SENATE

Tuesday, February 15, 2022

The Senate met at 1.30 p.m.

PRAYERS

[MADAM PRESIDENT *in the Chair*]

Madam President: Hon. Senators, I have granted leave of absence to Sen. Evans Welch who is out of the country and to Sen. Jayanti Lutchmedial who is ill.

SENATORS' APPOINTMENT

Madam President: Hon. Senators, I have received the following correspondence from Her Excellency the President Paula-Mae Weekes, ORTT.

"THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

By Her Excellency PAULA-MAE WEEKES, O.R.T.T., President of the Republic of Trinidad and Tobago and Commander-in-Chief of the Armed Forces.

/s/ Paula-Mae Weekes

President.

TO: MS. TAYLOR JOWELLE DE SOUZA

WHEREAS Senator Jayanti Lutchmedial is incapable of performing her duties as a Senator by reason of illness:

NOW THEREFORE, I, PAULA-MAE WEEKES, President as aforesaid, in exercise of the power vested in me by section 44(1)(b) and section 44(4)(b) of the Constitution of the Republic of Trinidad and Tobago, acting in accordance with the advice of the Leader of the Opposition, do hereby appoint you, TAYLOR JOWELLE DE SOUZA, to be a member of the

Senate temporarily, with effect from 15th February, 2022 and continuing during the absence of Senator Jayanti Lutchmedial by reason of illness.

Given under my Hand and the Seal of the President of the Republic of Trinidad and Tobago at the Office of the President, St. Ann's, this 15th day of February, 2022."

"THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

By Her Excellency PAULA-MAE WEEKES, O.R.T.T., President of the Republic of Trinidad and Tobago and Commander-in-Chief of the Armed Forces.

/s/ Paula-Mae Weekes

President.

TO: MR. JOHN HEATH

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

NOW THEREFORE, I, PAULA-MAE WEEKES, President as aforesaid, in exercise of the power vested in me by section 44(1)(a) and section 44(4)(c) of the Constitution of the Republic of Trinidad and Tobago, do hereby appoint you, JOHN HEATH to be a member of the Senate temporarily, with effect from 15th February, 2022 and continuing during the absence from Trinidad and Tobago of Senator Evans Welch.

Given under my Hand and the Seal of the President of the Republic of Trinidad and Tobago at the Office of the President, St. Ann's, this 14th day of February, 2022."

OATH OF ALLEGIANCE

Senator Taylor Jowelle De Souza took and subscribed the Oath of Allegiance as required by law.

Hon. Senators: [*Inaudible*]

Madam President: Members, please. I have never had to caution Members while this part of the proceedings is going on. So please.

OATH OF ALLEGIANCE

Senator John Heath took and subscribed the Oath of Allegiance as required by law.

SUMMARY COURTS (AMDT.) BILL, 2021

Bill to amend the Summary Courts Act, Chap. 4:20 to remove the requirement of consent for joinder of complaints in summary judicial matters, brought from the House of Representatives [*The Attorney General and Minister of Legal Affairs*]; read the first time.

Motion made: That the next stage of the Bill be taken later in the proceedings. [*Hon. F. Al-Rawi*]

Question put and agreed to.

PAPERS LAID

1. Ministerial Response of the Ministry of Rural Development and Local Government to the Second Report of the Joint Select Committee on Finance and Legal Affairs on an inquiry into the Status of Un-proclaimed Legislation (Part 1): The Planning and Facilitation of Development Act, 2014 and the Data Protection Act, Chapter 22:04. [*The Minister of Rural Development and Local Government* (*Sen. The Hon. Kazim Hosein*)]

2. Motor Vehicles and Road Traffic (Amendment to the Ninth Schedule) Order, 2022. [*The Minister of Works and Transport* (*Sen. The Hon. Rohan Sinanan*)]

   Ministerial Response of the Ministry of Planning and Development to the Second Report of the Joint Select Committee on Finance and Legal Affairs on an inquiry into the Status of Un-proclaimed Legislation (Part 1): The Planning and Facilitation of Development Act, 2014 and the Data Protection Act, Chapter 22:04. [*The Minister of Agriculture, Land and Fisheries* (*Sen. The Hon. Clarence Rambharat*)]

3. Annual Report of the Criminal Injuries Compensation Board for the period 2019/2020. [*Sen. The Hon. C. Rambharat*]

4. Report of the Auditor General of the Republic of Trinidad and Tobago on the Financial Statements of the National Agricultural Marketing Development Corporation for the year ended September 30, 2019. [*Sen. The Hon. C. Rambharat*]

5. Report on the Operations of the National Insurance Board of Trinidad and Tobago and the Audited Financial Statements for the financial year ended June 30, 2021. [*Sen. The Hon. C. Rambharat*]

6. Ministerial Response of the Ministry of Public Utilities to the Second Report of the Joint Select Committee on Land and Physical Infrastructure on an Inquiry into the Management of the Trinidad and Tobago Electricity Commission (T&TEC) and related Recommendations. [*Sen. The Hon. C. Rambharat*]

7. Ministerial Response of the Office of the Prime Minister – Communications to the Second Report of the Joint Select Committee on Finance and Legal Affairs on an inquiry into the Status of Un-proclaimed Legislation (Part 1):

The Planning and Facilitation of Development Act, 2014 and the Data Protection Act, Chapter 22:04. [*Sen. The Hon. C. Rambharat*]

8. Arbitration between A&V Oil and Gas Limited, the Claimant and Petroleum Company of Trinidad and Tobago Limited, the Respondent/Counterclaimant. [*Sen. The Hon. C. Rambharat*]

JOINT SELECT COMMITTEE REPORT

Trinidad and Tobago Solid Waste Management Company Limited

(Presentation)

Sen. Anthony Vieira: Madam President, I have the honour to present the following report as listed on the Supplemental Order Paper in my name:

Report of the Joint Select Committee on State Enterprises, Second Session (2021/2022), Twelfth Parliament, on an inquiry into the operations of the Trinidad and Tobago Solid Waste Management Company Limited (SWMCOL) with specific focus on the proposed measures to assist in achieving the objectives of the National Environmental Policy and Trinidad and Tobago's progress towards achieving the United Nations Sustainable Development Goals (SDGs).

URGENT QUESTIONS

Replacement of Special Operations Response Team

(Impact on Crime and Security)

Sen. Wade Mark: Thank you, Madam President. Madam President, to the Minister of National Security: Having replaced the Special Operations Response Team (SORT) with the National Operational Task Force (NOTF), can the Minister indicate the expected impact this will have on crime and security in the country?

Madam President: Minister of National Security.

