into the second reading of this Bill, and that is what I am doing, and I also want to look at the rights that are going to be touched, because it is not one right is being breached. You have the right to privacy, section 4 and 5 rights, you have the right to a fair hearing, you have the right to protection of law, you have the right to retain and instruct without delay a legal advisor of his own choice and to hold communication with him. Now, Madam President, those

are about five rights that I just indicated there that will be breached with this particular piece of law, and then you are going to measure that now by saying this is proportional to the legislative aim?

Madam President, there were over—and I am just going to give one example—500,000 intercepts in one year with five arrests. So the question is whether or not we are taking a hammer to kill an ant, because that is the balancing exercise we have to perform. Whether or not what we are doing here is more than necessary. Let us look at whether or not it is more than necessary. Can we find another way to stop communication in the prisons? Yes. Is this Bill only applying to criminals? No. Is this Bill applying to every citizen of Trinidad and Tobago? Yes. So you cannot say your legislative aim, when looking at proportionality is to deal with the prisoners when, in fact, this Bill intercepts communication from every single citizen without a warrant and it is now being made admissible in a court of law.

When you look at the requirements of a warrant, you have to show the court that it is the court of last call. You must have exhausted all other investigative measures. This is now going to be the first port of call. So it is a direct intrusion in terms of the rights and that is why I am asking that this Bill, the special majority should not have been removed, because it is an unconstitutional piece of legislation, Madam President.

Madam President: You have five more minutes.

Sen. S. Hosein: Thank you. So, just to recap, one, Suratt does not apply because we are looking at the Barry Francis case, and even if Suratt applies, Madam President, we are saying that the legislative measures are too heavy in order to attain the legislative aim, Madam President, and these are the facts that we have to

look at. This Parliament cannot and will not be used as the Cabinet. That is why we have—this is a defining moment in our history, Madam President, where we are standing here where a Bill left here with a constitutional majority and came back to us with a simple majority.

Madam President, this Government is out of control. This is not a democratic state anymore. This is turning into a dictatorship, Madam President. We have constitutional protections and privileges here that are being ignored by the Executive [*Desk thumping*] and you cannot expect us here in the Opposition who took an oath of office to allow this to happen, Madam President, [*Desk thumping*] and that is why there is also an additional layer, so that in the event that this Bill leaves here—and we are saying that it is intruding on constitutional rights of ordinary citizens—the court, Madam President, will have to make the ultimate determination on whether or not this particular piece of legislation is constitutional. And with these few words, Madam President, I thank you very much. [*Desk thumping*]

Sen. Vieira: Thank you, Madam President. Madam President, we are now in the extraordinary situation of trying to salvage necessary and important legislation on a simple majority. It would have been really nice to have had the three-fifths majority needed, but since that is not the case, really the question for us today is whether the amendments brought, whether the Bill will hold water without the three-fifths majority, and I think the answer to that is going to turn on whether the rights enshrined at section 4 are being abrogated or not.

Now, the amendments really are dealing, in the main, with the communications of prisoners, prisoner interceptions. It is trite but worth repeating that prisoners' rights are already curtailed when they are imprisoned: their liberty

and freedom, family life and privacy. The question is, if we as a Senate are aware that prisoners have and are hatching plans to commit nefarious crimes, including murder; can we ignore the pleas of the DPP, the pleas of the law enforcement, the pleas of Government to try and bring in legislative measures that will address that concern? [*Desk thumping*]

Should prisoners have an expectation of privacy when caught out in conspiracies to commit crime? [*Desk thumping*] Should prisoners have an expectation of privacy when making surreptitious and unlawful communications whether by phone or by text? When prisoners are aware that their communications are being monitored, should there be an expectation of privacy? I think not. As far as I am concerned, prisoners' rights were restricted by due process of law, and I do not see any deprivation of the fundamental rights and freedoms that would require a three-fifths majority where that is concerned.

The other point that has come up is really, are citizens at large also going to be affected? Well, the amendments and the parent law speak to the rights of privacy and the interest of national security. Well, I have no doubt about it, we are a country that is in the throes of serious crime. This very Parliament has been the subject of terrorist activity. We know of organized crime in all its forms and fashions. We know of eminent people, past Members of this Senate, who have been killed down, gunned down, assassinated by organized crime. Are we to turn blindly and say, well, the rights of the individual trump all of this, national security must take a back seat to that?

The Constitution speaks of the right of the individual to equality before the law and the protection of the law, and I think that is what I am going to focus on, because at the end of the day, it is always going to be about a balancing of rights.

But what really reigns supreme is the Constitution and the rule of law.

Now, another thing, when the Constitution was drafted in the 1960s, rights of privacy operated in an analogue world. We did not have—the framers of the Constitution did not anticipate all these new technologies. When they talked about issuing warrants, they were issuing warrants in a physical world. They were not anticipating about information not being stored in a desk drawer but in the cloud. So how do we translate? How do we adapt those values in this brave new world? This is an evolving situation. You cannot read the Constitution like it is some sort of sterile slab of stone. It sets out key principles, but it is a living, breathing document; it evolves. We have to evolve with the needs and circumstances of the time.

I have said it before and I would say it again, in Trinidad and Tobago we do not have a privacy law. The protections for privacy bind Government, but they do not bind private citizens. I have seen this legislation actually as a step in the right direction by providing some sort of privacy in the digital age. And, again, we are talking about privacy, but privacy is not an abstract thing. When we come into this building and they scan your bag or you go into the airport and they pat you down and they search you, when we are driving on public roads and there are cameras everywhere, the fact of the matter is, privacy in the 21st Century has been very impeded when it comes to movement in public places and spaces.

So, again, what is necessary? What is proportionate? Coming back to the point of this legislation, what is really an issue here? We know the technologies are already in use. We do not have any doubt that they are surveilling, they are eavesdropping, they are listening, they are taping whoever they want to tape. The question is really about whether that information can be used in evidence. That is

what this is about. It is about the admissibility of evidence. And, again, I come back to the rule of law point that what this legislation is about, is about setting up a framework for the other power in the separation of powers, for the Judiciary to weigh and consider whether this is admissible evidence or not.

We come back to the equality under the rule of law. I think that these amendments are trying to find the balance between private rights and the need to combat criminality and terrorism. And, again, it is going to be an evolving situation. What kind of surveillance activity should trigger privacy protection? There is a separation of powers. Our function is to bring the laws. That is not for the courts. The court's function is to interpret and to give enacted laws their fair meaning, whether those laws are ultra vires or vires. It is for the courts to make those determinations, but it is for us to set out the framework for the courts to consider and rule on whether rights have been affected or not.

12.45 p.m.

I see the provision of the special advocate as actually an attempt to balance competing and complex interests in a very novel and emerging situation with new technology, serious crimes. How do you weigh the rights of the individual against the national interest? Ultimately, this is a rule of law issue for me and I think the amendments seek to strike a fair balance between the interest of national security and crime prevention on the one hand and the privacy of citizens on the other. The rights enshrined in the Constitution set out fundamental principles but they are not cast in stone, they allow for flexibility under the rule of law and the due process of law. We bring the laws, the courts will consider whether the evidence is admissible or not. This legislation is subject to and it is all about the rule of law, procedures to safeguard and protect the rights of the individual at trial, the admissibility of

evidence and for tribunals to consider the prevention or detection of criminal offences and safeguarding the economic well-being of the State. The rule of law means equality for all, no man is above the law. It is not just about judges and lawyers, but it is an intrinsic part of the freedoms and capabilities of us as a people.

Whether the legislation is going to be considered vires or ultra vires, that would be for the courts to consider by looking at the wording of the amendments against the Act as a whole. In my humble opinion, the amendments in the parent Act recognize the rights of the individual, to respect for his private life by establishing measures and procedures for those rights to be judicially considered and dealt with under due process of law on an equal footing before the law and with the full protection of the law; that is what this is about. We are not taking away rights. In fact, the accused's right to a fair trial is being upheld. The special advocate is there for the purpose, it is for the benefit of the accused, so on that basis I do not see the need for a section 13 requirement. It would be nice to have—I really would have liked for all of us in this Senate to have been unanimous in supporting the legislation because we need it. It is necessary, it is just and it is proportionate. Nice to have but not necessary. I thank you. [*Desk thumping*]

Madam President: Sen. Haynes.

Sen. Haynes: Thank you, Madam President, for the opportunity to join in this very important debate on the Interception of Communications (Amdt.) Bill. I have noted your rulings before and I would be very relevant to the amendments. I am also raising my point in the context of the removal of the three-fifths majority, Madam President. I just want to start off in my contribution here with a quote from Thomas Jefferson, which is:

“He who gives his freedom for safety gets none...”

And I listened to the contribution by the hon. Minister of Agriculture, Land and Fisheries, Minister Rambharat, who in his contribution stated that, you know, people here are fighting for the constitutional rights of prisoners, Madam President, and I have a sense of where this debate will go after; I have a sense of what is happening right now. But I just want to, as we all contemplate, and I listened carefully to Sen. Vieira who spoke about what privacy means in the 21st Century and the concept of data, and in previous debates, I have had cause to discuss what that could mean for us, those of us who are sitting in the legislature now, crafting laws about concepts that we cannot even fathom what it may really mean.

Madam President, but in this particular piece of legislation, while the focus here is saying to the nation that there are prisoners, persons in prison communicating with persons on the outside and we need to put a stop to this, and by intercepting this communication, this is the way we are going to put a stop to it. Because to my understanding, the electronic devices in the prison are not allowed; you are not supposed to have them. So are we admitting defeat? Are we saying to the nation that persons who have been convicted and are in jail, who are not allowed to have access to these devices, while they have access now, we are going to bring a whole new piece of legislation and find a way to implement this legislation even though we cannot implement the rules as they are now. That is what we are saying to the population. Madam President, I was discussing with some persons before coming here and talking about why this Bill requires a three-fifths majority. I have had cause in this Parliament before to say that my fundamental belief in the way governance is supposed to be is that we require smaller, less intrusive governments, but more effective governance. That is the way I think about how governance is supposed to work.

This administration has been time and time again increasing government's power, via legislation, without becoming more effective. So is it by telling the population that you are going to pass this legislation and somehow, like magic, you are going to become effective, Madam President? And that where I really find flaws in what the Government is telling us here today. You are telling us that after four years with the legislation, with the power that you have, you have not found a way to be effective, you have not found a way to effectively protect the people of Trinidad and Tobago from criminals but with this law, you need this law to be effective, but you are not allowed to have these devices in prison anyway. So I cannot see, Madam President, I really cannot see where this idea that we are at war with criminals and we need all the tools in the arsenal to be at war. We can agree with you but what you have to be is effective, Madam President, and the passage of legislation upon legislation, giving more power to an ineffective Executive, it just simply will not work.

I am going to ask the Attorney General, I am going to put a scenario forward and I just want to know how it plays out once this legislation is passed. My phone number, my personal cell phone number—I have just one—is in fact public information. It goes out on press releases, it goes out on correspondence—

Madam President: Sen. Haynes, before you put that question to the Attorney General, let me put a question to you, you have certain amendments. The Bill has been debated, went to the other place, debated there, it comes back here with certain amendments, so you know we are not dealing with the entire Bill. Can you, therefore, whatever question you are putting, be specific to the amendments that are before us?

Sen. Haynes: Yes, absolutely, Madam President. So it is, like I said, dealing with

the removal of the preamble and the three-fifths majority, and the reason I am asking the question is, this is one of the reasons why I felt as if the Bill required that threshold of having a three-fifths majority. So that is the reason I am posing the question. Given that my number is public information, and also to note that this question of whether or not the conversation is on protecting the rights of prisoners, I want to show how those of us who are citizens, who are law-abiding citizens are in fact also impacted, and therefore, the higher threshold is required.

My phone number is public information. Someone within the prison system, due to not being able to manage the system as it ought to be, is in possession of an electronic device, and calls my public phone number, engages with me— I do not know who I am speaking with— am I in fact caught within this legislation, Madam President? Because it is all well and good for us to say that we pass laws to get bad people, criminals, all the people who did something wrong, but you only have to look around the globe today to understand that by all the good intentions in the justice system and in legislation, sometimes people who did no wrong could get caught on the wrong side, and therefore, legislation is meant to be—the process is meant to be slow, deliberate, you are meant to contemplate all of the eventualities. It is supposed to be a painstaking process because we are talking about the rights of citizens.

Now, Madam President, to be very careful not to re-debate the legislation, but especially when you are talking about that concept of stored data, and I am not going to go into it in any detail, but if you are talking about being able to access stored data, in my mind, you must need a three-fifths majority, Madam President, simply because I have had a cell phone since I was in secondary school. I have a nephew who is not yet 10 years old and he has electronic devices. This concept of

stored data in just a few years can mean our entire lives. It could be the equivalent of having had somebody follow me around for the entirety of the time that I have existed in the electronic world, Madam President. I do not know what that means to any other citizen but to me, to people in my generation, that is an increasingly scary concept that you could, by no fault of your own, get caught in a legislation that allows somebody to go into communication that is the entirety of your electronic life. And if we did not understand it before, after the COVID-19 situation and pandemic, where most of us who, if you were not existing in the online electronic community before, you are certainly are now, Madam President. If it did not mean something to you then, it means a lot to people right now.

So, Madam President, Sen. Hosein did an excellent job in talking about what this means in the context of a democracy and we are still, as far as I am aware, a democratic state, but let us not take this legislation in and of itself just as an isolated incident. In 2017—that would have been our first year here in the Senate—we debated—sorry, 2018, the removal of the SSA from under the Freedom of Information Act, and I said in that debate a lot of the things that I had to say here today, which was to caution our Government to continue to remove checks and balances, to continue to give unto itself more and more power without showing citizens how it can be effective. And balancing our rights and Government power where we are living in a state where people are afraid for their lives, Madam President, where we are afraid of crime, but to tell us that this legislation is a solution, I think is unfair to the citizenry.

As I close, Madam, President, I want to point out what we are discussing here today has an impact on us that we may not even be contemplating right now effectively as a Parliament because we do not know what it could mean as far as

just one year in the future. The constant narrative, Madam President, that as an Opposition we opposed for opposing sake, I know will find its way into this conversation. I want to make it very clear to the population of Trinidad and Tobago that where legislation, however crafted, affects the rights of citizens of Trinidad and Tobago, we as an Opposition will stand in firm defence of the rights of the people of this country, Madam President. [*Desk thumping*] And while we understand that crime is our problem and a serious problem in this country, I will say it again, there are ways to be effective without eroding the rights of the citizens of this country. I thank you, Madam President. [*Desk thumping*]

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

Sen. Chote SC: Thank you, Madam President, for the opportunity to contribute briefly on the proposed amendments to the legislation which is before us. As I understand it, according to Appendix II of the attachment to the Order Paper which we received yesterday, we are looking at subsections 2, 5, 6(b)(v), 7, and the preamble is being deleted. Now, I find myself in a state of some confusion because when the legislation, without the amendments proposed, had been brought before the Senate, it was clear—and the hon. Attorney General had said it then—that a three-fifths majority was required. I understand that when it went to the other place, a three-fifths majority was not obtained. So this is the first time, since I have been sitting as a Senator in this honourable House, that I have had the opportunity to look at a Bill which returns to the Chamber for the third reading and it returns with proposed amendments, apparently not having been contemplated before.

Now, I have heard a lot of talk around issues which, with all due respect, I do not think ought to be repeated. So let me put aside for the consideration of those who may be viewing or who may be listening, we already spoke about the level of

crime, about prisoners making calls from prison, about section 13, and proportionality and reasonableness, and all of the things which carry emotional appeals to us. As Senators, we are required to look at particular proposed amendments to this legislation. Now, the one thing that is not being said here but it appears as though this is what is being asked of us, is that when we come to vote on this, that a three-fifths majority be the vote of the House. I would respectfully say that I cannot appreciate or I do not accept the logic behind first coming to us and asking for a three-fifths majority, going down to the House being defeated and then returning to us asking for a three-fifths majority. I do not appreciate the explanations so I do not understand, perhaps they are beyond me; perhaps I do not understand the explanations given for this. I call it what it is, a turnaround, and with all due respect, I do not appreciate that sort of practice.