Hon. Senators: [*Desk thumping*]

The Minister of National Security (Hon. Fitzgerald Hinds): Thank you, Madam President. I would like to congratulate Sen. Mark who seems to have the remarkable ability to read a line in the newspaper or hear some kind of rumour and convert a very serious matter into the level that he has the capacity to do. I congratulate him. He is very able. Madam President, in answer to a serious matter, the Police Commissioner in his wisdom, acting on the influence of information made available to him, information from at home and from our international partners around the globe, took one of his many decisions and on this occasion it was to disband the Special Operations Response Team, or SORT, and to replace that with the National Operational Task Force, which was not all together new, but activated on this occasion.

Madam President, the effect of this would be purely operational consisting of specialized trained officers of the Trinidad and Tobago Police Service and the Trinidad and Tobago Defence Force. This new entity will now have a proper administrative structure taking into consideration the chain of command, the unity of command and a span of control which will engender a high level of accountability. The unit will fall under the office of an assistant Commissioner of Police, tactical support and be supervised by a senior superintendent who will have the responsibility of the National Operational Task Force and Inter-Agency Task Force, and the operations will be headed by a superintendent. It will cause—

Madam President: Minister, your two minutes have expired.

Hon. F. Hinds: Thank you kindly.

Madam President: Sen. Mark.

Sen. Mark: Yeah. Can I ask the hon. Minister: What role did he as the Minister of National Security play in this development as it relates to this replacement of SORT by the new NOTF? Can the Minister indicate his role in this matter?

Madam President: Sen. Mark, that question is not allowed.

Sen. Mark: Madam President, the Minister said that information reaching the Acting Commissioner of Police from both home and abroad permitted him to go into the direction that he has gone. Would the Minister be willing to share with this honourable House what information and from whom did this information come from, internationally, that informed the Commissioner to take the steps that he has taken?

Madam President: Minister.

Hon. F. Hinds: Madam President, the Police Service of Trinidad and Tobago is engaged in the observation and the practice of what is known as best practices. The Trinidad and Tobago Police Service learns a lot from international police organizations. That is to be expected in this modern world, quite mundane, quite ordinary. So I am to suggest to the hon. Senator that this is no different. The Commissioner of Police, exercising his authority under law and under the Constitution, makes these kinds of administrative changes as he sees fit on the basis of information coming to him, records that will be available to him, recent histories that will be available to him and, of course, influence as well by international policing organizations and elements that might provide support for the best practice in Trinidad and Tobago.

Madam President: Next question, Sen. Mark.

Sen. Mark: To the—shall I wait? Shall I wait until the Minister—

Madam President: Yeah, just hold on one second.

[*Madam President confers with the Clerk*]

Madam President: Sen. Mark, you can proceed.

Calypso and Extempo Monarch Competitions

(Funding Issues to Host)

Sen. Wade Mark: Thank you, Madam President. To the Minister of Tourism, Culture and the Arts: Given the funding issues being experienced by the Trinbago Unified Calypsonians' Organisation (TUCO) to host the Calypso and Extempo Monarch competitions, can the Minister include whether the competitions will be cancelled.

The Minister of Tourism, Culture and the Arts (Sen. The Hon. Randall Mitchell): Thank you very much—

Hon. Senators: [*Desk thumping*]

Sen. The Hon. R. Mitchell: Thank you very much, Madam President. Madam President, Sen. Mark is a parliamentarian of long standing and Sen. Mark must know that the matter of hosting of calypso and extempo competitions is a matter squarely within the purview of the executive of TUCO.

Madam President: Sen. Mark.

Sen. Mark: Madam President, as a young, upcoming parliamentarian, may I advise my friend that the issue of funding of which you are responsible—and when I say you, Madam President, the Government is the bugbear that is impacting or whether these competitions—

Hon. Senators: [*Crosstalk*]

Madam President: Sen. Mark, please ask a question, please.

Sen. Mark: Can the Minister indicate whether his Government has provided the TUCO, that is, the Trinbago Unified Calypsonians' Organisation and the NCC with the necessary funding to stage both the Calypso and Extempo Monarch competitions?

Madam President: Minister.

Sen. The Hon. R. Mitchell: Thank you very much, Madam President. Madam President, there are quite a number of able and competent parliamentarians on our side and I will take no lecture—

Hon. Senators: [*Desk thumping*]

Sen. The Hon. R. Mitchell:—from Sen. Mark on these matters. That being said, Madam President, on January 19th, the Cabinet approved the budget of $15 million to the NCC for the hosting of a "Taste of Carnival", which is a scaled-down version of Carnival. As Sen. Mark is aware, the special interest groups, TUCO, Pan Trinbago as well as the TTCBA are commissioners on the board of NCC. And the TTCBA has received, in terms of an allocation, $1.5 million to host their activities; TUCO, $1.5 million to host its activities; and Pan Trinbago, $4 million to host its activities. With respect to the types of activities, those matters are within the purview of the executives of the special interest groups.

Madam President: Sen. Mark.

Sen. Mark: I have another supplemental?

Madam President: You have one more.

Sen. Mark: Yes, Ma'am. Madam President, given the waste and corruption that has visited this Government over the last six years, can the Government indicate through the Minister steps that will be taken to address the shortfall—

Madam President: Sen. Mark, that question is not allowed. Okay? Next question, Sen. Thompson-Ahye.

Sen. Mark: [*Inaudible*]

Madam President: Sen. Mark, Sen. Mark.

Children's Authority
(Convening of Adoption Committee)

Sen. Hazel Thompson-Ahye: Thank you, Madam President. To the Minister in the Office of the Prime Minister: Given that there is a child who will reach the age of majority within eleven days and is awaiting imminent adoption, can the Minister indicate how soon will the Adoption Committee of the Children's Authority be convened to decide on this urgent application?

Madam President: Hon. Members, the time has expired, but I am going to just allow the Minister to give the answer to the question. Minister—Leader of Government Business.

The Minister of Agriculture, Land and Fisheries (Sen. The Hon. Clarence Rambharat): Thank you very much, Madam President, and thank you for the indulgence on this important question and response. I thank the Senator for the question. Madam President, the reason this question arises before us is because of the Tobago House of Assembly elections, the change in Tobago and the request of the Chief Secretary for persons appointed to entities by the THA to submit their resignation.

As a result of that request, the member nominated—the member on the Children's Authority Board nominated by the THA resigned and normally that would not pose a problem. However, the Children's Authority Act has two provisions which have put us in this position now and those provisions relate to the requirement that the board of the Children's Authority be constituted a minimum of seven members and maximum of 11 members. But in constituting the board, you must have a member of the THA. So ordinarily you can have a board that functions but in this case, the requirement of a member of the THA for the board to be constituted is a mandatory requirement.

Secondly, Madam President, in relation to the Adoption Committee, the Act provides for an Adoption Committee to deal with matters of adoption and to be

constituted with members of the board but it also makes it mandatory that the person on the board who represents the THA must also be on the Adoption Committee.

I could say after saying all of that, Madam President, that the Minister responsible for this area has made the appropriate submission to the Cabinet. It will be considered and hopefully approved after which the instrument under the Act has to be issued by Her Excellency the President. And I am sure that the persons who are usually involved in that process will ensure that this position is filled and the committee is—the board is properly constituted, the Adoption Committee is properly constituted and the matters which come before the committee can be addressed expeditiously. Thank you very much, Madam President.

Madam President: Sen. Thompson-Ahye, the time for urgent questions has expired. I allowed the Minister to answer based on the time it was taken for Members to move to the booth and the cleaning of the booths. Okay?

Sen. Thompson-Ahye: Thank you very much.

Madam President: Leader of Government Business.

ORAL ANSWERS TO QUESTIONS

The Minister of Agriculture, Land and Fisheries (Sen. The Hon. Clarence Rambharat): Madam President, there are three questions on notice for response today and the Government will be responding to all three. Thank you.

Increase in Homicides and Gang Warfare
(Measures to address)

48. Sen. Wade Mark asked the hon. Minister of National Security:

Given the increase in the rate of homicides in the months of October and November 2021, reportedly as a result of gang warfare, can the Minister advise as to the following:

(i) what measures are being implemented by the TTPS to address said issue in high-risk areas, such as the Laventille community; and

(ii) what specific measures are being implemented to reverse the trend of young persons and members of the protective services being murdered?

Madam President: Minister of National Security.

Hon. Senators: [*Desk thumping*]

The Minister of National Security (Hon. Fitzgerald Hinds): Thank you very much, Madam President. Madam President, while the Trinidad and Tobago Police Service has acknowledged an upsurge in violent criminal activities between the months of October and November 2021, including murders, it has noted that a significant percentage of these murders were as a result of conflicts pertaining to land, familial relationships and other such domestic issues.

In this regard, the Trinidad and Tobago Police Service instituted several measures including: the allocation of additional resources to the divisional operations and investigative unit to improve their response time and the prosecution of known violent offenders; partnering with other departments and agencies and stakeholders in an attempt to successfully enhance the capacity of investigative departments in managing these matters; increased patrols in districts where the upsurge is manifest; increased patrols in safe zones, all with a view to increasing visibility and as a result, the fear of crime. They conduct joint stop and search exercises in collaboration with officers of the special investigation unit and the Inter-Agency Task Force and, of course, the Trinidad and Tobago Defence Force in these and similar areas.

And finally, in this regard, continued deployment of community policing initiatives; free legal clinics to assist people in resolving some of these land and similar kinds of disputes; donation of food and clothing and other support with the support of the Ministry of Social Development and Family Services to citizens through the Hearts and Minds Foundation coming out of the police or opening conflict resolution centres, including one recently opened in the St. Joseph police district to assist, again, people in having a resolution to these conflicts and the provision of safety tips.

In respect of part (ii) of the question, some of the measures which have been implemented to treat with a tax on members of the protective services and young persons include: strengthened partnership between the Trinidad and Tobago Police Service and the Prison Service with increased intelligence supporting those actions; seizure of mobile phones and contraband at the Maximum Security Prison and the arrest of known rogue prison officers; prioritizing the safety of high-risk prison officers based on information gathered and strategic patrols around their homes and that of the family members; and the use of intelligence brief and special reports to guide the Trinidad and Tobago operational teams.

2.00 p.m.

In respect of the young persons, strengthen youth outreach through the Hearts and Minds and the police youth clubs, and the Ministry of National Security's Cure Violence Programme, enhancement of the community policing secretariat through partnerships with other Government entities as I indicated earlier, all as prevention strategies. A complex issue being tackled in serious ways after the application of intellect and applying the resources that are available to us in the Ministry of National Security generally, Madam President.

Madam President: Sen. Mark.

Sen. Mark: Yeah. Madam President, given what the Minister has outlined particularly as it relates to, elates rather, to young people, can the Minister indicate what has been the efficacious outcome as it relates to those measures relevant and related to these young persons who are perishing under his watch?

Madam President: Minister.

Hon. F. Hinds: Madam President, apparently the Senator is behaving like a newcomer as I heard him describe a while ago in this House. I just indicated, Madam President, in response to his question that those are the measures that the Trinidad and Tobago Police Service, prison service, are implementing to deal with the problems that he read some article in the newspaper and read here today. The answer was quite clear. These are ongoing works with young people. Is that not clear for the Senator to understand, Madam President?

Madam President: Sen. Mark.

Sen. Mark: Look, given your incompetence as a Minister, you should resign—

Madam President: Sen. Mark. Sen. Mark.

Sen. Mark:—you should resign.

Hon. Senators: [*Desk thumping*]

Madam President: Sen. Mark, perhaps you can move on to the next question, and Sen, Mark before you do, please withdraw and apologize.

Sen. Mark: Yeah. Well, let him apologize too.

Madam President: Please—Sen. Mark—

Sen. Mark: I will apologize and withdraw. Yes, I withdraw and apologize. But I am asking, Madam President, through you—

Madam President: Sen. Mark, move on to the next question please.

Sen. Mark: I hope I would not be provoked. Good. Madam President, through you, may I ask this beleaguered Minister—

Madam President: Sen. Mark—no, no. No, Sen. Mark, you have a choice. Here is the choice. The choice is you ask the question without any sort of comments, or you take your seat. Okay? So—

Sen. Mark: Well, I am standing so I will take offence. Madam President, may I ask the Minister—

Madam President: It is a simple way to put the question, Sen. Mark.

Sen. Mark: Yes.

Madam President: Yes?

Sen. Mark: Yes, Madam President, I am putting it if you would allow me? Madam President, can the hon, Minister indicate—

Madam President: Sen. Mark, the simple formula is: Question No. 49 to the Minister of National Security where you go. Minister of National Security.

Hon. F. Hinds: Thank you very much, Madam President. Madam President, at the outset—

Sen. Mark: Madam President—

Hon. F. Hinds:—it should be noted that while the Government of—

Madam President: One second, Minister. Sen. Mark.

Sen. Mark: Oh, supplemental.

Madam President: No—

Sen. Mark: I asked one—

Madam President: No, Sen. Mark.

Sen. Mark: So I have three more to go.

Madam President: I am on question No. 49. If Members want to ask their questions and pose their supplemental questions, you do it in a timely manner. Okay? So based on all that was going on there, it was my view that you had moved on, and therefore, question No. 49 is being posed to the Minister.

Sen. Mark: Well, Madam President, I had not moved on.

Hon. F. Hinds: Madam President—

Sen. Mark: I had not moved on.

Madam President: Sen. Mark—No, Sen. Mark, you are now on question No. 49.

Sen. Mark: You are in charge. Question No. 49 to the Minister of National Security.

WHO Travel Ban on Southern African Countries

(Government's Disregard to)

49. Sen. Wade Mark asked the hon. Minister of National Security:

In light of the World Health Organization's (WHO) urging of countries to not impose travel bans on southern African countries due to concerns over the new Omicron COVID-19 variant and this Government's travel ban on said countries, can the Minister explain the reason(s) for Government's disregard of the advice of the WHO?