When I look at the proposed amendments I have to say, and forgive me for speaking with a certain amount of passion because I had really not intended to—I have never spoken on the third reading of a Bill, so this is my first time. So let us look first at the proposed amendments. The Bill says in clause 5 that there will be a new word inserted after 4A, that is to say the word “proceedings”, but the bite of that comes in section 4, because the Act is being amended to:

- “4A (1)
- (a) criminal proceedings;
 - (b) proceedings under the Proceeds of Crime Act;
 - (c) proceedings under the Extradition (Commonwealth and Foreign Territories) Act;
 - (d) proceedings under the Anti-Terrorism Act;...

- (e) proceedings under the Civil Asset Recovery and Management and Unexplained Wealth Act, unless the trial has commenced and is in progress on the coming into force of this Act.
- (2) For the avoidance of doubt”—and this is quite a significant thing—“a trial is deemed to have commenced after the evidence has begun to have been led.
- (3) For the avoidance of doubt, all communications data obtained by a constable prior to the coming into force of this Act and lawfully obtained pursuant to sections 32 or 33 of the Proceeds of Crime Act, or section 5 of the Indictable Offences, (Preliminary Enquiry) Act shall continue to be admissible into evidence.”

Let us remember one thing, and perhaps we need to be reminded of this, this Act was initially brought to make it easier for evidence to be admitted in the courtroom. We forget though that unlawfully obtained evidence was always admissible in our courtrooms depending of the discretion of the trial judge taking all things into account. The purpose of this Act was sold as saying, “We are protecting your rights because we are regulating the manner in which such evidence can be used. It can now be used if we can show that the persons collecting the material, collected it in accordance with the Act”, and it is in that context that I respectfully thought that this had been a good idea because you were making things clearer for the path to admissibility. But with all due respect, this is not the case, because essentially what is now going to be permitted is a level of surveillance and recording for criminal proceedings generally, for proceedings under the Proceeds of Crime Act. And I pause to say, I did not have the time to check the Act again, but I do know, for example, that under the Proceeds of Crime

Act, even when you go with an order or a warrant, legally privileged material does not fall within the things that you can take.

So you cannot take stuff under the Act itself, under a warrant or a judge's order, but it seems as though you can now record conversations and other data. To me, it does not make sense, it does not add up. The other thing is, you are talking about a length of time between possible charge and trial which a citizen, because a prisoner remains a citizen—some of us forget that—charge and trial which may amount to up to 10 years during which time that person may be surveilled and recorded. So this piece of legislation has extremely wide, disproportionate and unreasonable inclusions. If I may move quickly to 6(b)(v), “authorised officer”. Now, I heard the hon. Attorney General speak about the DPP and what the DPP wants, and this kind of thing; not only that, what the QC hired to advise the DPP wants. With all due respect, let us not descend to that. That is like when a junior attorney stands up at the Bar table and instead of citing a case, says, “My senior says this is what the law is.” This is the highest court of the land, let us maintain our standards.

Clause 6(b)(v), “authorised officer” —now, I was hoping to see after all this importance being placed on the DPP that he may have been included, but he is not included even though his name is called as being the justification for some of these amendments in the interest of National Security. Now we know that there are people who will need to have that information in the interest of National Security. Let us not pretend that we do not know that terrorism is a matter, a live issue for any Minister of National Security, for example. So I do not necessarily have a problem with that, but look at subsection (ii):

“for the prevention or detection of an offence-

- (A) under this Act; or
- (B) for which the penalty on conviction is imprisonment for ten years or more, and includes an offence where death, imprisonment for the remainder of a person's natural life...is the penalty fixed by law;”

Now, perhaps we ought to have been given a list of all of the criminal offences for which the penalty on conviction by imprisonment for 10 years or more is contained. Such a list would have assisted us and I think it would have demonstrated that there are many offences, perhaps from assault right back, which would fall under the breadth of this subsection. It is way too wide. It is disproportionate and without proper justification at the third reading of this Bill, of this Act, it is unreasonable. [*Desk thumping*]

Now, for the purpose of safeguarding the economic well-being of the State, well, that could mean anything and nothing, and if you want to request a three-fifths majority for the passage for a piece of legislation then, at the very least, the Senators could have the respect of having language which is precise and clear. And for the purpose of safeguarding the economic well-being of the State, I do not know that there is a crime which says that you are jeopardizing the economic well-being of the State, so I have no touchstone for interpreting this phrase. So it means that this phrase may be interpreted in anyway by anyone, and that is dangerous.

Now, section 7, to make it worse, section 6B(1) after “authorised officer”, the following words are included:

- “(b) ...prevention or detention of an offence-
 - (i) under this Act; or
 - (ii) for which the penalty on conviction is imprisonment for five

years or more...”—et cetera.

Well, the point I made in relation to the 10 years would certainly have helped us and would have shown us how unreasonable this section is, because just off the top of my head I can tell you that a simple assault attracts a penalty of five years. So it means that somebody charged with a simple assault is now liable to lose his privilege against self-incrimination taken away, his right to silence taken away, evidence collected in his absence—well, without his knowledge and capable of being used against him in a court of law, until he finds out 10 years down the line when he comes to trial. And I think when we look at the legislation, we have to consider, practically, how it is going to work out, and there has been data given and lofty comments about rule of law and how it works, and that kind of thing, but you know what? The average citizen wants to know the nitty-gritty: How is this going to impact the system which we use? And that is one thing that has not been discussed thus far in this debate.

Again, we find the phrase, “for the purpose of safeguarding the economic well-being of the State”, and quite frankly, I must confess, and perhaps it is because, you know, it is beyond me, but I have no idea what that is supposed to mean or what it is capable of being interpreted as meaning. So the long and short of it is that, in my respectful view—

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

Sen. Chote SC: Thank you. In my respectful view, what is proposed here makes it even more clear that we need a three-fifths majority [*Desk thumping*] for the reasons that I have advanced. I am not saying that everybody has to agree with me, and most of you may not, but quite frankly, that is the way I see it. Madam President, thank you for allowing me to make my contribution. [*Desk thumping*]

Madam President: Attorney General. Hon. Senators, at this juncture, the sitting will be suspended. We will return at 2.00 p.m., and I will remind Members that on the return 10 Senators are required to be in this Chamber. So we are suspended until 2.00 p.m.

1.17 p.m.: *Sitting suspended.*

2.00 p.m.: *Sitting resumed.*

Madam President: Attorney General.

Hon. Al-Rawi: Thank you, Madam President. I am very pleased to draw conclusion to this Motion that we have before us, which is to adopt the amendments coming from the House of Representatives. I wish to thank all hon. Senators for their contributions today. Certainly we have had quite an amount of passionate contribution on obviously what is a very heartfelt issue.

Madam President, this is about balancing of rights. This is about where we stand in our society at present, a democracy of our kind in our situation in this country. This is not, with the greatest of respect, something that is uncomplicated. This is about an amendment to existing law. This is about the rule of law. I do not consider that a lofty objective. I consider that the core of what this debate is about.

There is a separation of powers. Anything that we do under the Constitution as the supreme law under section 2, anything that we do in pursuance of section 53 of the Constitution, as we make laws for the peace, order and good governance of our society, the constitutionality of all that we do is to be interpreted by a court of law under the separation of powers principle. They interpret the law. They consider what is passed here.

So permit me, Madam President, to address some of the issues raised in the contributions of my learned colleagues, and I will begin with Sen. Wade Mark.

Sen. Mark made the opening contribution that the Attorney General is upset with the Opposition. Sen. Mark then said that it appeared to be the Government's intention and the Attorney General's intention to gut, slaughter and attack fundamental rights. Sen. Mark then called for the one-man opinion, as he put it, of Fyard Hosein SC to be tabled, and he asked for the CPC's opinion to be tabled. He asked for Senior Counsel Gaspard's opinion to be tabled and that of Queen's Counsel Jenkins to be tabled.

I respectfully do not stand before you as a junior counsel saying, "My senior said", as Sen. Chote alluded to in terms of the contribution. I know she did not mean me, the hon. Senator. I am sure she was addressing the argument itself; I took it that way. I thank Sen. Chote for a very passionate contribution today. Certainly I listened with great intent and enjoyed it. But I will explain why we will not table the constitutional opinion and that is quite simply because we have had an experience in this country of going to our courts. We have had a fellow named Anand Ramlogan and a fella named Gerald Ramdeen, who have sat and passed laws to amend the Bail Act, passed those very laws, laws to create the child rehabilitation centres, and then those same individuals armed with opinions that the State produced, then went to court to challenge the very laws that they had passed.

Sen. Mark: A poor excuse.

Hon. Al-Rawi: We have a system—in fact, under our Public Health Regulations and in laying opinions, the UNC has been to court nine times and lost all nine matters. The simple point to put is, if and when we ever get to a court of law, assuming that there is support for this amendment today, we will deal with that in court. I cannot and will not table the contributions coming from the Director of Public Prosecutions simply because they concern matters of national security. In

the correspondence is addressed issues of national security.

Why I drew the comment from Sen. Chote's contribution about a junior counsel saying, "Meh Senior tell meh so", is because the DPP is no Senior Counsel leading the Attorney General. The DPP has an obligation to inform the Attorney General, who has the task of amending laws, what his position in relation to laws is, and then the Attorney General in exercising his own discretion and in taking matters before the Cabinet, brings before the Parliament laws which are approved by the Cabinet. So this is no case, hon. Senators, of "Meh Senior tell meh so". This is a case of discharging the constitutional remit that I have as the Attorney General and as the Minister of Legal Affairs of the Republic of Trinidad and Tobago.

Madam President, Sen. Mark said that there is a right to privacy and that it is fundamental. In holding on to Sen. Vieira's contribution I would like to remind that the right to life is equally fundamental. And Trinidad and Tobago in wondering, as our citizens are asked to wonder, asked to make enquiry as to what this law is about for them, this law is designed in its legitimate aim and in the rational connection of the amendments to that legitimate aim, and in the proportionality of those amendments to this legitimate aim to safeguard a number of aspects. Firstly, the right to a fair trial; secondly, the upholding of the rule of law; thirdly, the protection of lives.

What is the first aspect of the right to a fair trial? It is ensuring that there is an admissibility of evidence, because right now section 17 and section 19, as they stand in the law without amendment, are unconstitutional. Sections 17 and 19 cause an ouster of the court's jurisdiction because it says sensitive information, which is anything which will reveal the making of intercept evidence, who made it, the method, et cetera, shall be admitted into a court of law without enquiry.

Now, Sen. Hosein made a very unusual contribution as it relates to sections 17 and 19 in the amendments that we cause here in this Motion. Sen. Hosein said that he read the sections that said we still use the word “shall”. Yes, Madam President, we do use the word “shall”. But what we are putting into the words are, “shall, subject to the court’s consideration of the interest of justice”. And 17(4)(b) and (c) set out that subject to the court’s consideration of interest of justice and any application for disclosure of sensitive information must be met by a consideration of criterion. And 17(2C) sets out the Bailey principle criterion. So unfortunately it appears that Sen. Hosein has quite simply just not read the Bill. That “shall” is not an automatic “shall”. With an ouster of the court’s jurisdiction, it is a discretion which is subject to the court’s consideration of interest of justice, and under 17(2C) the Bailey principles, similar under section 19.

Sen. Hosein made a very unusual statement. Sen. Hosein said that we should look past *Suratt* as it relates to the Motion before us. I of course put on the record that in *Barry Francis* and that in *Suratt* and that in *Northern Construction* we were reliant upon Baroness Hale’s submissions in the *Suratt* case, and I made the point that *Suratt* stands as the current supreme case, standing in our jurisprudence coming out of the Privy Council. Sen. Hosein said that *Barry Francis* applied, but he forgot to tell us that he was relying upon the minority judgment in *Barry Francis*, not the majority judgment which was delivered by Mr. Justice of Appeals Nolan Beraux.

Sen. Hosein then went further to make a most remarkable submission, that the case of *Hinds v The Queen* stands superior to *Suratt*. Let me remind Sen. Hosein that *Hinds v The Queen* is a case, (1977) AC 195, and that *Suratt* was a judgment, (2007) 71 West Indian Law Reports 391. In other words, the 2007

judgment which dealt with the case is obviously the leading judgment, not the minority decision of Jamadar and Chief Justice Ivor Archie, and not the 1977 appeal cases in *Hinds v The Queen*.

Sen. Mark made a spectacular reference to the case of Malone, which is the European Court of Human Rights 1984. And as he glibly read from that judgment, forgot that the United Kingdom passed the RIPA legislation in the year 2000. In other words then it is not applicable, because the Regulation of Investigatory Powers Act, 2000, came into effect long after the 1984 case. It was that kind of frolic that Sen. Mark took us too as well and upon.

Sen. Mark made some very bold assertions about the case of Big Brother. Sen. Mark in referring to the *Big Brother Watch and Others v the United Kingdom*, swept into that case as if that case had persuasion in our jurisdiction. Because what Sen. Mark did not tell us is that that case concerned bulk collection of data. Let me repeat that: bulk collection of data. Where the collection of data was not circumscribed by section 6(1) and section 6(2) considerations in our law, our law does not allow for bulk collection of data. Our law specifically says that we must consider the collection of data or communication in unwarranted circumstances.

In section 6 of the Interception of Communications Act, section 6(2) says specifically that:

“...a person does not commit an offence under this section if—

- (a) the communication is intercepted in obedience to a warrant issued...under section 8 or 11;
- (b) the communication is intercepted by an authorised officer—”

—and hear these touchstones—

“(i) in the interest of national security;

- (ii) for the prevention or detection of an offence for which the penalty on conviction is imprisonment for ten years or more, and includes an offence where death, imprisonment for the remainder of a person's natural life or life imprisonment is the penalty fixed by law;
- (iii) for the purpose of safeguarding the economic well-being of the State; or
- (iv) for the purpose of giving effect to the provisions of any international mutual assistance agreement..."

Sen. Chote asked us for a touchstone for the amendments that we caused in clause 7 and in clause 6, saying that there was no reference to what "economic interest" means or what "national security" means. Quite properly pointing out to the fact that it is broad, I agree with the hon. Senator, but the touchstone is right here passed in 2010. Section 6(2) of the 2010 Act which we have operated under for 10 years straight has that touchstone.

Where does the touchstone come from? The Regulation of Investigatory Powers Act, 2000. That touchstone comes from the United States model. That touchstone comes from the New Zealand model. That touchstone comes from the Australian model, and all of them have the very broad concepts of law. Are we bettering those broad concepts in seeking to cause the admissibility of evidence is the question. Because what is this Bill at its core, what these amendments in the Motion are at core, as we seek to amend clause 7, clause 6? We are seeking to allow for the admissibility of evidence in very careful circumstances, where we do that under the separation of powers principle. Where we feed the lofty concept of due process and rule of law. Those are not things to be trivialized. In a Parliament

such as ours we must have regard to the rule of law, and to due process and to the balancing of rights.

This country is under siege. Section 13 of the Constitution, where you are seeking to intrude upon 4 and 5 rights says that it only stands under two grounds. If you have a three-fifths majority of the Members voting, and importantly section 13(2), if it is reasonably justified in a society such as Trinidad and Tobago. Now, what could be unreasonable in a society such as Trinidad and Tobago in saying that a prison must be a prison? What is unjustifiable in a society such as Trinidad and Tobago in saying that you ought not to have the ability to use any device inside of a prison?