Madam President: Minister of National Security.

The Minister of National Security (Hon. Fitzgerald Hinds): Madam President, at the outset it should be noted that while the Government of Trinidad and Tobago, like many other jurisdictions, are guided by the advice of the World Health Organization in the development of COVID-19 protocols. Final policy decisions regarding the imposition of public health measures remain the sole prerogative of each individual Government taking into account the advice of their local health authorities and conditions. As such, the decision to impose a travel restriction on non-nationals from eight South African countries was taken by the Government of Trinidad and Tobago based on the advice of local health officials at the Ministry of Health and appropriate consideration of current COVID-19 situations within Trinidad and Tobago.

This measure was taken in light of the new COVID-19 variant of concern. Omicron variant, which emerged in the South African region in an attempt to protect the citizens of Trinidad and Tobago by delaying its entry and spread amongst the population. It is noteworthy, Madam President, that COVID-19 travel restrictions were first introduced by Trinidad and Tobago in January 2020, and many other countries quickly followed our lead. The approach of countries to travel bans is also evolving over time as more and more information comes to hand, and the Government of Trinidad and Tobago will continue to make informed and sober decisions to control the spread of the COVID-19 virus in the public interest as we are always wont to do. Thank you, Madam President.

Madam President: Sen. Mark

Sen. Mark: Madam President, can the Minister outline the reasons why the Government ignored in this instance the advice of the World Health Organization which the Government has been religiously and faithfully following in this pandemic?

Madam President: Sen. Mark, I would not allow that question because you are merely repeating the question that was posed to the Minister and that a response was given to. So next question, Sen. Mark. Next supplemental.

Sen. Mark: Madam President, may I go on to the next question?

Madam President: Okay. Yes.

Families of Murdered Prison Officers

(Provisions for Compensation)

50. Sen. Wade Mark asked the hon. Minister of National Security:

In view of the November 2021 murder of two (2) prison officers, can the Minister indicate whether any provisions will be made for the families of said officers to receive one million dollars each in compensation?

Madam President: Minister of National Security.

The Minister of National Security (Hon. Fitzgerald Hinds): Madam President, I did not have notice of that question today.

Madam President: Minister, the Leader of Government Business indicated—Minister, the Leader of Government Business—just one sec. The Leader of Government Business who advises on which questions will be answered did indicate that all questions will be answered.

Hon. F. Hinds: Madam President, I crave your indulgence for a few moments if I may just access that document?

Madam President: Sure.

Hon. F. Hinds: Thank you kindly.

Madam President: Sen. Mark, please.

Hon. F. Hinds: Thank you very much, Madam President. Madam President, my apologies. I had it on my mobile phone as opposed to in hard copy as I did.

The answer to the question is as follows, Madam President. The Ministry of National Security is guided by the policy approved by Cabinet in 2016 as it relates to compensation for officers of the protective service who are killed in the line of duty. Thank you, Madam President.

Madam President: Sen. Mark.

Sen. Mark: Madam President, in light of the murders of prison officers, can the Minister indicate, Madam President, what measures are being taken to bring some degree of security, safety, and protection to those prison officers who are exposed to the criminal elements based on what the Minister has advanced?

Madam President: Sen. Mark, that question is not allowed.

Sen. Mark: Madam President, can the Minister indicate whether the Government intends to embark upon measures aimed at restoring that compensation package for

prison offices who are killed or who died on or during their duties, or carrying out their duties re this million dollar arrangement? Can the Minister indicate whether there are any efforts to look at this matter?

Madam President: Minister.

Hon. F. Hinds: Madam President, the question is rather soft and convoluted, reflecting, Madam President, some similarity between my colleague's hair style and his internal capacities.

Madam President: No.

Hon. F. Hinds: But, Madam President—

Hon. Senators: [*Crosstalk*]

Madam President: Senator—Minister.

Sen. Mark: You cannot do that.

Madam President: Sen. Mark—

Sen. Mark: Sorry, Ma'am.

Madam President: Are you?

Sen. Mark: I am sorry, Ma'am.

Madam President: Minister, please, please, let us not be personalizing matters. Let us just answer the question. Okay?

Hon. F. Hinds: Madam President, the policy as established since 2016 is quite clear. It says in effect that where an officer is killed in the execution of his duty the compensation is made available to his legal personal representative upon proof thereof. It is particularly clear. It has been, Madam President, in cases where the office may not have been on actual duty but he would have been killed by virtue of the fact that he was an officer of law enforcement, and those circumstances have been taken into account and honoured, Madam President. So the question as I indicated a while ago, Madam President, is rather convoluted, but I have ventured

an answer.

Madam President: Sen. Mark.

Sen. Mark: I will grant him his leave now, Madam President. Let him go. He is tired.

Madam President: Members, please, please. Sen. Mark, I am hearing your grumbling. I will ask you please to stop. Members please, I will ask you to try and behave. Okay?

IMMIGRATION (CARIBBEAN COMMUNITY SKILLED NATIONALS) (AMDT.) BILL, 2022

Bill to amend the Immigration (Caribbean Community Skilled Nationals) Act, Chap. 18:03 [*The Minister of Foreign and Caricom Affairs*]; read the first time.

SUMMARY COURTS (AMDT.) BILL, 2021

Order for second reading read.

Madam President: Attorney General.

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

> That a Bill to amend the Summary Courts Act, Chap. 4:20 to remove the requirement of consent for joinder of complaints in summary judicial matters, be now read a second time.

Madam President, the Bill before us today is two clauses in length. The first clause is literally the short title, and the second clause is the substantive amendment that we proposed. This Bill is anchored in the continuous reform of the criminal justice system. The reform of the criminal justice system is perhaps the most important aspect of engagement that a Parliament can participate in, largely because for all of us in Trinidad and Tobago we desire to feel a sense of security.

One can only feel a sense of security if there is a degree of resonance in the manner in which our judicial system works.

Madam President, for persons who are not familiar with the law and the structure of the criminal justice system, suffice it to say the law as it relates to how we manage charges is split between two areas: one, there is the indictable approach and, two, there is the summary approach. The indictable approach is really the relegation of serious matters before a serious court, as it is put in very simple terms, where persons are invited to be judged today either by a judge sitting alone in the Assizes, or by a judge and jury after a process of preliminary enquiry has been engaged in where a filtration system is applied to see if a matter can effectively move beyond the laying of charges and into the Assizes which is the High Court setting.