We passed a law. We passed the Miscellaneous Provisions (Law Enforcement Officers) Act, No. 25 of 2019. We passed that law and yet we know that in the prisons we have these things. Sen. Haynes made a remarkable submission, that we are trying to give an executive—a failed executive as she put it, the hon. Senator—more power. This is not a power for the Executive. It appears that the hon. Senator has not read the Motion before us. This is a power for the courts exercising their consideration as to the admissibility of evidence under the Bailey principles set out in law in the Bill in the new section 17(2B) and (2C). It is not an executive exercising that consideration of admissibility. It is the courts of Trinidad and Tobago and perhaps the Privy Council itself, as the highest court of our land.

Madam President, I want to put on record that *The Big Brother Watch and Others v the United Kingdom* is the exact opposite in terms of relevance as to what Sen. Mark said. It is just irrelevant, because nothing in this law is treating with en masse data collection. That was done under Cambridge Analytica by a different

government, if you believe what the British House of Commons and the United States Senate has to have on its records coming from Christopher Wylie.

So, Madam President, Sen. Mark's submission is not only irrelevant, but it is entirely dangerous in its purport.

We had Sen. Hosein telling us that this law is too wide, that there is a disproportionate effect. I would like to say that, most respectfully, I think the hon. Senator gave some good batting, tried to raise the minority judgment in Francis, but unfortunately that just does not apply to our particular setting. I believe that this law is entirely about balancing the scales of justice. This law is about correcting an unconstitutionality which exists in the current law. You cannot separate the court from a discretion. You have to allow for the consideration of admissibility of evidence.

This law is not about creating an intrusion upon the media. That happened in 2010; that boat sailed already. Section 6(2) of the 2010 Act allowed everybody to be intercepted in non-warranted circumstances. In considering the Bailey principles and the proportionality and gravity of the offence considerations that we have put into the statute, obviously you cannot be on a fishing expedition. Obviously you have got to explain why it is your warrant was not taken. Obviously you have got to consider the rights of journalists when you are looking at—the words actually say in section 17(2C) it must be proportionate to the gravity of the offence. Which court in Trinidad and Tobago is going to watch the legitimacy of journalistic purpose in relation to whether a journalist or a politician received a phone call from the prisons—as I have received phone calls from the prisons back in 2015—and say to them that that is something that they are not going to consider in the admissibility of evidence?

But Sen. Richards, most respectfully, who sits with Sen. Vieira and I on the cybercrime legislation, what exactly is a journalist? Who is a journalist? How do we create a journalistic exception in this law? We cannot do it in cybercrime, because the journalists will not tell us who a journalist is, but we just had, Mr. Justice Ramcharan tell us in a case now completed, where an ex-Minister named Devant Maharaj alleged that he was a journalist. We had a court telling that person that you are not a journalist. So that is something which is very hard to determine. But more particularly the amendments before us do not concern that, because that was not a feature of the law.

The parent Act treats with what the exceptions are. The parent Act says how long a section 8 or section 11 warrant is to survive, how many hours, when it is renewed, what the authorized officer must do. I would find it very curious that the DPP could have a power as an authorized officer to intercept, Sen. Chote. I do not think that that would fit within our constitutional structure to have a prosecutor have the power to be an intercepting officer. That would run afoul of investigations. *[Interruption]* Yes, please.

Sen. Chote SC: On the contrary, the Director of the Police Complaints Authority can be an investigator. Why was consideration not given to that?

Hon. Al-Rawi: I see. Forgive me if I got it wrong, Sen. Chote. I assumed you were talking about the Director of Public Prosecutions, it is the Director of Police Complaints Authority. Yes?

Sen. Chote SC: Yes, that had been in your original contribution.

Hon. Al-Rawi: I sincerely apologize. I took it wrong; I apologize. Well, it would make sense, because I found it unusual that the Director of Public Prosecutions could be there. The Police Complaints Authority has actually asked for certain

amendments to be included. What happened with the Police Complaints Authority is that they entered into a memorandum of understanding with the Commissioner of Police so that they could actually request investigations, and particularly pass certain matters to them. We were wrestling with the authority of police power and the lack of a Public Service Commission backing with the Police Complaints Authority. So we were fighting with the constitutional backing.

We allowed the constitutional backing to prevail in the Chief of Defence Staff, the Commissioner of Police and the Director of the SSA in the circumstances that that was produced. The Director of the SSA went in, in the 2010 amendments. That may be something that one has to have a view of, but the Police Complaints Authority, from a constitutional perspective, we have not figured that out yet. Part of the recommendations were making the Police Complaints Authority policemen, so that therefore they could have the Police Complaints backing of the Service Commission aspect. A touchy constitutional issue which we are trying to solve.

I want to state that this law does not touch and concern retrospectivity. We were very careful in the application section, as it relates to the amendments before us, to say that this law only saves or acknowledges the validity of warranted material produced under the Proceeds of Crime Act production orders, I mean there. Warranted under section 5 of the Indictable Offences (Preliminary Enquiry) Act, and warranted interceptions or productions made under section 6 of the Indictable Offences (Committal Proceedings) Act.

If a trial has begun then you are out of the door. What this does, these amendments before us, in amending via clause 6 and clause 7, what we propose here now, we are allowing for the admissibility of evidence to come in. If we do not do this there is a risk that all of the intercepted material that is going to be

challenged in court can be viewed to be inadmissible, or if they were made admissible, to have the convictions overturned on the basis that there was a breach of the right of the accused to a fair trial. And most respectfully, Madam President, I cannot as a responsible Attorney General, having heard from the DPP, having heard from Queen's Counsel for the DPP, having considered what I heard and formed my own view, I cannot respectfully observe this position and not take a legislative step.

Under the supreme law of the Constitution, pursuant to section 53 of the Constitution to make orders, laws for the peace, order and good governance of our society, because that would be to allow criminals a get-out-of-jail card. Not that people are not innocent until proven guilty, not that you are not in the position of allowing for an acquittal to happen, whether on the matter itself or on appeal. But specifically because you have to have a fair trial.

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

Hon. Al-Rawi: Much obliged, Madam President.

I want for the record in looking at the amendments before us to point out that the case of *R v Sang*, S-A-N-G, which is a case (1980) Appeal Cases 402, the question whether or not an offence was committed in the course of obtaining evidence by intercepting a communication by post or by means of a public telephone system is, in the absence of a statutory provision to the contrary, irrelevant to the admissibility of that evidence. That is very germane to our situation in these amendments before us, because we are proposing specific—
[*Interruption*] Yes, please.

Sen. Chote SC: Hon. Attorney General, I must seek to make the point, thank you for allowing me to do so, Sang is the case which says that nonetheless it is

admissible depending on the discretion of the court.

Hon. Al-Rawi: Exactly; I was about to come to that point, but to point out that we have a statutory provision to the contrary. Our statutory provision to the contrary is in section 17 and section 19. Therefore, we must treat with it statutorily, which is what we are doing. So Sen. Chote has assisted me in making the very point that I was about to make, because the case that I have just referred to speaks in the absence of a statutory provision. But I also want to note that in New Zealand, in Canada and in the United Kingdom the ability to obtain interception is an administrative function, not a judicial function.

In Trinidad and Tobago we have a judicial function for warranted evidence, and for non-warranted evidence we have an administrative function—that is the authorized officer. And what we say is we are not the United Kingdom, New Zealand or Canada, and we do not leave it there. We say anything obtained by that method of an authorized officer must be subject to the jurisdiction of the court, because that is critical. We cannot allow a member of an executive to reach into the SSA, to have an ability to know what interception is going on, and not subject it to the best form of scrutiny in a democracy, an independent court right up to the Privy Council.

2.30 p.m.

So what we are doing in this law, we are underwriting the constitutionality of laws, we are preserving due process, we are preserving the right to a fair trial, we are saving this 2010 law from collapse.

Now, Sen. Wade Mark tells us, the Opposition will not support this. The Opposition did not support this law with a three-fifths majority. Sen. Mark and all Senators on the Opposition Bench—Sen. Sobers, as he runs for San Fernando West

is on record as saying, he will not support making a prison, a prison, by not supporting the law with a three-fifths majority.

So today, respectfully, Madam President, do we really need to hear Sen. Mark threaten us? He did not support with a three-fifths majority and he did not support without a three-fifth majority; same old, same old.

Madam President, this law is about saving lives in a careful, constructed balance of proportionality. This law is about saving constitutionality and therefore, I recommend to all Senators, as we consider our positions on this law, that we find support for what is clearly underwritten as within our constitutional structure for the amendments that we bring from the House of Representatives. I beg to move.
[Desk thumping]

Madam President: Hon. Senators, the question is that we agree with the House in the amendments to clauses 2, 5, 6(b)(v), 7 and the Preamble of the Interception of Communications (Amdt.) Bill, 2019.

Just one second, eh. Let me just restate what I said before. Hon. Senators, the question is that this Senate agree with the House in the amendments to clauses 2, 5, 6(b)(v), 7 and the Preamble of the Interception of Communications (Amdt.) Bill, 2020.

Question put.

Sen. Mark: Division.

Madam President: Hon. Senators, we will await the arrival of the other Senators. I believe that I have said three minutes, so three minutes will start from now. I will ask all Members, when you are entering to enter in silence, please.

The Senate divided: Ayes 16 Noes 7

AYES

Interception of Communications
(Amdt.) Bill, 2020 (cont'd)

Khan, Hon. F.

Gopee-Scoon, Hon. P.

Baptiste-Primus, Hon. J.

Rambharat, Hon. C.

Sinanan, Hon. R.

Moses, Hon. D.

Hosein, Hon. K.

West, Hon. A.

Cox, Hon. D.

De Freitas, N.

Singh, A.

Cummings, F.

Henry, Dr. L.

Dookie, D.

Williams, J.

Vieira, A.

NOES

Mark, W.

Haynes, Ms. A.

Ameen, Ms. K.

Hosein, S.

Sobers, S.

Teemal, D.

Thompson-Ahye, Mrs. H.

The following Senators abstained: Mr. P. Richards, Ms. S. Chote SC, Dr. V. Deyalsingh, Ms. A. Deonarine, Ms. C. Seepersad and Dr. M. Dillon-Remy.

UNREVISED

Question agreed to.

Madam President: Attorney General. [*Crosstalk*]—

But could you desist? Thank you very much.

URBAN AND REGIONAL PLANNING PROFESSION BILL, 2019

Order for second reading read.

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

That a Bill to establish a Council for Urban and Regional Planners and to provide for the regulation of the urban and regional planning profession and for other matters incidental thereto, be now read a second time.

Madam President, it seems that I live in the Senate as well. It is a pleasure to bring this Bill from the House of Representatives and note that on Friday, 15th of November, 2019, we considered the 61 clauses brought before us now, we made certain amendments to this Bill and we now come before the Members of the Senate to ask for their consideration for the passage into law of this Bill.

This Bill, the Urban and Regional Planning Profession Bill, 2019, is squarely seated in Act No. 10 of 2014. That Act is the Planning and Facilitation of Development Act. That Act is an Act of Parliament of 2014, which was passed in 2013 and which is effectively proclaimed in 2015 partially and only as to a few of the sections.

This law, the Planning and Facilitation of Development Act; this Bill, the Urban and Regional Planning Profession Bill are intimately associated with the Local Government (Amdt.) Bill, intimately associated with the existing laws of development and planning as we have in the transitional sense of it, our Town and Country Planning Act of 1960, Chap. 35:01. It is integrally associated as well with the amendments that we have done in causing a real estate agency sector to be

managed by the Real Estate Agents Act. In the Bill, which we are discussing still in the Senate, the Registration of Deeds Bill, the miscellaneous provisions, it is rooted to the Registration of Titles to Land Act, the Land Adjudication Act, the Land Tribunal Act and the amendments to the state suite legislation professions, also attached to this includes, Engineering Profession, which is an Act passed, No. 34 of 1985, the Architecture Profession Act, passed as an Act in 1992, and the Land Surveyors Act passed as Act No. 33 of 1996. Permit me to connect the dots.

Today, we ask for the incorporation of a body to cause the regulation on a mandatory basis, to cause all members who intend to practise as urban and regional planners that they must mandatorily constitute themselves as members of a council which we seek to establish under Part II of this particular Bill in clause 4. And also, that that council be responsible for the licensing of urban and regional planners, as we have in Part III of this Bill, in clauses 15 to 28 included. That we ask for there to be established, a register for urban and regional planners, as we have in Part IV of the Bill, which is clauses 29 to 33. As we get to a committee of the council to consider exercising disciplinary proceedings if necessary against urban and regional planners, as we have in Part V. What those “Disciplinary Proceedings” ought to be, as we have in Part VI, clauses 50 to 53, and then what offences and penalties exist.

Now, what is this all about? This is all squarely seated, Madam President, in Part V and Part VII of the Act No. 10 of 2014—the Planning and Facilitation of Development Act—is a law which was long in the making. That law saw us go through many iterations of cycle of planning, legislation was contemplated, a new national planning system since 1988, there was a comprehensive reform exercise for the Town and Country Planning Act. That Town and Country Planning Act, in

fact, Madam President, is an English law of 1925 and then 1947. Our planning laws are as old as that, the British 1947 law.

So, our country in 1988 set about considering reforms. In 1995, we had the IDB funding reforms in the agricultural reform programme. In 1996, we had the National Physical Planning Commission, the Planning and Development of Land Bill, 1998. After 1998, we had the Planning and Facilitation—the Planning and Development of Land Bill, 1999; the Planning and Development of Land Bill, 2000; the Planning and Development of Land Bill 2000; the Planning and Development of Land (No. 2) Bill, 2000; the Planning and Development of Land Bill, 2000; all of which never saw the light of day.

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

We then had the pick-up of that last Bill, the Planning and Development of Land Bill, 2000 in 2011. We established a joint select committee. I in fact served as an Opposition Senator on that Joint Select Committee, and we birthed the Planning and Facilitation of Development Act No. 10 of 2014, as I welcome you, Mr. Vice-President. That was, in fact, a special select committee that sat on that particular point.

Now, this Planning and Facilitation of Development Act, which is relevant to this Bill, does some very important things. It creates a preparation and approval of a national and sub-national development planning aspect. It allows for planning and development approvals for development applications. It allows for the establishment of a national planning authority that will collaborate with the EMA. It allows for the decentralization of certain decisions-making powers with respect to local government issues including planning. Let me repeat that. It allows for the decentralization—let me stick a pin on that word.

Let me therefore jump immediately to, Mr. Vice-President, what the Planning and Facilitation of Development Act anchors this Bill in. We must jump to Part V of the Planning and Facilitation Development Act, No. 10 of 2014, Part V, beginning with section 29, allows for development control. And permit me to seat this, Mr. Vice-President.

When we look at Part V it is called “Development Control”. In this Act, they define “development” and then they go through all of the processes as to what you need to have development control done by. It is a process of application, to whom you make the application and very importantly, we divide out complex planning permission from simple planning permission. Complex planning permission is done by way of the higher body at the Ministry level and simple planning permission is done at the local government level. And then, Mr. Vice-President, we jump to Part VII.

Part VII is the “Listing of Professionals”. It begins at section 73 of that particular point. And Part VII, we refer to professional governing bodies and we refer to the professional governing bodied for architects, engineers, lands surveyors—and hear this— urban and regional planners, established under the Urban and Regional Profession Planning Act.

In other words, in 2013 and 2014, in this Act of Parliament, in section 73, we referred to a professional organization that was not yet created. This Bill today is to create that professional governing body.

Why do you want the urban and regional planners? You want the urban and regional planners because we allow them the ability to have a delegated function and responsibility. The Planning and Facilitation of Development Act No. 10 of 2014 says, we will entrust planning, delivery of certain matters to certain

professionals who are listed with the planning authorities; architects, engineers, land surveyors and urban planners. Why? In the decentralization of the structure, we say that these professionals, because they are going to have professional indemnity insurance, because they are going to be listed, because they are going to be regulated, because they will have to have a bond for the performance of their fiduciary responsibilities, they will be allowed the latitude to engage in delegated planning approvals.

In other words, the Planning and Facilitation of Development Act must have listed professionals who will have charge of managing development approvals on a faster rate. It creates a solution to bottlenecking, it creates a solution to the ease of doing business. So that is to seat this Bill in the law because if you just considered this Bill, it would not make sense if you do not give a context of the law.

The Urban and Regional Planning Profession Bill before us now, Originally, in 2019, when we drafted this Bill, we drafted it as a three-fifths majority Bill because at that point, the law was not as settled as it is now. Coming out of the Supreme Court of Barbados in the Court of Appeal in the case of *Norman MacDonald Nurse v the Attorney General*, the jurisprudence is now settled that mandatory membership in a professional body is not a breach of your constitutional rights, provided that the mandatory membership is vested in a public body for a public purpose in the public interest; public body, public purpose in the public interest.

And the example of the constitutionality of that approach is found in the following laws: the architects' professional body law, the engineers, the land surveyors, dentists, doctors, all of those professional bodies require mandatory membership, and all of them were passed with simple majority in Trinidad and

Tobago.

The only professional association that has been passed with a three-fifths majority is the legal profession because in 1986, when that law was being considered, the Legal Profession Act operated then with the jurisprudence at that date in 1986 to say that they could have been an infringement of rights. The law is now settled that there is no infringement of rights in that purpose and therefore, in the House of Representatives, we removed the three-fifth majority clause.

I want to remind hon. Members that in this Parliament, we just passed, this Senate, just passed the Real Estate Agents Bill. That has been passed in both Houses of Parliament and we passed that with a simple majority because of the public body with a public interest exercising a public function had a mandatory membership of members, and all members of this Senate were happy with that approach.

I raised that because we just had a whole amount of time spent on passing law involving the removal of a three-fifths majority. Even though that is not before us now, Mr. Vice-President, I would say that I have no discomfort in there being an agreement to disagree. We have passed many a law before without unanimity.

We passed the Children Act in 2012, with not a single Independent Senator supporting the Bill, not a single Independent Senator supporting the Bill, only the PNM bench in Opposition and the Government passed that law. That law today is one of the most robust laws in our country because, you see, you can agree to disagree. You cannot have a weak spine in this game, Mr. Vice-President, when you are fighting for rights, Mr. Vice-President. And the rights that we are fighting for here are equally important as rights that we fight for elsewhere when we are protecting people, be it under interception of communications, for example. When

you are protecting the interest under the public planning system, under the Planning and Facilitation of Development Act or under the urban and regional planning association, you have got to make sure that you have the courage to pass law. So let us look to the Bill.

The Bill is divided into several Parts and we have eight Schedules. In the Parts that we look at, we have the preliminary sections, interpretation, commencement. In the Part II, we are treating with the Trinidad and Tobago Council for Urban and Regional Planners and it is here that we establish a council. We cause the composition of the council.

Clause 6 is very important because we deal with the functions of the council. It is clause 6 that feeds what the public interest is.

Clause 4, in establishing the council, we create a public body, that is the council, to exercise public functions, that is clause 6, in the public interest which is the rest of the Bill. What is the public interest? It is to be found in the provisions clauses 50 to 53, “Disciplinary Proceedings” Part VI, and “Offences and Penalties” in Part VII. So what does clause 4 provide for us? Clause 4 provides for us that we are establishing:

“...a body corporate to be known as the Trinidad and Tobago Council for Urban and Regional Planners.”

What time is full time, Mr. Vice-President?

Mr. Vice-President: You end at 3:08.

Hon. F. Al-Rawi: Much obliged. We established that public body a statutory authority. We say that the council shall be comprised of seven members, but we bifurcate it. We allow members being an attorney-at-law with experience in urban and regional; two state planners because state planners come from the public

service aspect. We allow for someone to represent the public interest and of course, I recognize that the Minister appoints these people. But in subclause (b), the three persons nominated by the Trinidad and Tobago Society of Planners is what is relevant in the balancing of interests. These three people come from a separate body other than the Executive of Trinidad and Tobago.

Mr. Vice-President, we go onto suggest what the quorum is, who is treasurer, who is secretary. Clause 6, which is important, the functions of the council, and here is the public interest.

- “(a) keep the administration of this Act under review...
- (b) register and license persons to practise urban and regional planning...
- (c) monitor and adherence to the Code of Ethics;
- (d) institute disciplinary proceedings...
- (e) review periodically application fees...
- (f) suspend or revoke the registration or licence of an Urban and Regional Planner;
- (g) place or remove a name on the Register;
- (h) collect such fees as may be prescribed;
- (i) perform such functions as maybe required...”

Is the collection of the fee something to be viewed to be an infringement of your sections 4 and 5 rights? No, it is not. In the Trinidad Island Wide Cane Farmers' Association, in umpteen laws that have been tested in particular cessations, et cetera, in Trinidad and Tobago, I can tell you that this has been well managed, that none of these things concern rights of property and our laws are very clear on that.

Mr. Vice-President, we allow for the tenure to be three years with capable of

extension. We allow for members to vacate on the usual terms and conditions in clause 8, on death, expiry of term, resignation or if removed from office. We allow for the removal from office for the usual factors in legislation: unable to function because of physical and mental illness, absent without leave, et cetera, et cetera, guilty of misbehaviour in office, bankruptcy or disqualification or suspension.

We allow for the council to pay its members remuneration against standard terms and conditions. The seal of the council is at clause 10. Meetings defined at clause 11. The quorum is set out at clause 12 being four; two from those appointed by the Minister and two from those from the Trinidad and Tobago Society of Planners.

We allow for the voting to be by way of majority. Part III is relevant, beginning at clause 15, where we look at the licensing of urban and regional planners. And we say here:

- “(1) No person shall practise as an Urban and Regional Planner in Trinidad and Tobago unless—
- (a) his name is placed on the Register; and
 - (b) he holds a valid licence issued under section 16, 18 or 19.”

Why? It is a requirement that if these people are going to have the privilege and powers under the Planning and Facilitation of Development Act No. 10 of 2014, if they are going to have the powers under that Act, they must be licensed in the public interest and for the public good.

Mr. Vice-President, we allow for several types of applicants for licensing. We allow for provisional, temporary and effectively permanent licensing. We allow for these licensing to be based upon your qualifications. Are you with a bachelor of science's degree? Are you with a master's degree? How many years'

experience do you have? In the case of a BSc, you are looking for three years' experience being the line that takes you into the non-provisional aspect. In the case of master's, more than two years' practical experience. So we treat with professional licences, provisional licences, and we make sure that we treat with licensing in the context of citizens of this country, residents of this country and very importantly, under the our provisions in the Caricom Single Market, for the qualifying Caribbean community states because we as a Government have signed on to the Caribbean single economic structures, a single market, led by Prime Ministers in this region, importantly, by Prime Minister Dr. Rowley.

Mr. Vice-President, we obviously allow for urban and regional planners to demand and recover their remuneration in clause 22. But we say that they are only entitled to the reasonableness of that, and that you cannot be practising as an urban and regional planner, i.e. a quack or a "bush planner"—if you want to call it in Trinidadian parlance—and you cannot levy fees, it is an offence to charge people if you are not licensed to engage in this industry.

3.00 p.m.

Mr. Vice-President, we obviously provide for the revocation of licence, and that is very important at clause 25, for the grounds of professional misconduct, conviction of an offence under the usual terms and conditions. We allow for the revocation of a licence from someone in that capacity then having the right to reapply for a licence, and therefore that preserves due process, and you will see that at clause 26. Very importantly, we have allowed for the right of appeal. You must preserve the right of appeal and the due process provisions, and that is at clause 27. A person may appeal to the Environmental Commission on any decision of the Council including a decision to refuse the renewal of his licence, a

revocation of his licence, a suspension of his licence, a refusal of his reapplication, and, that the Environmental Commission on hearing the appeal may make such Orders as it deems just.

Mr. Vice-President, obviously the rules of court provisions at the Environmental Commission are applied. Now, why did we not just let this be in the domain of the regular High Court applications? Why did we use the Environmental Commission? We used the Environmental Commission on this occasion because the pool of Urban and Regional Planners is so very small, and therefore that Environmental Commission as a route of access was most appropriate and in this instance, not the High Court, because the sheer volume is so low in these particular circumstances.

Part IV treats with the register for Urban and Regional Planners, and this is important because the register is there for transparency, and the register is there to ensure that the public and the public sector know who is licensed, because if you are going to have a devolving of authority to conduct development planning under the Planning and Facilitation of Development Act, you need to know if the person is licensed and currently licensed most importantly. Mr. Vice-President, we set up under Part V, the Committees of the Council. Very important, a Recognition Committee and very important as well, a Disciplinary Committee, and the Recognition Committee does the scrutinizing and examining of applications, et cetera, for licences. They liaise with the Accreditation Council. They look at the assessing and keeping under review of academic qualifications, this whole concept that many professions are wrestling with of continuing professional education and assessment. And the Recognition Committee, we have set out how it is comprised, what they do under clause 36. We allow for resignation of those members from the

committee.

We then get, if I could jump past the other provisions of 38, 39, 40, 41, which deal with the Recognition Committee, let us get down to the Disciplinary Committee at clause 43. The Disciplinary Committee carries the constitutionality of mandatory licensing into effect. Why? Somebody has to, in the public interest, via a public body, protect the public, and clause 43 in the Disciplinary Committee, the conduct of disciplinary proceedings, on the receipt of a complaint, the enquiry into matters referred and the making of recommendations to the council is a critical function to make sure that professional misconduct does not find its way in a system where the Planning and Facilitation of Development Act, trusts the Urban and Regional Planner to be the kind of professional worthy of carrying out development planning in this country in a devolved situation. Mr. Vice-President, we have an entire section—

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

Hon. F. Al-Rawi: Much obliged, Sir. We have an entire section on Part VI, which deals with disciplinary proceedings. Again, it is important that there is certainty of law, beginning in clause 50, straight through to the rules in clause 51, the reports in clause 52, the consideration of the reports by the council in clause 53, and then we get to what is the certainty of offences. Part VII treats with “Offences and Penalties“

“A person who practices...without a valid licence...who...

- (a) demands or receives a fee, gratuity or remuneration;
- (b) makes use of the name...‘Urban and Regional Planner’...
- (c) ...represents”—by way of advertisement—“that he is qualified...

commits an offence...”—if you are not licensed—“...liable on summary conviction to a fine of fifteen thousand dollars and to imprisonment for two years.”

Obtaining a licence fraudulently, making a fraudulent entry on the register, practising whilst suspended, professional misconduct. These are all matters the subject of offences.

This is so because of the enormity of responsibility that is being provided to Urban and Regional Planners. You cannot leave your system of development to somebody who is unlicensed. Why? What does this mean for citizens? When we look at flooding in this country, when we look at ad hoc development in this country and we wonder where it comes from, a lot of it comes because of unregulated and unsupervised planning, where the water that runs off of our hills are not caught and managed into our rivers. We can avoid catastrophic events by better planning of our environment. The Planning and Facilitation of Development law, tied into the local government law, tied into the Urban and Regional Planners, tied into the engineering, architects, land surveyors, all of these bodies working together bring us to a better Trinidad and Tobago. The lifeblood of local government reform requires money. Money must be dealt with by an effective Revenue Authority. Money must be dealt with by your property tax, eventually in a reasonable and low fashion coming to allow the local communities the ability to spend their own money, so that schools may be bettered, roads may be bettered, drains may be bettered, pavements may be bettered, for both abled or differently-abled persons.

And therefore, Mr. Vice-President, we have to function in a society where we make provision for regular activity. The matrix of approach from the Attorney

General's Office has been that every single law is connected to the other. Little did we know when we passed the amendments to the SSA Act in 2015, where we had one Independent support that Bill, thank the Lord that particular law has stood the test of time today. That law has allowed Trinidad and Tobago a fighting chance. Today, we look at this law needing a fighting chance. This law is relevant to a better Trinidad and Tobago. This law is relevant to completing the management of resources. This law is what can "follow the money". This law is how you protect against white collar crime, and therefore, Mr. Vice-President, if you know who has the authority to plan and you hold them accountable, you make them have professional indemnity insurance, you make them have a bond, you make them subject to offences if they practise outside of the law. You are able to know who with stolen money was building a property without planning permission outside the system. You see how the pieces connect, Mr. Vice-President? It is all one matrix.

Mr. Vice-President, I do not think this is too complicated a Bill for us to consider today. I look forward to the contributions of hon. Members, and I beg to move. [*Desk thumping*]

Question proposed.

Sen. Wade Mark: Thank you very much, Mr. Vice-President, for allowing me another opportunity to speak and to address a Bill dealing with the establishment of a Council for Urban and Regional Planners, and the regulation of the entire profession.

Mr. Vice-President, this Bill has had various incarnations. I remember this Bill being discussed and debated in 2013, in 2014, and of course the last incarnation would have been in the House of Representatives. Mr. Vice-President, I would like to say from the outset that when this Bill was first introduced in the other place, as

the Attorney General said, it had a constitutional majority. But in his normal style, the Attorney General gutted, removed, which is now becoming a habit of this Attorney General, the special constitutional majority, and he used the Supreme Court of Barbados decision in the Mc Donald Nurse matter and the law association, to indicate that it was okay for persons to become compulsorily members of an association, and therefore no rights were being infringed. But if you look at this hon. Attorney General's contribution, when he was a Member of the Opposition in 2014, and this Bill was brought, this Bill in 2014 had a certificate of three-fifths, and the then Faris Al-Rawi, Sen. Faris Al-Rawi, supported the Bill, but he did it with some provisos. And when I read this contribution to this Bill, I thought Sen. Faris Al-Rawi was cloning me. Because everything that I stood for and I would have argued was argued by the hon. Senator. And, Mr. Vice-President, what has changed? The only thing that has changed is that there has been a shift in where we sit. He is now in Government, I am in Opposition, temporarily. [*Desk thumping*]

This Bill, Mr. Vice-President, I would insist, requires a special constitutional majority. And I will tell you why I am insisting very early, that this Bill violates sections 4 and 5 of the Constitution. Mr. Vice-President, like the former Sen. Faris Al-Rawi, I would argue that it interferes with property rights. It interferes with the due process rights, and it also interferes with what is called, “equality of treatment rights”. And in this context I would like to adopt fully the position adopted by the then Sen. Faris Al-Rawi, indicating that this Bill was—a constitutional majority was needed, and what was even more important is that the then Senator indicated the various rights of the people that were being infringed.

Mr. Vice-President, I want to ask a question: The Barbados Supreme Court,

whilst it has made a decision, is that decision binding on Trinidad and Tobago? So the Attorney General tells us that *Nurse v the Bar Association*, the Supreme Court of Barbados has ruled that there is nothing wrong in you being asked compulsorily to be a member of that association in Barbados. And because of that, the Attorney General removed the certificate, and says, because Barbados Supreme Court determined that, we must then follow. Our highest Court of Appeal is the Privy Council, and we have a judgment here from TICFA that makes it and tells you it is illegal and unconstitutional to force somebody to be a member of another association. So this is why I am arguing that we have to be very careful when we adopt wholesale decisions, when they could guide us, but I do not believe they can bind us. There is a difference between guiding you and binding you, and therefore the Attorney General is totally wrong to come and tell us, because the Supreme Court of Barbados said X we must jump to that beat.

The highest Court of Appeal of Barbados is not the Privy Council, you know. It is the Caribbean Court of Justice. So we have to be very careful when these things are being advanced to us. And I want to say as I make my contribution to this Bill, I say from here on I adopt all the positions put forward by the Attorney General as it relates to the Bill of 2014 which is what we are dealing with today, and I am going to propose all his amendments that he proposed then to change the Bill, and we will see where the Attorney General stands today. [*Desk thumping*] You know, Mr. Vice-President, the Attorney General in that Bill, there was no provision for a negative or an affirmative resolution. You know the Attorney General insisted that there must be a provision in the law that was being debated in 2014 to have—he did not go, he talked about affirmative, but he did not go with the affirmative. He said this law must have a negative resolution.