In the Summary Court context, we have the position of matters described as less serious than indictable offences, but, Madam Speaker, Madam President, the fact is today we really do treat with the Summary Courts or the Magistrates' Courts now called District Courts. We really deal with some very serious matters in there, financial crimes, intellectual property, securities matters, and therefore, it is sufficient to say that at all levels of judicial involvement be it in the High Court or in the District Courts as we have them now, serious matters are done. Now, the fact is further borne that the Summary Courts Act, Chap. 4:20 is an Act of Parliament now standing more than 100 years old. It is an Act of Parliament borne by Act No. 9 of 1918, and the law as it stands is that our District Court, meaning the Magistrates' Courts, are dealt with by magistrates now called district judges. Our magistrates are creatures of statute. Magistrates are not anchored in the Constitution. They are in fact anchored in the Summary Courts Act, and out of interest and connected to this, Madam President, it is material to note:

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

That is section 3 of the Summary Courts Act.

In dealing with the fact that magistrates are creatures of statute. In dealing with the simplification of the districts in which magistrates now sit because we now have divisions that are simplified—there is north, there is south and there is Tobago—magistrates are bound to act in accordance with the law, and this case here in dealing with complaints in the Summary Courts arena, magistrates are bound by section 64 of the Summary Courts Act to act in accordance with the strict requirements of this Act. That, Madam President, brings us to why we are treating with the amendments today. Section 64(2) is the part of the Summary Courts Act, Chap. 4:20, which deals with the issue of what we called joinder of complaints. Joinder of complaints is where two or more complaints are made by one or more parties against another party or other parties. Perhaps some people are not aware, but matters can be brought to the Magistrates' Courts under the Summary Courts Act by persons named in law, meaning policemen or other persons, or by individuals themselves there is the concept of private complaint.

And if we turn briefly to the statistics before the Magistrates' Court, the District Court, and the reason for the amendments that we proposed today, Madam President, permit me to say if we look at the number of complaints, that is Summary Court matters coming before the Magistracy, if we look to the period 2016 right up to 2020, the number of Summary Court matters are as follow: in the year '16 to '17, 14,927 matters came by way of named State complaints, 8,808 came from private complaints. That is roughly 26,000 matters in the year 2016 to 2017; 2017 to 2018, there were 17,012 magistrate complaints brought by the State, and there were also on top of that 8,242 together comprising nearly 26,000 matters

for that year; 2018 to 2019, there were 14,360 matters by the State and 7,923 by private individuals, nearly 22,000; if we look to 2019 to 2020, there were 10,862 matters and 4,520 further matters brought by private complaint coming down to somewhere close to 15,000; if you look at the year 2020 to 2021, there were 13,925 matters brought by the State, 1,397 by private individuals.

Now, Madam President, the fact is upon becoming Attorney General and having the responsibility for this area of law, the average figure of complaints and matters before the Magistracy stood anywhere between 126,000 cases per year up to 146,000 cases per years. And whilst there were complaints in Trinidad and Tobago asking for night court and asking for faster justice, the fact is that people were not taking conscious reflection of what the system comprised, what was before the 43 magistrates in the 14 districts as it then stood. Today we have three districts and the number has dropped from 146,000 cases per annum. We have eliminated and 8,500 matters by decriminalizing marijuana, and we have removed 104,000 cases per year by converting the system of every traffic offence being an offence and instead introducing violations. The consequence of that has been that we have had a 65 year low in road traffic deaths just by way of understanding.

Now, Madam President, in looking at the average of 15,000 cases per year that are summary offences, and in factoring the situation as it now exists that we now have virtual appearances in the Magistrates' Court, we now have defendants appearing in virtual access centres, some of them every appearing from the prisons. Now we also have, Madam President, the fact that we are in active case management not by justices of the peace as existed in 2015, not by clerks of the court who are untrained professionals as existed in 2015, but now we do case management pursuant to rules of court, criminal proceedings rules, and also, Madam President, via a registrar of the District Court. So we have taken the step to

professionalize the Magistracy, we have taken the step to provide full magisterial immunity, we have taken the step to adjust what is in consideration of the caseload by disaggregating what is actually before the court by taking children's matters and putting it in the Children Court, Madam President. And I should tell you, Madam President, for the period 2017 to 2018 in the Children Court we dealt with 211 matters in the State filling, 111 by the private route; '18 to '19, 197 in the Children Court by the State and 213 in private arena; 2019 to 2020, 111 for the State and 40 for the private matters; in 2020 to 2021, 83 in the State and 80 by private matters.

And as we look to the whole concept of case management, as we treat with case management now, statistically of these 14,000 matters per year, private and public, Summary Court matters, I can tell you Madam President, 20 per cent. If we look at the northern division alone 20 per cent of the matters are for multiple offences. And if we look to how many multiple parties are involved, we are anywhere close to 6 per cent to 10 per cent of the matters involving multiple parties. So what is the mischief that we attempt to treat with today? What is the legislative aim that we are interested in? The fact is we are in an aggressive case management enterprise now at the Judiciary. Lawyers would have received by way of circulation from the Law Association, certainly the Attorney General's Office has received by way of circulation from the Judiciary, the fact that case management from the Court of Appeal right down to the Magistrates' Court—the courts are in an aggressive state of case management. And therefore, when we look to the analysis of how we are going to treat with matters, how we are going to ensure that justice is delivered on time because justice delayed is certainly justice denied, that is where the rationale for this amendment comes in the reformulation of section 64(2).

Section 64(2) says, the present law, that you two conditions precedent to

meet. There is a judicial discretion to consider joinder, but the condition's precedent is that if you have multiple matters involving multiple persons, one, you have to inform the defendants; and, two, they must consent. And in default of consent, you are bound by the statute, the Summary Courts Act, section 64(2), to hear the matters separately. Now there is an anomaly in the system because, Madam President, when we look to how our indictable proceedings are treated with, our indictable proceedings do not fine themselves confined to the issue of consent. In the indictable arena, that is in the High Court setting, that is in the preliminary enquiry setting, when we look to the joinder of indictable offences and we look to the Criminal Procedure Act, Chap. 12:02, section 13, or we look to the Criminal Procedure Act, First Schedule, Indictable Rules, Rule 3, charges for more than one offence may be joined in the same indictment, and very importantly when we look to the case law relating to joinder in indictable matters there is no encumbrance of the requirement for consent. And that is set out most usefully in the leading case of *Bhola Nandlal v the State (1995) 49 WIR 412*.

So in Trinidad and Tobago in relation to our very serious matters are indictable proceedings, you can have joinder of parties, you can have joinder of matters pursuant to the rules of court, pursuant to the legislation, and consent is not a condition precedent. That is not to say that the court is not bound to consider the interest of justice, or that the court is not bound to consider factors of abuse of process. I mean the very case of *Bhola Nandlal v the State* set out in clear terms what abuse of process looks like. In that case where a second indictment followed the first indictment and there was an abuse of process against the allegations standing against the magistrate who came before court. Abuse of process and joinder obviously fall to be considered against the complexity of the matter. The number of charges, the number of defendants, the probable length of the trial, and

that overriding objective, if I use the term, of the interest of justice is something that the magistrate, if the magistrate is sitting in the preliminary enquiry's route or a judge of the High Court is sitting on has to consider. Now bear in mind, Madam President, that we are not treating with the confining of jurisdictions.