Hon. Al-Rawi: Mr. Vice-President, Standing Order 46(1), most respectfully. 46(1), Sir.

Sen. W. Mark: No, I am relating this Bill to his contribution, and I am adopting it wholesale.

Mr. Vice-President: Sen. Mark, please allow me—take your seat. Thank you. Please allow me to—okay? All right. Attorney General, Sen. Mark I would allow you to continue but just be very careful. Continue.

Sen. W. Mark: Yeah. So, Mr. Vice-President, I am saying when I go to clause—let me go to the clause itself so that I would be guided by your ruling. I am going to clause 60 of the Bill and in clause 60 of the Bill there is subclause (3) that deals with regulations and mere consultation with the council. I am arguing like the Attorney General did, as Sen. Al-Rawi, in 2014, and he did that. The date that that contribution was made was the 25th of November, 2014, and I am also insisting that we make the necessary changes to ensure that this Bill is subject to an affirmative resolution. I will be proposing several amendments to this piece of legislation, Mr. Vice-President.

Mr. Vice-President, the first matter that jumped out at me. When I read clause 5 of the Bill I really thought this was a PNM party group. I do not know why they are calling this council an urban council. This is not an urban council. This is a PNM council. That is what it is. Mr. Vice-President, I have with me all the legislation governing, and I would not burden you today because I would not have the time. But I can tell you, Mr. Vice-President, that when you look at the Medical Board Act, when you look at the Legal Profession Act, of which the Attorney General is a member, when you look at the Engineering Profession Act as examples, Mr. Vice-President, you know what you see? You see independence.

These bodies appoint their own personnel to the board; their peers. I have not seen any Minister, any politician appointing members to the council of the Law Association. I have not seen in the engineering profession any Minister appointing engineers to their council or their board. When I look at the medical profession, I am not seeing that. When you go to the architects you are not seeing that. When you go to the Pharmacy Board, when you go to the dental profession, we are not seeing politicians, be it UNC or be it PNM appointing professionals.

But, Mr. Vice-President, in this Bill that we are debating you go to clause 5 of this Bill and tell me what you see. You know what you see, Mr. Vice-President? In clause 5 they tell you how many persons would comprise the council, seven persons. Out of those seven persons the Minister, in this instance, a PNM Minister, is appointing. This is a council of Regional and Urban Planners, they are professionals, and you have a politician appointing for. So hear what is going on here, Mr. Vice-President. Not an urban planner, the Minister appoints an attorney-at-law with 10 years—with experience in matters relating to urban and regional planning. So he appoints an attorney with experience in planning. Then you say you are appointing two state planners who are professional members of the TTSP. But you are appointing them, and then you are appointing one person representing the TTSP, which is the Trinidad and Tobago Society of Planners.

And then, Mr. Vice-President, they tell the TTSP, you appoint three. So there are seven members, four are appointed by the Government, through the Minister of Planning and Development, and three are appointed by the Trinidad and Tobago Society of Planners. Could you imagine that? Mr. Vice-President, you are a professional and you have a politician appointing you to your profession? It does not exist in all the Acts that I have read, Pharmacy Board Act, the Dental

Profession Act, the Medical Board Act, the Legal Profession Act. They appoint them. In other words, lawyers are appointed to the council by lawyers, not by politicians. So, Mr. Vice-President, something is wrong with this. It does not end there. The Minister of Planning and Development or any other Minister, Mr. Vice-President, goes and appoints the chairman. So the Minister is appointing the chairman of that council. So that is a party group. That cannot be a professional body, and I want to serve notice on this Government that we will not be supporting this. We will be proposing amendments to give this body that independence that it deserves. So I want to make that point.

Not only is the Minister appointing the chairman, the Minister is also appointing the vice-chairman in accordance with the Bill here in clause 5. As if that is not enough, Mr. Vice-President, the Minister can remove you; has the power to remove you. So, the Minister could appoint, the Minister could then dis-appoint, and then the Minister will appoint the chairman and the vice-chairman. That is madness in 2020. This cannot be right! How can this be real? I am sorry that the Attorney General had to run. Leave the Senate for whatever reason. But, Mr. Vice-President, I find it amazing that we can be debating a Bill today in which a politician has complete control over the council. Reprehensible! Unacceptable! Indefensible! Inexcusable; shall not be accepted.

So, Mr. Vice-President, this is the first matter that came to me. I found it very strange. The Minister has too much power. And, Mr. Vice-President, the Minister also has power to appoint alternates. Alternates to a professional body. So, the Minister is not satisfied with appointing the majority of members to this council, but the Minister is also going to be appointing alternates. So if you happen as a member not to be present at a meeting, the Minister will have the power to

appoint you as an alternate. That is why I am saying, Mr. Vice-President, with the greatest of respect, this is not a professional council, this is not an independent council, this is a PNM party group that they are appointing under the rubric of a professional organization. How can we in 2020 identify with that kind of backwardness? This is retrogression. We cannot support this, Mr. Vice-President, and therefore I want to let you know that we intend to put forward a number of amendments for the consideration of this honourable Senate.

Mr. Vice-President, when you go to—I saw something also that I could not understand, if you go to clause 15 of the Bill, you will see where, I do not know why this is necessary, because it is a given, we do not live in a Spanish speaking country, and we do not speak Spanish as our first language. But I saw in 15(2) where we are being told that an applicant for a licence shall be proficient in the English language. I do not know what was the relevance of that, but, let me go to clause 15(3)(c), Mr. Vice-President. I am seeing here, and these are people who can be given temporary licences. Some people get permanent licences, some will get provisional licences, some will get also temporary licences.

Mr. Vice-President, as I am on this point, I am a bit concerned that there will be a collision as it relates to this legislation. Mr. Vice-President, do you know that there is an Act of Parliament incorporating the Trinidad and Tobago Society of Planners? Do you know this? Mr. Vice-President, do you know in that Act governing—and, Mr. Vice-President, that came into being in 1975, before you were born, because I know you are a young man.

3.30 p.m.

But in 1975, Mr. Vice-President, this came into being, right, and some of the provisions that we have in the legislation, that we are now debating, are also

contained in that Act incorporating the Trinidad and Tobago Society of Planners. They have a Disciplinary Committee, they have a Recognition Committee, they have a board of directors, we have a council, they have a board, they have a Disciplinary Committee here—which I will talk about—they also have that there, they have a Recognition Committee here, it is also there.

Mr. Vice-President, what is going on? What is going on? I do not know. We are talking about a Code of Ethics for this body. They also have a Code of Ethics for their professionals. The same society of planners, both urban and rural, they already have these bodies, these institutions. So, Mr. Vice-President, I do not know, you know, what to make of this that is before us.

Then I saw here, Mr. Vice-President, where in clause 15(3)(c). It says that: “certificate of good standing from TTSP”—which is the Trinidad and Tobago Society of Planners—“or in the case of an applicant for a Temporary Licence under section 19...”

And I would have thought that if you want to get a certificate of good standing in order to submit to a body to determine if you will get a temporary or a provisional license, I would have thought, Mr. Vice-President, that a certificate of good character from the police service might have been more appropriate. But this is not the case.

Now, we are also seeing in clause 19(4), it states that if:

“A Temporary Licence issued under subsection (1)...”—is—“deemed to be invalid where it is subsequently discovered that the application contained...misrepresentation...”—of documents—“or falsification of any document...under...”—this clause.

Then they are saying, Mr. Vice-President, that that would not be permissible and

therefore, they would deny that issuance of the temporary license.

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

Sen. W. Mark: But, Mr. Vice-President, you know what, this is not applicable across the board to professional and provisional licences, which is something that we ought to address. I have seen some inconsistencies in the various Schedules in terms of the language. They are speaking in the past tense and I think that Schedule—Forms 1, 2 and 3 of the Fifth Schedule we would need to revisit, Mr. Vice-President, because the language certainly is not in keeping with what is required in this piece of legislation.

Mr. Vice-President, let us go to the committees and we need to determine these committees and they are found in clause 34 of the legislation. And in clause 34 of the legislation, it states that:

“The Council shall appoint a Recognition Committee and a Disciplinary Committee.”

It goes on to say that these committees would comprise of five members but nowhere in the legislation does it refer to how these members of this committee would be remunerated for their services. So that is an area, Mr. Vice-President, we need to pay attention to. Then they talk about in clause 36(3) that the members should have a term not exceeding three years, we may need to look at that. In clause 53(2), it talks about revocation of a licence or removal of the person’s name on the register, and I come to my favourite and that has to do with regulations.

I cannot see in 2020 where you can bring a Bill and simply say, Mr. Vice-President, in clause 60 that you are going to develop regulations simply in consultation with the council. So, Mr. Vice-President, hear what this is saying.

“(1) The Minister may, after consultation with the Council, make

Regulations...”

Himself making regulations for himself.

The Government is appointing, Mr. Vice-President, the majority of members to the council. The Government is consulting with its council to make regulations and the Government is not bringing those regulations to the Parliament for affirmative resolution. It is staying within the council.

Mr. Vice-President, something is wrong with this Bill. We intend to fix it. We intend to submit a number of amendments to strengthen the legislation and we will do so at the appropriate time, with your leave, so that we can strengthen this legislation and get from the Attorney General and the Government how are they going to treat with this parallel organization. You have the council that is being established and you have something called the Trinidad and Tobago Society of Planners. How are these two bodies going to work together in this environment?

These are matters that we need to have cleared up and clarified from the Government, and we hope that at the committee stage these matters would be addressed. But for the moment, Mr. Vice-President, in closing, I want to compliment the Attorney General for being so forthright in his contribution in 2014 and I will be adopting all of his amendments that he would have proposed in 2014 during the committee stage. I thank the Attorney General for his vision and his wisdom in this matter. I thank you very much, Mr. Vice-President. [*Desk thumping*]

Sen. Hazel Thompson-Ahye: Thank you, Mr. Vice-President. The first time I heard about planning, town planners, I was a young girl, a young woman I would say, and a young teacher. And there was a teacher I looked up to, she became my very good friend and she used to talk to me about an injustice as she saw it that

was done by Town and Country. And because I admired her, you know, and she felt so passionately about the subject, of course I believed that she knew what she was talking about. So her peeve became my peeve.

So she had the idea that town planners were wicked people. Why? Why did she give me that impression? Because she was very close and was a protégé of Beryl McBurnie. And Beryl McBurnie had a long history with Town and Country and the Little Carib Theatre. So my impression was that these people did not treat Beryl right and because she was very close to my dear friend Anna Chee Ying, I adopted Anna's view. Her righteous anger for Beryl became my righteous anger. Anna was very much, as I said, involved in the arts. She used to dance and we used to be together preparing the children for arts festival. I was doing the drama and the prose and verse, and she was doing the dance. So, you would meet Beryl from time to time and I would hear that story over and over again.

Later on I would hear stories of people having to pay Town and Country to get them to pass a plan or as the calypsonian would say, "Run something". And what amazed me is that whenever I heard the stories, there was sense of air of resignation, there was no lack of protest, it was like par for the course. But I could not help wondering what kind of society do we live in that would agree that these things were normal? So again, I began to think that planners have an eye to the main chance and they should be subjected to what we have now, the explain your wealth provisions. But I must say there are some good, honest, helpful, competent people that I have met who belong to that profession.

So today, I come to talk about a Bill to regulate this profession. The Bill is to establish a Council for Urban and Regional Planners and to provide for the regulation of the urban and regional planning profession and other matters

incidental thereto. And there is a Code of Ethics which governs urban planners and speaks to categories of membership and I want to look at a Code of Ethics that came from the South African Council for Planners, that is their policy document.

[MADAM PRESIDENT *in the Chair*]

When I saw the document put out by the Senate staff, the Bill Essentials, and I saw that they looked at Zambia and South Africa, I was a little concerned. I thought maybe that they have intercepted my computer because I too had looked at those jurisdictions. Now, that South African Council for Planners Code of Ethics is a policy document which guides members and it contests in the document that it has drawn from the experiences of the Australian, the Canadian, the American and British and their own project and management institute. And it says that:

“The principles of the Code is derived both from the general values of society and from the planning profession’s special responsibility to serve the public interest.”

So this code is:

- “- A measure of attainment of societal values in pursuit of the public interest goal
- A measure of good and bad behavior
- A measure of our commitment to the planning profession
- A measure of our accountability...”

So it fits in very well with our own policy document and in fact when we look at our Code of Ethics, our Sixth Schedule you see that there is a parallel because it talks about the urban and regional planners having public and private practice duties to the public, to serve the public interest. So in fact that is what we expect, that the urban and regional planners would serve the public interest in a

manner in which upholds the integrity of the profession within the laws of Trinidad and Tobago. That is an important word, the “integrity of the profession”. Because we are looking to see whether in fact these are reputable people, performing functions in our interest because we are all involved in this. And we expect to uphold the reputation of urban and regional planning, and they would conduct themselves in accordance with the highest standards of professional practice and integrity, and assist with the advancing, the competency of the persons who are qualified or training to become urban and regional planners.

Now, when we look at the Code of Ethics of South Africa, which I have mentioned before, it defines “fairness”, which we do not find in our legislation. And it says:

“Fairness...”—if I may, Madam President—“our duty to make decisions and act impartially and objectively. Our conduct must be free from competing self interest, prejudice, and favoritism. We should make decisions solely on merit and in accordance with our professional and elected obligations.”

And that is in fact mirrored in our Code of Ethics as well, because it says in Part V, it talks about “Self-responsibility”. And it states at clause 18(e):

“An Urban and Regional Planner shall—

- (e) respect the rights of others and, in particular, shall not improperly discriminate against any person in the practice of his profession;”

Planning decisions based on principle of fairness repose confidence in the profession, and in private and commercial interest. Now, many times we do not understand why you do not get planning permission. It is not always clear, why we do and sometimes why we do not.

I remember a time when it was said that you could not have a building that

was a two-story building in a particular development— Trincity, for example. So that people who have applied could not “go up”, as we called it, but then we found, in later years, that people were building two-story buildings next to flat houses and one wonders what was going on. There was nothing to really guide you but I understand now that there is a policy document. But is it readily available, so that now you can apply?

At times you are told, and there has been actual cases, that you cannot have commercial business operating in a particular area and you can only—because it is for only residential. But right next to you, there is a commercial building, and further up the road, there is another commercial building. And therefore, that raises the issue of: Is there fairness? Is there fairness? And sometimes people would try to see what they can do to assist with overcoming their difficulty, but then everybody cannot fight City Hall. Sometimes the resources are just not there. So you, just like the naughty boy in John Keats, you just stand in your shoes and you wonder, you wonder, is Trinidad and Tobago a real place? So we hope that this new legislation that we are putting on books that in fact people will abide by the Code of Ethics and it would be seen that everyone is acting fairly.

Now when we look at clause 3, which is the interpretation clause of the Bill, we see something called a “certificate of good standing”. And that certificate of good standing is a statement issued by the TTSP, which is the Trinidad and Tobago Society of Planners, which certifies that a person has inter alia:

“(b) completed within the past year, a number of hours of continuing professional development...”

Now continuing education is a subject very close to my heart. I always used to emphasize to the law students, you must keep abreast, you must go to

conferences and symposia. You must read, you must always keep learning. I am happy to see that Trinidad and Tobago Law Association is now doing some continuing legal education but it is not mandatory, it is voluntary, unlike the Jamaica law council, which for some years now dragged into the continued education into their way of expectation for the attorneys, kicking and screaming. But we— in Jamaica they have it and we hope at some point, Trinidad and Tobago would have it mandatory for lawyers as other professions.