In 2015 when this Government entered, magistrates had to deal with matters separately from High Court judges. As you are well aware in the Criminal Division and in the Family and Children Division we removed the limitation on jurisdictions so that a judge can actually hear a summary offence, and as we move towards the Administration of Justice Act, that is the abolition of preliminary enquiries as we call it AJIPA, A-J-I-P-A, as we move to proclaiming AJIPA in full form, subject to certain reviews going on in the Officer of the DPP and the Judiciary now, what is intended is that at sufficiency hearings that the Master of the Court who is case managing can consider treating with summary and indictable matters, and therefore, issues of joinder, et cetera. So we are navigating our way to ensuring that there is proper use of judicial time.

Madam President, permit to say the recommendations before us have arisen because of the constant functioning of the criminal justice committee. At the criminal justice committee this particular matter was discussed, then sitting acting Chief Justice Madam Alice Yorke-Soo Hon; Justice Lucky as the acting Chairman; the hon. Madam Justice Pemberton as Chairman of the Bar Bench committee, I as Attorney General attended, the Court Executive Administrator; the Chief Magistrate; the Registrar; the hon. DPP, Mr. Roger Gaspard; the President of the Law Association, Ms. Sophia Chote; the President of the Legal Aid and Advisory Authority, Mr. Gilbert Peterson; the Director of the Public Defenders' Department, Ms. Hasine Shaikh; the Assistant Deputy, forgive me, Director of Public Prosecutions, Joan Honore-Paul; the Commissioner of Prisons; the Deputy

Commissioner of Police, et cetera, et cetera.

2.30 p.m.

In this committee, we considered the reformulation of section 64(2). This committee proposed and accepted that we ought to amendment 64(2) to remove the consent requirement, that we should leave it to the interest of justice, and this Committee considered the fact that there were multiple appeals coming to the Court of Appeal. Bearing in mind we have no procedural appeals in respect of magisterial matters, appeals were still coming before the appeal court on the issue of the statutory requirements of section 64(2).

Madam President, permit me to put on the record that I think the leading case in this matter is really one that we ought to reflect upon. Would you remind me, Madam President, what time is full time?

Madam President: You finish at two minutes to three.

Hon. F. Al-Rawi: Thank you so much. So Madam President, there is a very useful judgment coming from the Court Of Appeal, and I refer here now to magisterial appeal No. 930 of 2008, it is the case of *Fazal Dindial v Rajesh Deoseran Police Constable No. 12861*. In that case, this magisterial appeal the panel was Madam Justice of Appeal Alice Yorke-Soo Hon, and Mr. Justice of Appeal Prakash Moosai, and the date of delivery of that judgment was the 15th of December, 2017.

It is a very useful judgment because the honourable Justice of Appeal Moosai in setting out the dicta that the case volunteered as the ratio, the judge focused specifically on section 64(2) as one of the several grounds of appeal. And in it we got the benefit of the historical antecedents of this particular law. In fact, Mr. Justice of Appeal Moosai reflected upon the fact that the first version of section 64:1 was enacted in 1918 as section 61 of the Summary Conviction Offences Procedure Ordinance, No. 9 of 1918. The honourable judge went on to

demonstrate where section 64(2) came from, and in fact set forward the ratio in *Bally v Ninvale*, N-I-N-V-A-L-E, that is a case in 1964 found at 7WIR at 430 and the honourable judge reflected, and it is in the judgment, that the object of section 64(2) is to prevent a multiplicity of proceedings.

The honourable Justices of Appeal reflected upon what the common law of the United Kingdom is, and in the proposal that we make today to amend section 64(2), to bring it in line with the indictable route, we are also bringing it in line with the common law of the United Kingdom. And the common law has been perhaps best set out in the case of *Clayton v Chief Constable of Norfolk*, that is a case 1971, appeal cases 29 at page 39. And in looking at the dicta of Lord Roskill, again, the parameters were set forward that the common law of England says that while:

> "…statute confers a discretion on the magistrate as to joinder."

And I am quoting from paragraph 20 with your leave, Madam President, it says this:

> "This discretion is not unfettered and must be exercised judicially. There is no reason why, as a matter of principle, the test postulated by the House of Lords in the leading case of Clayton, a decision based on the joinder of informations in the magistrates' court, should not be apposite for the exercise of the discretion under our statute."

So these are the words of Mr. Justice of Appeal Prakash Moosai. He goes on to say:

> "Accordingly, the court should ask itself 'whether it would be fair and just to the defendant or defendants to allow a joint trial'"

And he was quoting from Lord Roskill.

So this decision, the Dindial decision, the honourable justices of appeal

considered the magisterial appeal. They said, "Listen, we are going to infer that there was consent because there was representation. We are going to set out what the bare minimum for that is. We are going to say that you need to look at the interest of justice." So they looked past the issue of consent on a very narrow and technical ground that the defendants were represented, and that the magistrate had engaged in conversations with the legal counsel for the defendants. But what Mr. Justice of Appeal Moosai put on the record at paragraph 27 is in fact the most important point. Because it was here at paragraph 27 that the Court of Appeal in Trinidad and Tobago reminded, and permit me, Madam President, with your leave to put this on the record. I quote from paragraph 27 as follows:

> "Before concluding this issue and proceeding with my analysis of the other arguments raised, I find myself in the unenviable position of having to remind judicial officers of the importance of complying with statutory requirements. Precious judicial time is spent hearing and adjudicating over grounds of appeal based upon a magistrate's failure to comply with statutory requirements, or having to navigate and make sense of ambiguous approaches to compliance. It is somewhat disquieting to observe that this apparent trend centres around adherence to the least complex and decidedly straightforward of statutory duties. Regardless of any apparent simplicity or lack thereof, as was reiterated most recently in the Privy Council decision of *Wright*…"

That is W-R-I-G-H-T—

> "…*v The Queen*, 24 statutory duties are not mere formalities, and a failure to comply can, in appropriate circumstances, amount to a material irregularity. Specific to section 64 (2), it is but the work of simple comment and enquiry to ensure that a defendant is made aware of his right to a separate hearing

and that his consent to proceed with a joint hearing is obtained. It is the responsibility of magistrates to ensure that these requirements are complied with."

Now, I have taken care to read into the record paragraph 27 of the Dindial judgment from the Court of Appeal because that paragraph demonstrates where it goes wrong. And the magisterial appeals demonstrate the fact that entire trials can be aborted because formalities were not complied with, and therefore justice was not carried out. Therefore, the legitimate aim of this particular Bill is to remove the statutory requirement that there must be consent, and that without consent or if there is expressly no consent provided that you must have separate trials.

Our law is replete with case law that demonstrates that is the interest of justice argument is an appropriate consideration in the common law, and in our case as we propose this amendment in statutory reference. Because, Madam President, I would like to remind that the clause 2 of this Bill proposes specifically that:

"'(2) Where two or more complaints are made by one or more parties against another party or other parties in the same matter, and the complaints in that matter are founded on the same facts, the complaints may, if the Court thinks fit, be heard and determined together unless the Court determines that separate proceedings are required in the interest of justice."'

So we preserve the constitutional underpinning of the separation of powers. We leave it to the judicial mind to consider the propriety of the joinder of matters. We leave it to judicial consideration to consider the interest of justice argument. Obviously, the interest of justice argument fits within the rule of law and fair trial proceedings established in our Constitution, and obviously, they include the issue

of abuse of process considerations.

I would like to say that we ought to be warmed by the fact that Blackstone has clearly set out the route in the United Kingdom in relation to joinder of summary matters. And I refer specifically in looking at the most recent version of Blackstone at page 2,229, when we look to paragraph D 2146. Again, the reliance on the Chief Constable of Norfolk finds itself and that is the Clayton case.

If we look, Madam President, to jurisdictions that are close to us, I want put on to the record that Barbados in its Magistrates' Courts Act, Chap. 116A, as in Alpha, sets out at paragraph 95 of their law, section 95, the fact that the interest of justice in joinder is the factor to be considered.

I also wish to refer you to the law of St. Vincent and the Grenadines; I refer specifically to the Criminal Procedure Code, Chap. 172 and I note that their section 70 subsection (6), again treats with the interest of justice and joinder where consent is not a prerequisite.

I refer as well to the laws of Jamaica, the Criminal Justice Administration Act, and I refer specifically, Madam President, to section 22 of that Act. And the caveat there:

> "…such charges may be tried at the same time unless the Court is of the opinion that such person is likely to be prejudiced or embarrassed in his defence by reason of such joinder."

That in the Jamaica case law, in their Supreme Court, all the way up the road as we say, has been held to be the interest of justice argument.

Lastly, I will refer to the laws of Guyana, Summary Jurisdiction Procedure Act, Ch. 10:02, and I refer specifically to section 29 where again the interest of justice argument finds expressed mention in the laws.

So, Madam Speaker, there is ample—forgive me, Madam President—there

is ample precedent in the common law in the United Kingdom, in the Commonwealth Caribbean, in our own laws, when we deal with indictable matters and we look to the criminal procedures in relation to indictable matters, and also in the rules the interest of justice is the point of reference. The issue of mandatory consent for joinder is not a feature of our indictable proceedings.

When we look to the proposed amendments, and we look to our own Court of Appeal considerations in the Dindial case, whilst we can rely upon the fact that our Court of Appeal says, "Look, provided that you have complied with certain formalities in a bare basic way, you are still subjected to the vagaries of not having done it, and therefore you are going to be subjected to magisterial appeals."

If we look to the desire of the Government at present having radically transform the laws that treat with the criminal justice arena; having focused upon plant and machinery, people, processes, and the law, having had the ability by way of amendments and the creation of divisions of court; having introduces rules of court; be they the Children's Rules; be they the Family Proceedings Rules; the Criminal Procedure Rules; having given full magisterial immunity; having simplified the districts of court into three; having allowed for virtual appearances; having professionalized the magistracy by the introduction of Registrars of the Court and filing arrangements of the court office; being about to open nearly 129 new courts as the Judiciary has already started occupying in part the waterfront courts; with the build-out of the Hall of Justice as the criminal arena; with the expansion of the Magistrates' Court in San Fernando; the opening of the Siparia Court; the opening of virtual courts. A court being now a laptop, Madam President, a laptop with virtual access centres, Madam President.

We are bound to continue to further analyze what is before the court. And this law treats with joinder for multiple parties in a multiple charge scenario,

contemplating that you may have private matters and also public matters, meaning matters brought in the name of the State, and in these circumstance, as the case management is as active as it is, we wish to further simplify the law within the boundaries of sensibility and jurisprudence, and certainly within the confines of our Constitution.

Madam President, I will say as I begin to end my contribution now, that I give notice that there are a significant number of other amendments to come to us. We are in the course of scrubbing the final arrangements for the full abolition of preliminary enquiries, the operationalization schedule for that is imminent. But as we do with every law before proclamation, we check with all of the stakeholders.

So, Madam President, I look forward to the contributions of hon. Senators. Certainly, their reflections always redound to our best interests, and in those circumstances, I beg to move.

Question proposed.

Madam President: Sen Mark.

Hon. Senators: [*Desk thumping*]

Sen. Wade Mark: Thank you very much, Madam President. Madam President, I am very happy to join this debate on:

> "An Act to amend the Summary Courts Act, Chap. 4:20 to remove the requirement of consent for joinder of complaints in summary judicial matters."

Now, Madam President, we are traversing a piece of legislation as the Attorney General pointed out is over 100 years old. But what is even more significant, Madam President, in accordance with the judgment of the Court of Appeal issued by Justice Moosai and I think Yorke-Soo Hon, is the issue of when this particular amendment came into existence. This amendment to the then

legislation came into being in 1936, some 86 years ago, and we have to ask ourselves what are the practical challenges confronting the courts as it relates to hearing complaints jointly as opposed to separately and with the consent of the defendant?

Madam President, what struck me when I looked at the legislation is the provision that talks about removing the requirement of consent for joinder of complaints in summary judicial matters. Why in 2022, after we have had on our statute books for some 86 years a provision that would have allowed, Madam President, persons who are charged and they are before the court, either individually with a summary of offences within a specific factual matrix as it is described, or whether it is a series or number of defendants who are charged with offences being committed during the same time and during the same period, and with similar matters being addressed and being addressed and charges being proffered? Why would the Government at this time seek to want to streamline a practice that from the research has already been in force?

So from the research that we have conducted this is already a well-established practice in the courts and it has been consolidated from various appeals on these very said matters that we are dealing with at the Court of Appeal level. So the Attorney General has brought a measure before us to today that is already streamlined, and it is already an existing practice in order, Madam President, to bring about speedier and more efficient delivery of justice. So if the procedure is already codified in practice, then what is the real mischief that the Attorney General is seeking to address?

Because, Madam President, when we have existing laws on our statute books, and in particular, laws that deal with the Magistrates' Court, and as the Attorney General indicated, when it comes to the Magistrates' Court, Madam

President, that level of the jurisdiction is guided by statute. So there is no wiggle room or space for any kind of discretion. So when we have a provision in which the Government is seeking, Madam President, to remove consent and leave, Madam President, the discretion to join matters entirely within the discretion of the magistrate, we have to look at the practicality, we have to look at the implications, we have to look at any prejudice that may arise as it relates to justice particularly for the unrepresented in our courts in Trinidad and Tobago.

Madam President, we are all aware that 95 per cent according to the Justice Moosai appeal matter, the entry point of matters before the courts of this country come through, Madam President, the "magistry" or the Magistracy, to the Magistrates' Court that is. And Madam President, I will show that we need to be extremely cautious in making these amendments because they may impact negatively on the unrepresented in our courts. We know what legal aid is all about. It takes as long time before ordinary people who populate the Magistracy are able to access legal aid.