And there is precedent for including that requirement in the legislation, because if you look at Zambia, which is one of the pieces of legislation I mentioned before that has been looked at as a model for our present Bill that we are discussing, you will see in section 9 of their Urban and Regional Planners Act that:

“The functions of the Council are to—

(h) promote continuing professional development among planners...”

And when you look at our Code of Ethics, it says:

“18(g) seek to maintain his professional competence throughout his professional life;”

That is something that is required. So who should do it? It should be a function of the council.

When you look at clause 3 again, continuing with the definition section, there is a definition in our proposed law of urban and regional planner. But there is no definition of who simply is a planner. If you look at the Bill Essentials, you will see that the models that our framers of this Bill looked at is also— you see that they also have it in their legislation. In the Zambia legislation, planners is defined as:

“...a person with special knowledge of urban designing, the environmental, social, economic and political issues with the spatial approach to problem solving acquired through planning education...experience...”

Now, why would I recommend that we include such a definition in our interpretation section? I say so because if you define who is a planner before you go on to define specialist planners, then it would assist the Accreditation Council which has the responsibility for assessing and pronouncing on the accredited status of an institution providing academic training. So it would be useful for them.

When I looked at clause 6, “Functions of the Council”, I would like to add another function. And I looked again at the Zambia legislation which says in section 9(g):

“make recommendation affecting, or relating to, the planning profession to the general meeting...”

It is important for those people who manage the council to keep abreast of changes, innovations in the profession worldwide so they can in fact seek to achieve improvements in the law and practice. And I want to tie this in with our world Sustainable Development Goals. And Goal 11 talks about having to:

“Make cities and human settlements inclusive, safe, resilient and sustainable.”

“By 2030, ensure access for all to adequate, safe and affordable housing and basic services and upgrade slums.”

When we look at goal 11.3:

“By 2030, enhance inclusive and sustainable urbanization and capacity for participatory, integrated and sustainable human settlement planning and management in all countries.”

Now Barbados, in their brief, the introduction to their planning and development legislation also looked at the Sustainable Development Goals. In fact, that is one of their headings.

“Decisions should be guided by the principles of sustainable development ensuring long term environmental, economic and community health and wellbeing.”

So that it is important that we not only talk about Sustainable Development Goals but at every opportunity, try to bring the goals into whatever we are doing to improve the well-being of our citizens.

When we look at the Code of Ethics, again, it is tied into the whole idea of improvement of what we do with our planning. It talks about state planners in their practise to:

- “4(1) (a) have regard to the totality of land use and adjacent seabed;
- (b) ensure the rational and sustainable utilization of land and related natural resources...
- (c) consider the integrated development of settlements and supporting networks which promote human well-being, environmental harmony and aesthetics.”

When we look at some of the buildings that have been approved we wonder, really, if there is any question of aesthetics there. There is a particular institute of higher learning that every time I see the buildings that they have, really it makes me get very upset, it is an extremely ugly building, but it is cropping up over, wherever they decide to have a branch.

Now, research has shown how lack of urban management just had negative consequences. The people who cannot afford to buy land, they go and in fact they

put down their houses anywhere. And we know the consequences, we know the flooding, we know the natural disasters that are happening in this country and therefore, we always have to be vigilant to ensure that things are done in a proper way, that there must be monitoring all the time. When you look at a clause 8, which deals with the demitting and removal of office for members of the council, we see that it talks about death— of course, you cannot continue if you are dead—the expiration of the term resonation and removal of office by the Minister.

So we have first of all the use of the word “shall” and then we have the “may”. And my question is we know that in legal drafting sometimes “may” is mandatory and sometimes it is not. Is it discretionary in this case? Because when we look at some of the provisions that the Minister “may” remove, not “shall” but “may” remove—if someone is convicted in any court of a criminal offence under this Act or which carries a penalty of imprisonment for a term of six or more months; someone who is guilty of misbehaviour in office; someone who has been declared bankrupt in accordance with the laws of Trinidad and Tobago; someone who is disqualified or suspended otherwise, at his own request, from practising his profession in Trinidad and Tobago or in any other country by an order of any competent authority. And when we put that against our Code of Ethics that:

“5 An Urban and Regional Planner shall—

(d) conduct himself in such a manner as not to prejudice his professional reputation.”

I wonder if this provision in the code is really something that can go along with a discretionary provision which also occurs in clause 46 for members of the Disciplinary Committee.

Do we want, as members of council; do we want, as members of the

Disciplinary Committee, someone who has been convicted? I heard the Attorney General speak of a limited supply. But if we want to talk about persons with integrity, do we want someone there, especially like in a Disciplinary Committee to sit in judgment of someone else if you yourself have been charged with misbehaviour or have been convicted of a criminal offence? This does not sit well, it seems to me, for what we want.

Now when we look at the Disciplinary Committee, I do not see in the Bill at all any limitation of time in terms of the appointment. So whereas the Recognition Committee— it states in clause 36, I believe— that you are there for three years, I do not see a similar provision for the Disciplinary Committee. So is it that if you are on a Disciplinary Committee that you sit forever and ever, amen? I would like to know. Certainly, I would recommend that the period of three years which occurs in other parts in the Recognition Committee should be also in for the Disciplinary Committee members.

Now when I look at the Disciplinary Committee provisions, clause 50, we see that they can make recommendations after they have been hearing complaints against a member and I wonder why they can only make recommendations and cannot make decisions? The Disciplinary Committee of the Law Association, certainly, can make decisions and awards, and why is it that they are just hearing complaints? And when you look at the provision, it speaks about the Disciplinary Committee, at the end of the day, that they would send a copy— whatever recommendation together with a copy of the record of the proceedings to the council.

4.00 p.m.

Now, I would like to recommend—and I say it would be helpful—to the

council in its deliberations that the council—what should happen as well is that not only the proceedings and the decisions, but actually a report of the proceedings because if someone has—when it goes to the council and you have to make a final decision—it is very helpful having sat on enquiries before—it is very helpful if you can see exactly what happened in the proceedings because, you know, you might have a question of a judicial review or something so at least you have all the proceedings there that one can look at to make the decision.

Now, I find that there is some limitation in the kind of decisions that can be made, and I would recommend that when you look again at Zambia's law, that it could be expanded to include the imposition of a fine, that an order can be made to pay restitution because someone may be harmed by the decision that has been made, and therefore, provision can be made for those persons to be compensated and, also for the payment of costs for anyone who has been prejudiced by the decision of the council.

Now, I heard the Senator coming before me speak about how the council is determined, that the Minister is the one who nominates. I find the word “nominate” to be a very curious one because, to me, “nominate” would mean to propose for election. So what do you mean by the Minister nominating? Is it that the Minister is in fact appointing because there is no process here for any election as far as I can see? May I enquire, Madam President, how much time I have left, if any?

Madam President: You finish at 4.08.

Sen. H. Thompson-Ahye: All right. Thank you. So this is clause 5:

“The council shall comprise of the following seven members:”

I will come to that construction again—

“(a) four persons nominated by the Minister as follows—

- (i) one Attorney-at-law with experience in matters relating to urban and regional planning;”

And perhaps what we can do is have the Law Association propose someone, the attorney-at-law that we want to have on the council, instead of the Minister—

Madam President: Sen. Thompson-Ahye, you have five more minutes.

Sen. H. Thompson-Ahye: Thank you. But we can have the Law Association propose someone to be a member of that council. So if that happens it means that we will have three persons nominated, or proposed, or appointed by the Minister; then we have one by the Law Association; and three persons nominated by TTSP, the association who are professional members. So that would help to have more of a balance. You have three, three, and one, and, of course, all members can get their final instruments from the Minister or whomsoever you may choose. All in all, this is a welcome Bill and it can really make a difference to people’s lives once everything is done as it is supposed to be done.

It will certainly help to inspire confidence in the populace, and once my recommendations are accepted in terms of looking at Sustainable Development Goals, and so on, certainly it would bring us more into the 21st Century, but, of course, I cannot leave this alone. As I close, I wish to apologize to James Ingram and say:

“I did my best

But I guess my best wasn’t good enough

‘Cause here we are back where we were before...”

In clause 5 I see “shall comprise of”; please use “shall contain”, “shall comprise” or “include”. In clause 6, use “incidental to”, not “in” because we must:

“...find a way to finally make it right...”

—and let me leave here happy just for one more night. Thank you.

Sen. Deeroop Teemal: Thank you, Madam President, for the opportunity to contribute to this Bill:

“An Act to establish a Council for Urban and Regional Planning and to provide for the regulation of the urban and regional planning profession and other matters incidental thereto”

Madam President, any attempt to increase the professionalism amongst their respective disciplines that are necessary for the planning development in general, it is a welcome move. For the more we have our professionals registered would encourage professionalism, the genuine offer of services to clients, and at the same time it makes our professionals more marketable, not only locally, but it offers the opportunity for professions and professionals to market their services internationally.

So, this attempt to register our urban and regional planners is indeed a commendable move, and as the hon. AG in piloting the Bill explained, it ties in with certain key pieces of legislation, Planning and Facilitation of Development Act and other pieces of legislation to sort of complete the framework, the matrix, for urban and regional planners to fit in so that our country can benefit from that level of professionalism, and also make our urban and regional planners responsible for the services that they provide, and also ensures that they are fairly treated by those who engage their services.

Madam President, I would like to go to clause 3, on page 5, which this particular clause deals with the definitions that fall within this proposed Bill, and the last one where “urban and regional planning” is defined, and it says:

“...means the provision of physical or spatial planning services...”—et

cetera.

Madam President, my main concern here or my main disappointment here in this definition of urban and regional planning is the absence of the element or the word “sustainable”, because overall with the United Nations Sustainable Development Goals that we have subscribed to and, in fact, those Sustainable Development Goals actually form the framework for *Vision 2030* which has been outlined by the Government, I felt that this definition should really make an attempt to include—maybe it is inherent by use of certain terms here, but specifically the use of the term “sustainable” whenever we speak about development in the context of planning.

So I would suggest that this definition when we speak about “provision of physical or spatial planning”, we should include “physical, spatial and sustainable planning”. And in (b) of the definition where we refer to:

“...preparation of land use and physical development...”

—we should also take the opportunity to include “physical and sustainable development” to bring home the point that one of the key features of planning and spatial and physical planning is that in the context of the sustainable development goals, all planning must be sustainable.

With respect to clause 5, in Part II that deals with “The Trinidad and Tobago Council for Urban and Regional Planners” of the Bill, clause 5(2), Madam President, that particular clause which deals with appointment of alternatives, sorry, clause 5(4) that deals with appointment of alternatives, the clause states that:

“The Minister shall appoint, in respect of each member other than the Chairman and Vice-Chairman, an alternative...”

But my concern here is that in the appointment of the members of the council as

outlined in clause 5(1) is that:

“The Council shall comprise of...seven members:

(a) four persons nominated by the Minister...”

And it states as follows: attorney-at-law, state planners, and three persons nominated by the Trinidad and Tobago Society of Planners. What I am saying is that the alternates for the persons nominated by the TTSP should also be done by the TTSP instead of the Minister. Or maybe the TTSP should make recommendations to the Minister as alternates for him to appoint such, seeing that they are the ones who are nominating their three persons.

Madam President, I would like to go to Part III of the Bill that deals with “Licensing of Urban and Regional Planners”. Clause 15(4) in which a particular qualification is introduced in that the academic qualification that is required must be from an accredited body under the Accreditation Council of Trinidad and Tobago Act. And then when we go further down to clause 16(3), it says that:

“A person, who is a professional member of TTSP immediately prior to the commencement of this Act, shall be deemed to be an Urban and Regional Planner and shall be entitled to have his name placed on the Register...”

Now, Madam President, I ask the question: is the current criteria for membership of the TTSP as stringent as what has been outlined in clause 15? Because particularly with regard to qualification from accredited bodies that I referred to earlier under the Accreditation Council of the Trinidad and Tobago Act—because I accessed the website of the Trinidad and Tobago Society of Planners and tried to get some information as to what are the requirements for their professional members because we are talking specifically about professional members here, and there is a form to be filled out and essentially together with the form, a CV—

curriculum vitae—has to be attached as well as a listing of the work experience of the urban and regular planner, and within that form no specific mention is made of accreditation and a process of accreditation for the qualifications of the urban and regional planner.

So I am wondering whether in the crafting of this Bill and in possible consultation with the TTSP, I was wondering in terms of the criteria of the TTSP in terms of they allowing persons to become professional members whether it is comparable with what is being proposed in this Bill here, and whether a due diligence exercise was carried out to validate that the membership of the TTSP as it stands is the same as what is being proposed here in the Bill. Because what it means is that all those who are members of the TTSP, once the Bill is proclaimed automatically this clause 16(3) suggests that they automatically become registered urban and regional planners, and I am exceedingly concerned about this because going forward you have one set of criteria, rigid criteria, for persons to be registered and then if the criteria used for the past is not comparable, I think there is serious inequity in this provision that is being proposed here. What I would suggest is that once this Bill is proclaimed, all persons should apply for registration as urban and regional planners under this Bill and not automatically qualify if they are members of the TTSP. But all should be subjected to the process that is outlined in the Bill here for registration and not allow automatic registration based on membership on the TTSP.

Madam President, I would like to refer to Part V “Committees of the Council”, clause 35 which speaks about the recognition committee and the composition of the committee which would be a subcommittee of the proposed council. In clause 36(2)(b) it mentions four persons—well, the composition of the

Recognition Committee being one member of the council and four persons who are professional members of the TTSP, and I am just querying why four persons who are professional members of the TTSP and why not four members who are registered under this Act? Why the criteria should be four professional members of the TTSP and not four members who are registered under this Act? Because in such a situation as what is proposed here it seems to me that the professional membership of the TTSP takes precedence over those who are registered as urban and regional planners under this Act, and I would recommend that consideration be given to changing those four persons, professional members of TTSP to four persons who are registered under this Act.

The other aspect of it with regard to the Recognition Committee, Madam President, is that it speaks of, in clause 36(4):

“Members of the Recognition Committee shall elect a Chairman and a Deputy Chairman from among themselves.”

In terms of the functioning of the Recognition Committee as a subcommittee of the council and you just only have one member of the council on that Recognition Committee, I was just thinking whether it would not be more professional and expedient for the functioning of the Recognition Committee—

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

Sen. D. Teemal:—to not have the member of the council be the chairman of that Recognition Committee. So such that the reporting back to the council, the member of the council being the chairman, and for liaising with the council itself, it will be more expeditious.

Madam President, the same comment that I just made about the Recognition Committee, I would like it to also follow in clause 44 regarding the Disciplinary

Committee, and the three persons from the TTSP to be on that Disciplinary Committee, for those three persons to also be urban and regional planners registered under the Act rather than professional members of the TTSP.

Madam President, the hon. AG in piloting the Bill referred to professional indemnity insurance, but within what is proposed here in the Bill I am not seeing any specific reference to professional indemnity insurance and whether the urban and regional planners registered under this Act would have to by legislation, would have to effect on their own, or through the council, or through the TTSP, professional indemnity insurance. And with those few words, I thank you, Madam President. [*Desk thumping*]

Sen. Sean Sobers: Thank you, Madam President, for recognizing me this afternoon to contribute to a Bill entitled:

“An Act to establish a Council for Urban and Regional Planners and to provide for the regulation of the urban and regional planning profession and other matters incidental thereto.”

Madam President, if you would permit me, I would like to indicate very early on that Bills like these are welcomed Bills. They are Bills that are designed to treat with lacunas that exist within our system that many persons throughout our society have to deal with on a daily basis, with little or no redress to assist them, and only sometimes unfortunately as lawyers when we get involved in these types of phrase, we recognize how wanting our system is.

That being said, I personally would like to also indicate that when coming here I take my job and my role as a legislator very, very seriously, and I understand that we are here to do the business of the people, to improve the lives of citizens of Trinidad and Tobago. So, when some of us go low, I will continue to go high, and I

am sure that all persons, not just the people of San Fernando West, but all people will appreciate that breath of fresh air in this political climate.

That being said, I would want to bring what we are discussing into a proper perspective because I think when people hear about urban planning and the discussions that were being had so far, I do not think they totally understand what this means and how it would impact our society. A lot of the times when we are conducting business construction, making an application to the Magistrates' Court for a liquor licence, a grocer's licence, special restaurant licence, we have to obtain certain approvals that come from the Town and Country Division, the regional authorities or city corporation, as it may be.

Some of these things entail us treating with the Ministry of Works and Transport depending upon the size of the property and the structure, and we are left wanting because we do not understand how a particular structure that could have been licensed since you know yourself growing up as a little boy, when you attempt to make a purchase, or have the licence converted into your name, you are met with a significant amount of changes that have to take place with respect to this structure, to have the very same licence that has been existing for a number of years vested in your name, and you are told by persons at these institutions that it is for the good of the environment with respect to OSHA concerns, and health concerns, and what not.

But then you wonder why were these concerns not raised or treated with during the lifetime or span that this previous business owner operated his or her establishment? That is a huge concern that I had when reviewing the legislation and understanding the environment that we are currently existing in, and I must indicate from the get go that the problems that plague the Town and Country

Division are interwoven with what exists in the regional corporations and the Ministry of Works and Transport.

Some persons may not say it at all during this entire debate, but it is ramp with significant amounts of corruption and mismanagement, that you have persons setting policy within the Town and Country Division who may very well be educated and licensed accordingly and those policies are not being followed properly through by individuals who exist within the regional corporation setting, that you may very well have an urban planner existing under such a title at the regional corporation, but with no qualifications to hold that post. You have someone called a building inspector at the regional corporation or the city corporation but with no significant qualifications to hold that post.

And so, when you as a member of society may want to purchase a property, conduct some construction, have a licence vested in your name, you obtain the necessary approvals from Town and Country, you have the building inspector from regional corporation telling you something totally different, and then when you apply to the Ministry of Works and Transport to get involved they can only do so. The Ministry of Works and Transport has qualified persons, engineers and planners there, but they can only do so once they are informed that there is a problem existing from the regional corporation.

And these are the things that I thought—I mean, yes, we are starting with putting some structures in place, but these are the things that I thought that the legislation would fix and it does not. There is no strict requirement meted out in this particular Bill that would indicate that this is what is supposed to happen with respect to chain of command and chain of instructions within these three organizations; that there is also no lack of enforcement articulated within this Bill for urban planners

to enforce upon individuals when they run afoul or they become errant; that there should be some correlation existing, and I would like to hear it possibly in the wrapping up from the Attorney General, between the Ministry of Works and Transport, the Ministry of Health as well too, OSHA, Town and Country, fire, WASA and even T&TEC with respect to enforcement, with respect to information being passed laterally amongst each other when it comes to enforcing the provisions and the stipulations that would be meted out through this particular piece of legislation.

4.30 p.m.

And also, I would have liked to see some recommendation within the Bill as it pertains to constant assessment. So I mentioned at the genesis of my contribution that there are many persons— and I as a lawyer representing them— persons who would like to take on licences that would have existed, are met with a significant amount of changes that have to take place with respect to the property before they can have it vested in their name and in most instances, they do not understand. If there was a constant level of assessment that was taking place during the lifetime of the previous licence holder, then the current person who is willing to make that application to have this licence—be it special restaurants, spirit retailers, grocer licence or whatever it is— vested in them, would not have to be faced with this enormous task to have the structure adapted to meet the current requirements as meted out by Town and Country.

That the same requirements, the same position adopted by Town and Country with respect to ensuring that the establishment is up to code— building codes, structural code— so as to ensure that persons' health concerns and whatnot are paramount. Where were those concerns five years ago or 10 years ago or 15

years ago when the building was in existence? And that is what I would have liked to see in the legislation, a need for constant assessment of structures within our country, especially assessment for establishments that allow a lot of foot traffic, a lot of visitors and patrons at those establishments. It is non-existent.

When I looked at the legislation, firstly, at page 6 of the Bill, clause 5(3) deals with the qualifications of persons who would make up the council or who the members of the Council would be and 5(3) in particular—so 5(1) speaks to the appointment of the attorney-at-law with experience in matters related to urban and regional planning; 5(2) speaks to two state planners who are professional members in TTSP; and then 5(3) is simply one person representing the public interest and there is no indication or description to any experience being attached to this individual. In what capacity would they be representing the public interest? Are we just simply going to take someone off the street? Or because the members of the Council are appointed based upon the Minister's instruction, is this person going to really be a card-carrying member of any party? So I would like to see an amendment to that where there is some degree of experience or expertise adapted to fit within this section so that it is not some arbitrary person who is appointed to the council.

Clause 5(3)(a) as well too. So this section indicates the qualifications of the Chairman and it reads:

“a Chairman, who shall hold professional membership in TTSP and shall have at least ten years' experience in urban and regional planning...”

And then (b):

“a Vice-Chairman.”

No indication as to the level of experience or expertise that that vice-chairman may

have. So the same problems that I have associated with respect to the appointment of a person representing the public interest, I would like to see some expansion on the qualifications attached to this vice-chairman who is also going to be someone extremely important in terms of the operations after of the council as well too.

At page 10, it deals with the application for a licence to be placed upon the register of urban and regional planning. Now clause 15(3)(b) which is located on page 11 indicates that the individual should procure what is known as a certificate of fitness, so it says:

“recommendations from two Urban and Regional Planners attesting to the applicant’s fitness and ability to practise urban and regional planning in Trinidad and Tobago;”

Then when you read on the following page, on page 12, at 15(4), it says:

“Subject to subsection (3), the applicant shall submit to the Council qualifications in urban and regional planning that have accredited status and are granted by institutions which are accredited under the Accreditation Council of Trinidad and Tobago Act.”

Now, the qualifications that are listed here are understandable. It treats with persons who may have now graduated from whatever college or institution that awards these urban planning certificates and degrees and whatnot, which I am told are really non-existent in Trinidad and so, persons will be foreign qualified. But in terms of the certificate of fitness aspect, where there is a:

“recommendation from two Urban and Regional Planners attesting to the applicant’s fitness and ability to practise urban and regional planning in Trinidad and Tobago;”

More than likely, in all cases, this may very well be a non-existent situation,

insofar, as if you have just graduated and you have no urban and regional planning experience within Trinidad and Tobago, how are you to satisfy this requirement? Most certificates of fitness that are requested for persons to join professional organizations come from the institution that the person would have attended, indicating that the person, based upon their success at the institution, is a person fit and ready to engage in practising in that particular field as opposed to someone who already has that necessary— or that experience associated with them.

So that I think it is going to be extremely difficult for this individual who is now applying to be placed upon the register to get recommendations from two urban planners attesting to that individual's fitness to practise when he has now actually been qualified. So I think we need to relook how that is interwoven within that particular section.

At page 17, clause 27 deals with the issue of appeal to the Environmental Commission and the appeal process is specific to the refusal of the renewal of the individual's licence, an appeal process with respect to the revocation of the individual's licence—

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

Sen. S. Sobers: Grateful please. And the appeal process with respect to suspension is here as well too and the refusal of his reapplication under section 26. But there is no appeal process indicated in the body of the Bill that treats with a person's ability to appeal to any tribunal for a first-time applicant. So clause 15 of the Bill deals with the first-time applicants and the process that they have to go through and where I thought in section 27 where we were dealing with appeals, the first type of appeal I would see listed there would have been for persons who would have been refused on their first-time application, it is not contemplated in this section of the

appeal. So I heard the hon. Attorney General indicating why the Environmental Commission, because it is a small body and whatnot and whatnot, but I mean this is totally lacking the contemplation of first-time applicants having a place to appeal to if they are refused to be placed upon the register.

And also at clause 29(2) where it indicates that:

“The Register shall at all reasonable times be open to inspection at the office of the Council.”

The hon. Attorney General and the Government, they love to indicate that they are going digital and that most of these things would be online and whatnot, and bringing things into perspective with respect to the 21st Century. So that I thought that at this juncture we would have seen that the register would have also been online for persons to be able to access to see who are the registered urban planners within our country, as opposed to having to go and actually inspect the register document or whatever at the council’s office itself.

Madam President, again, I would like to reiterate in conclusion that we need to be more vigilant, more proactive, when it comes to addressing issues related to proper urban planning, not only when it comes to flooding and construction of homes and buildings in areas where they ought not to, but in terms of ensuring, especially in more urban developments, that there is constant assessment of those structures. There is constant assessment as to how persons who currently hold licences—because it is a licence, it is not an unfettered right to remain and exist, it can be revoked. We need to ensure that there is constant assessment, that persons who hold those licences operate within a manner that is responsible, especially when they are serving persons and members of the public within our country. The Bill does not properly speak to that and I think it is something that we should

consider. Even though we are taking a first step in trying to get this particular position right, that to me is very, very lack in the contents of the Bill and we would need to address that going forward.

With these few words, Madam President, I thank you for this opportunity.

[Desk thumping]

Sen. Dr. Varma Deyalsingh: Thank you, Madam President, for allowing me to partake in this debate. First I might say that recently, when we had the recovery team announced, I was a bit disappointed that I do not think I saw any urban planners in this body and I am thinking that the urban planners are really very important. They are very important especially now that they have this situation, in a COVID world, that you have the new norm. And remember, they have the skill set and they have an important role as well as the healthcare workers, as well as the economists, to say how to get the country going, to see how we are going to plan our cities, how we are going to put things in place and they should also be in the forefront of this battle, because they should be an advocate for a strong voice that could help against the spread of this pandemic and other pandemics that may come.

So remember, the urban planners are trained to handle a variety of responsibilities around planning, design, management of land, resources, transportation, public spaces as well as, you know, they would also have the planning in a city to say how it is best for the people in terms of the health care, in terms of any sort of problems that may exist. So remember, we have a problem with density and the spread of COVID. We have that problem in cities with density. So therefore, getting the planners into a body, getting them in more a professional way, we will have to depend on them more and more, how to plan our

cities. But not all dense cities cause problems because Los Angeles is a dense city, it is a good example but the neighbourhoods are dense, but people can shelter and work remotely and have all the necessities addressed. In comparison or contrast to New York where you see there is a poor dense space, where people are forced to navigate between vehicular traffic roadways, narrow, non-existent sidewalks, are herded into commercial facilities to shop for their basic needs. So I am trying to give a plug for the importance of this profession and I have to say it is indeed commendable that today, we are now debating this Bill to try to get them into that body to appreciate them.

You see, Madam President, we have to consider the new norm where we have six feet apart, public places, parks are there, you know. We will have to know how we are going to set up shop in the city and they are the ones who will be giving us that guidance. They are the ones to look at the open spaces, the recreational amenities and to see how we are going to plan ahead. So the opportunity now exists for housing developers, public policymakers to apply lessons that we have learnt from COVID and how to deal with this density, but then previously, urban planning and regional planning took more of an economic viewpoint. It should be driven now, not too much in the market approach, but by poverty eradication because that is one of our specific developmental goals and also, health and safety.

Madam President, just coming to the Parliament, you know, you pass the Beetham landfill and you realize that Trinidad has one of the highest waste production per capita and even we are running out of space in the landfill. You remember years ago, I think when there was a summit here, there were plans to block off the walls to hide that area. We look at even Sea Lots as we are going in

there. I mean Machel immortalized Sea Lots in a song “I See Lots”. And the thing is, there are those areas around our city, there are those areas that we need to fix, we need to fix the poverty, we need to fix the crime and I am saying this is the time that we give this profession the job, you know, to do that the job.

Because, Madam President, we have to appreciate Trinidad and Tobago, we have had earthquakes and people are saying that we are in for a major one. We have had floods and flood season is coming on. So all these are efforts that we would have to address and all these are efforts that we would have to see how we are going to best get the spatial density, get the ills that plague our city, how we can get those and somehow in a better way that will help our population.

So, Madam President, we have a lot to be thankful for. We have the Queen’s Park Savannah which is green space. I mean, Trinidad could be a beautiful city, Port of Spain could be a beautiful city, we just have to get together and get our act together. It is not to say that planning has not been attempted in the past. I remember when the NAR was in power, the painting of the light house, that area there, in front of the sea parks, you know, benches were put there. They had drained that area where there were shipwrecks. So attempts were made to beautify. And then later on, we had—I think when you had the development the Brian Lara Promenade, then you had the Hyatt Waterfront. All those are commendable things to make our city nice.

But I mean, even though we had that, even though it was plagued with some UDeCOTT scandal, even before that, we had instances when the Financial Complex was built, you had—all those are efforts that made Trinidad, made our city look a little better. But even that was plagued with some sort of allegations where you had the Ballah Report saying that government-to-government

arrangements for that planning were also a little bit tainted. So urban development is there but we have to realize that when we are developing our country, we have to appreciate that we have to look out for any sort of corruption that may be linked to this.

So, Madam President, I would like to say that we have to look at the fact that development of our city, I think is paramount. We have to look at when they developed Silicon Valley, when it was developed in California, you had that area developed in such a way that you blended the communities, the industries, the dominant firms and distinct economies. So the idea is there. You can do things, you can do great things. We can fix Trinidad and Tobago and we could also look at the idea that the urban planning— we have to figure that the appreciation has to be given that this profession could help poverty and crime because there was a research done by O'Sullivan who stated that poor people living close together may somehow continue the cycle of poverty. We also know the broken windows concept where you have certain buildings broken down. So we have an effort here that we need to go after.

So all in all, this Bill seeks to give the profession, you know, some sort of area where you can have that body, that council disciplining the members, giving them that authority to make it a body. And I realize that even the University of the West Indies, I think they produce about eight graduates a year, and most of these urban planners are, I think, hired by the Ministry of Planning and Development—I think there are about 22 and then Tobago, there are 12, so it is a field that is there. And it is a field, if we are producing eight graduates a year, we have to think now when we are putting them in that professional body, you are going to have—and then some are also in private entity. So we have to appreciate— this is the time to

put them in this sort of framework where they can exist.

So the fact that this seeks to establish the council, I think it is something that is commendable. The fact that certain members had mentioned certain concerns about the composition of the council and I too, Madam, may have to say that I too was a little concerned when I looked at the composition of the council in the sense that I noticed that when you look at composition of the council— it was mentioned here in clause 5 that four persons would be nominated by the Minister, including an attorney-at-law with experience in urban and regional matters; two state planners, who are professional members of the Trinidad and Tobago Society of Planners; and one person representing public interest; and the remaining three persons are nominated by the TTSP. It was made mentioned that this might be skewed in favour of the Minister having more control and people mentioned that.

And as I make mention to this, Madam, even in our medical board, as the President of the medical board, we have a medical board where there are 11 members and four in the Council are elected by medical board and the Minister appoints two members. So the Minister appoints two but one person who comes on automatically in our medical council is the CMOH, who occupies that position in the Ministry. But we also have the Law Association giving us a nominee, we also have the IRO giving us a nominee and we also have a member of the ICATT, the accountant committee, giving us a nominee and in this way, there is a balance. In this way, yes, the Minister has two appointees and the medical fraternity elects four, but there are non-medical persons on board also to ensure that there is a balance from doctors themselves not taking up for doctors when disciplinary matters come on-board so there is a greater balance; 11 members. So therefore, I am saying, somehow, I would have loved to see a more balance into the

composition of the Council.

And I look at the composition too, I am thinking since planning has such a great aspect now in dealing with the post-COVID, probably, we may have to factor in that even the CMOH, the Chief Medical Officer Dr. Parasram or whoever occupies this post in the future, should be factored in there because the planning—the council itself has to be cognizant of the fact that the health issues, public spaces, public health inspectors, all these things he can bring to the table into this council to make them appreciate not just the structure and the parks, but more the health issues.

When I looked at clause 6, I realize that this really serves to give a Code of Ethics to register and license the practitioners, to really monitor the profession and so, this gives some of the functions of the council. And clause 7 will give the tenure of office, the vacancy of office, all these are actually taken care off. But, you know, what I found that caused me a little concern is the fact that you have a Licensing Committee and a Disciplinary Committee, and we in the medical council, we do that function on our own. We do not have separate committees to manage that because having additional committees would mean more bureaucracy, it may mean—well besides more staff and I do not know how these members are going to be paid. So probably the Minister may have to look at— the AG may have to look at how the medical board and the medical council functions without having these additional committees appointed. But I do not know if it is the new law now that it is a more transparent idea to have a Disciplinary Committee separate or to have not just a Disciplinary Committee but a committee who will license separate. So if that is the trend of the law then probably the Medical Board Act needs to be amended to be in tangent with what is happening now to come to terms with this.

However, when I looked at the licensing committee, I realize that the Licensing Committee—clause 15 speaks of having the application for a licence. Somebody coming up for a licence must have a degree, they must have at least three years' post-qualification experience in urban and regional planning work recognized by the Council. But, Madam President, some persons may come out with a degree and may not get jobs, so we have to know how we are going to factor them in. Further down in the legislation, I heard what you call a “provisional registration” but the fact is—

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

Sen. Dr. V. Deyalsingh: Thank you, Madam. So the fact is we have to appreciate that we may have to create a position of mentorship with those persons, a paid position, so these young persons will be able to get into the Ministry. so we have that future of these planners being there with a job. Because then, if they have no work experience, they would just have a degree and nothing to say that they have experience to come on board as full members.

Again, I want to look at clause 16 where we are looking to put persons into the list of the professional members of TTSP and I am saying people exist right now who call themselves urban planners. I think the AG mentioned that they may be like the “bush planners” and, you know, when you are changing any piece of legislation, we have also accommodate these “bush planners” too and probably grandfather them in and say, “Well, you are there already, we will put you in as you are functioning in that role but after a year, nobody will be able to come unless they get their degree from the university.” So I think we need to factor that in.

So the provisional licence, clause 18, Madam, I think the provisional licence actually has applicants not having the requisite experience that they are under the

supervision of an urban regional planner who holds a valid professional licence and is a professional member of the TTSP. So if these young persons are under those persons, we want to make sure that they are given a job, they are paid well, they are not taken as somebody with a labour, you can just give them pittance. So these people may have to be looked at, they need feedback on performances from whoever is hiring them.

For temporary licence, this actually looks at persons who are not citizens from abroad and I think further down in the legislation, it gives to the sense that they must come in and give a certificate of good character from wherever they are coming and I suggest also, that their professional planning body should give a certificate saying there is nothing amiss in whatever job they did there before.

Clause 27 had me a little puzzled and I need some clarity here where it allows for the appeal for the Environmental Commission on a decision of the council to refuse renewal or reapplication of a licence or to revoke or to suspend a licence. So I just need clarification about the Environmental Commission on how come they would be the one overseeing this. I think sometimes, you know, if somebody is not given a licence, there is also the avenue for the court, they can go to court and challenge that also.

I looked at clause 33 where they said you should publish the list on two daily newspapers. I say all respectively, there are three daily newspapers, it would not cost more, put it in the three daily newspapers instead of two, lest the Government be accused of having their preferences in this newspaper or that newspaper. There are three daily newspapers; that should not cost more.

5.00 p.m.

Now, there is a Recognition Committee, which basically looks at the

qualifications. And most respectively, I am thinking, besides the members there, one should also include a nominee from the University of the West Indies, an academic, so to say, who can look in at the qualifications. Because the Recognition Committee looks at qualifications of probably people coming abroad to practise here and could compare the curriculum here with what exists abroad.

The composition of the Disciplinary Committee, clause 44, they said it has to be an attorney-at-law at least of 10 years standing. And I am thinking: Why among themselves they cannot vote in, among their membership, who could be the chairman? And also why not include other personnel, like a member of the mediation board? Because if a Disciplinary Committee comes about, he may be able to diffuse the situation.

Further down in clause 46, it was said that if somebody is bankrupt, they cannot be obviously a part/a member, but how do we know if somebody is bankrupt? Because they may have somebody being bankrupt or somebody abroad who comes in and get struck off from their role up there, and when they are here, we would have no idea that they were struck off because of some activity abroad. So somehow we have to have a link between our body and their body.

So all in all, Madam President, I think that this is a good venture. And in conclusion, I would want to say we need a cleaner city. We need a safer city. I dream of Port of Spain being the jewel of the Caribbean and I hope one day this could be achieved with this body. Thank you.

ADJOURNMENT

The Minister of Energy and Energy Industries (Sen. The Hon. Franklin Khan): Thank you very much, Madam President, I beg to move that this Senate do now adjourn to Tuesday, the 9th of June, 2020, at 10.00 a.m.

We plan to complete the committee stage of the registration of bills Bill and time permitting, to complete debate on this Bill, the urban planners Bill.

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

Sen. Mark: Madam President, thank you. Madam President, I have been advised by Sen. Clarence Rambharat that the Minister of Finance is otherwise engaged, so he would not be able to present himself to respond to my Motion. So, with your leave, Madam President, I shall defer that matter for next sitting. That is what I have been advised.

Returning Nationals (Government's Plans)

Sen. Wade Mark: Madam President, the matter that I will be discussing and seeking some clarification on, is the need for the Government to outline what steps, if any, it will be taking to immediately assist the hundreds of T&T, Trinidad and Tobago nationals stranded in different countries and on cruise vessels who are desirous of return to this country.

Now, Madam President, I cannot provide this honourable Senate with all the instances of persons, groups in different parts of the world, in different countries, on cruise line vessels, who are seeking to return to Trinidad and Tobago. But there is need for the Government to outline, in a very clear manner, through a policy document, what is the policy of the Government and the process involved in a transparent way, as it relates, Madam President, to the granting of exemptions to different categories of persons in Trinidad and Tobago, or who are desirous I should say, in returning to Trinidad and Tobago. You see, in the absence of a clear policy that is published and circulated, no one in this country would have a proper understanding of how this process is activated and executed, lest citizens come to

the unfortunate conclusion that there may be some discrimination in the actions that are being taken, as it relates to picking and choosing who should be returning to our country. So the first point I would like to record is the need for the Government to circulate, for public consumption, its policy as it relates to citizens who are stranded abroad and who are desirous of returning to their country.

Madam President, there are so many instances of citizens who have been appealing to the Minister of National Security for them to be granted an exemption so that they can revisit or that they can return, I should say, to their homeland. Some of them are not in a fortunate position to pay their way. They are literally bankrupt, financially, and they are depending on the Government to intervene and to bring them back home. Some of them, or I should say others, are in a position to finance their own way, even to the point of paying for a private aircraft to bring them home, Madam President. So, I am raising this matter today to get from the hon. Minister of National Security: How does the Government proceed in dealing with all of these nationals who are willing to return? I will give you some examples, Madam President, in order to demonstrate the challenges that these citizens who are outside of our space, land space and are located in other jurisdictions, are experiencing grave and dangerous challenges.

I myself was moved, not to tears, but my pores raised when I listened this morning to the pleas, the cries, of one Mr. Patrick Jaglalsingh. He is a visually impaired person who, unfortunately, Madam President, went to St. Lucia and whilst he was in St. Lucia, we closed the borders. And Mr. Jaglalsingh is appealing to the Minister of National Security, and he has done it on several occasions— I am speaking after what the gentleman said on the radio this morning— that he has made several efforts to contact the Minister of National Security, to get the Minister to agree to bring him home. He is saying, Madam President, by the 4th of

June, which—is today the 4th?

Madam President: Tomorrow.

Sen. W. Mark: Tomorrow. He is saying to us, Madam President, that the person who he was staying by would be leaving for Texas because St. Lucia is opening its airport and they are going to Texas, and he would be stranded. So, I just draw this as example, Madam President. We have a citizen who is visually impaired. He is crying out for help and he is not getting any responses from the Minister of National Security as to whether the Government would be willing to arrange a flight or to let him get some funding because he is stranded. He needs to come back home. So that is the first person I wish to bring to your attention. Madam President, that is a person who cannot afford to pay his way back to Trinidad.

But, Madam President, I too was a bit surprised like, I am sure, many of us, when we read in the *Saturday Express* of May 23rd, when a citizen who is a businessman by the name of Mr. Jeffrey Azar, who complained, Madam President, that he was shocked, even though he is able to pay his way and he was able, Madam President, to pay almost three-quarters of the moneys required for a private aircraft to bring him home with his wife who went, according to this report, for treatment for cancer. And, Madam President, this gentleman, from my information, and maybe the Minister of National Security can clear the air on this matter, this gentleman is still languishing in Miami. And he is with his sick wife, and he has been making appeals after appeals to the Minister to have him come home. He is not asking for CAL to go to New York or to Miami to pick him up. He is willing to get a private aircraft to take himself and his family back home.

So, Madam President, here is another example of a citizen who is able to pay but he is still unable to be granted an exemption to come home. This is why I am asking today: What is really the policy of the Government when it comes to

dealing with our nationals who are stranded?

And, Madam President, you would know many people have medical emergencies. Many people, based on the research that I have conducted, are stranded on cruise lines or cruise ships. Some of them are in Curaçao. Some of them are in the United States. Some of them are in Europe and they want to come home, Madam President.

And therefore, I am raising and I am seeking clarification from the Government of Trinidad and Tobago, as to how we are dealing with our nationals. Our nationals believe that they are not being treated fairly. They believe that they are not getting adequate responses and timely intervention on the part and from the Government.

So, Madam President, this is my simple Motion, and I would like the hon. Minister of National Security to guide us on this matter and guide Trinidad and Tobago on the Government's policy on this matter. I wish to thank you, Madam President, for the opportunity.

The Minister of Agriculture, Land and Fisheries (Sen. The Hon. Clarence Rambharat): Thank you, Madam President. Madam President, I thank Sen. Mark for the Motion. I want to emphasize from the outset, Madam President, that it is clear that the Government has successfully managed the country's response to COVID-19. [*Desk thumping*] Compared to some of the more resourced jurisdictions, we have done well under the leadership of our hon. Prime Minister, our Minister of Health, the Chief Medical Officer, all the health care practitioners, those based in Trinidad and those advising from the outside, and all the other persons, all the other citizens, Madam President, who have done what they were required to do.

Madam President, perhaps the most difficult measure we have had to take—

we have taken several measures, including stay at home, wear your masks, and other things—the most difficult measure must have been closing the borders, and even the hon. Prime Minister had spoken about his daughter having to remain outside. Because not only for us, jurisdictions which have had success— a major part of the success has been the closure of the borders. And we have done that since March 23, 2020, to both nationals and non-nationals. Madam President, the Government believes that a significant component of protecting the population and the success we have had so far, has been through the closure of the borders. And we do not have to go far to justify this. Every single one of the 117 positive cases of COVID-19 in Trinidad and Tobago, everyone was imported or traced to importation.

We do in fact recognize that we have nationals outside, that is the nature of all these Caribbean islands. We have significant sections of our population outside. And in this case, the Minister of National Security has indicated—and they are outside for various reasons, Madam President, including those who work outside of Trinidad and Tobago like offshore workers in the oil and gas industry, people who work on rigs, people who work on service boats, servicing rigs in the Gulf of Mexico, in Suriname and other parts of the world, people who work on vessels, people who work on cruise ships. Throughout the Caribbean region, we have been hearing a lot about the cruise ships and the impact of COVID-19 on the cruise ships. But the Minister of National Security believes that there are 330,000 nationals outside of Trinidad and Tobago and thousands of them wish to return to the country and thousands are seeking approvals to re-enter Trinidad and Tobago. And towards the end, I would talk about the press release from June 2nd that outlines a process.

Madam President, the Government has continuously provided information

with regard to the controls at the borders, the closure, the way in which it is being managed and the reason for doing that. We have moved from daily press conferences to a position where we have a few press conference each week. But initially, at least for the first month, there were press conferences every day; a lot of information, via the Ministry of Communication. My colleague, Sen. Donna Cox and various technocrats from the Ministries have appeared at the press conferences, including my colleague, Sen. Paula Gopee-Scoon also. So, there has been no shortage of information.

Madam President, what the Minister of National Security has been articulating is that, from time to time, permission may be granted to persons to enter or to leave Trinidad and Tobago. We do not focus too much on leaving but because the airports are closed to commercial aircraft, there is also the need for the Minister, from time to time, to facilitate the landing of aircraft for transport of persons outside of Trinidad. For example, the various embassies, the British Embassy and the US Embassy have had flights for persons working in Trinidad, and for persons who were in Trinidad and Tobago and were required to leave.

So the process has been the Minister receiving those requests and exercising his authority, in consultation with the Ministry of Health and the Prime Minister, in relation to exit and entry of nationals. The Government has been permitting nationals to come back to Trinidad but it has done so in a very controlled manner. And in the case of persons entering, the key element has been on the basis of risk assessment and on the requirement of quarantine. And for that purpose, Madam President, we have established quarantine facilities where persons returning to Trinidad, by permission, are required to enter into these quarantine facilities.

Madam President, in relation to the cruise ship workers, very topical. It was in the news, there were a lot of pleas and so on for the re-entry of those workers.

The first batch of six nationals were allowed back into the country on Saturday 23rd May, 2020 and two days later, there were 52 nationals who worked on cruise ships, who were permitted entry, and they are all in quarantine still, in accordance with the procedure and the guidelines which have been established. But I take the opportunity to say, Madam President, that cruise ship workers who were repatriated to Jamaica, Grenada and St. Vincent, have actually tested positive for COVID-19 and some of our nationals who were on board the same vessels as those persons who have tested positive and re-entered those other Caribbean jurisdictions.

Madam President, the Government is now making arrangements for another 29 nationals working on cruise ships to enter Trinidad and Tobago tomorrow. The Minister of National Security and a team are currently in discussions with one of the largest cruise ship companies, Royal Caribbean, to manage—and there has been a lot of discussions on this particular one—the return of between 326 and 350 of our nationals who are working on the Royal Caribbean ships. Madam President, the point that the Minister of National Security, the Prime Minister and the Minister of Health have been making is that the re-entry and quarantine of this particular group requires significant logistical arrangements, as the re-entry would really put pressure on the existing quarantine resources and also, in the event it becomes necessary, would put pressure on the other elements of the health sector that provides support in our response to COVID-19. So, those discussions are taking place with the Minister of National Security, of course, in consultation with the Prime Minister and the Minister of Health, and of course, the Chief Medical Officer.

The Government is also working with the principals of UWI in Barbados and Jamaica, Madam President, to repatriate our nationals who are at UWI in those

countries. And again, the initial figures suggest that there are about 600 nationals of Trinidad and Tobago who are in Barbados and Jamaica, and again, the need for quarantine and the need for additional measures, and of course, the need to ensure that we have the capacity in case some of these returning nationals who are coming from UWI in Barbados and Jamaica need additional health support, having regard to where they are coming from. So all nationals returning are assessed by the Chief Medical Officer and a determination is made on what needs to be done in the context of quarantine but the Government remains mindful of the stress. We have avoided great difficulty so far. We know what our capacity is. The Government is making sure that we do not put the sort of pressure that other jurisdictions have put on their health capacity and found themselves in grave difficulty.

Madam President, there was a press release on June 2nd from the Minister of National Security and the media release sets out the procedure for requesting an exemption to enter or depart from Trinidad and Tobago—enter into. And basically it sets out that, at this stage, only requests made by nationals and permanent residents of Trinidad and Tobago to enter the country are being considered, at this time, on a case by case basis.

Madam President: Minister, your time is up.

Sen. The Hon. C. Rambharat: Thank you very much, Madam President.

Question put and agreed to.

Senate adjourned accordingly.

Adjourned at 5.23 p.m.