So many a times, Madam President, they are unrepresented. But being unrepresented, Madam President, means that the current 64 subsection (2) demands of the magistrate to inform the defendant or the accused that is before the magistrate, that if I, and others, or persons are jointly charged and the magistrate is of the view given the circumstances, the facts, and the evidence before him or her, the magistrate can decide that these matters will be held jointly. There will be a joint hearing.

But you know, Madam President, in making that decision and in exercising that ability at the time the magistrate is bound under section 64 subsection (2) to inform the defendant, to inform the accused, Madam President, that he is entitled to a separate trial, that he must grant consent if this matter or if these matters are to

be jointly heard.

So, Madam President, when we are passing laws we are not passing laws for big shots "yuh" know, and the elite "yuh" know, we are passing laws in which ordinary day-to-day citizens populate the Magistrates' Court and sometimes they are without defence. They are without representation, and if they are without representation who will represent them?

So here it is, Madam President, we are being advised by the Attorney General through this amendment, that the time has arrived to change around the language, but in changing around the language what the Attorney General is doing, Madam President, in this amendment is denying ordinary people of the right to be advised by the magistrate that listen, you are entitled to a separate trial and your consent is required if we are to have a joint trial.

So the concept of in the interest of justice has sprung up in this amendment. So we are assuming, Madam President, that the magistrate who is guided by statute and does not have the kind of discretion and wiggle room as a high court judge, is in a position in the absence, Madam President, of this person giving consent for a joint hearing or a joint trial, that that person is now at the mercy of the court.

Whereas, under the present arrangement, Madam President, in 64(2) that is now being repealed, the person is entitled to be told by the magistrate, "Look, separation. You could have a separate trial. You can and you must give consent because if I object." Madam President, and there are cases at the level of the Court of Appeal where magistrates have gone ahead and insisted on joint hearings and the court have squashed those decisions of the magistrate, because the courts agreed, Madam President, the Court of Appeal agreed there would have been a miscarriage of justice.

So when we are making amendments, hon. President, through you to the

Attorney General, we must take into account and consideration how will these amendments effect the ordinary man? How will it affect John Public? Because they are the ones, because of the inequitable and unjust economic order we have in this country, they are the ones who receive, Madam President, the raw end of the economic stick in this country.

3.00 p.m.

So we have to be very careful what we are do doing. This may appear on the surface as a "one-clauser", a one-clause Bill, but it has dangerous implications and disturbing repercussions for ordinary people in our country and therefore, I am not into the business of just agreeing for agreeing's sake. I have amendments that I am proposing you know, because I want to make sure that ordinary people are advised by the magistrate at the appropriate time of their rights, they must be advised.

So, Madam President, that is an area that we are very concerned about. Why did the Attorney General decide to go the route although he talked about all of these persons who are involved and they agree, and they agree, and they agree, yes, they agree but they could make mistakes too you know, all of those people who agree. Because whilst I am not a lawyer like the Attorney General, I am on the ground and I understand for instance how this thing is going to impact the people of this country, the ordinary people who are before the courts.

So, Madam President, I would like to ask the Attorney General when he is coming to wind up this debate: Who is going to determine for the magistrate, what is in the interest of justice? Because that is what is in the legislation, the legislation is saying that they are going to remove consent from the legislation in terms of 64(2) and they are going to give that now—going to place that into the hands of the court and the Summary Court is headed by a magistrate so, it would be given to the magistrate, Madam President. And if it is going to be given to the magistrate, we

want to know for example through you—would the Attorney General indicate when we talk about the interest of justice, are there going to be any specific guidelines to assist the magistrates into determining the interest of justice? What are the guidelines we are establishing in this instance? How will justice be best served when we use this term interest of justice? How is this going to be best served? Are there guidelines for the magistrate to follow so as to decide that justice will best serve or be served when the case is tried as separate proceedings? These are very, very interesting and powerful issues that we need to clarify—we just cannot decide to remove what existed for 86 years, Madam President. Since 1936, that is in our statute.

In 2022, somebody got a dream because up to now, Madam President, we have not been given data—a lot of data were given to us you know, but the AG failed to give this Parliament data as it relates, Madam President, to what is the state of play. How many cases are there in the courts of this country in which for instance, we have had a multiplicity of—or multiple proceedings as a result of people insisting that they should have separate trials? How many are there? My research—our research has led us to the conclusion that there is an established practice already in the courts and many lawyers who are practising in the courts who I have been in contact with, they say that is almost like a fait accompli. Once they go before the courts, Madam President—

Madam President: Sen. Mark, you have raised these points already in your contribution and you are starting now to repeat.

Sen. W. Mark: [*Inaudible*]

Madam President: Thank you very much.

Sen. W. Mark: [*Inaudible*] —several other matters to raise. Madam President, I am saying that if we look at this Bill that we have before us and the amendment

that is being proposed, I want to say that there is need for us to understand that there may be instances, Madam President, where an individual might suffer a prejudice in a matter in which there are joint charges or persons are charged rather, for the same offence and therefore, they may require a separate trial. But what is being proposed to us in this amendment is that in the interest of justice that could go out of the window. So we are seeing, Madam President, as the Attorney General said, there is a matter which is in this very famous judgment that I have like him before me, it is called the *Fazal Dindial v Rajesh Deoseran* matter. And in this matter, Madam President, we are told that in a very famous case of *Clayton v the Chief Constable of Norfolk* and someone called ANR, I almost talked about ANR Robinson but he is gone—they say even if consent—that was since in 1947—Law Lords—the House of Lords determining Madam President, that even though consent is sought and obtained under the Act—they say if such consent is not obtained or is being refused the magistrate must still consider overall interest of justice and determine whether it would be fair and just in the prevailing circumstances to order a joint trial.

So, that is what came out in this famous case because the underlying principle that we have to pay attention to is the principle of justice, of fairness to ensure that there is no miscarriage of justice in this matter that we are dealing with.

So, Madam President, what are the amendments? The amendment that is before us says—the existing amendment, the existing provision I should say, says that and I quote:

> "Where two or more complaints are made by one or more parties against another party or other parties and such complaints refer to the same matter, such complaints may, if the Court thinks fit, be heard and determined at one

and the same time i f each defendant is informed of his right to have such complaints taken separately and consents to their being taken together."

So, this is what obtains and that is what is in the current Act, Madam President. And what is being proposed by the Attorney General is what we are dealing with and it simply says Madam President, that in the instance of:

"...two or more complaints...by one or more parties against another party or other parties in the same matter, and the complaints in that matter are founded on the same facts, the complaints may, if the Court thinks fit, be heard and determined together unless the Court determines that separate proceedings are required in the interest of justice."

So Madam President, we are advancing that this amendment that is being proposed, we will ask the Attorney General to revisit that particular amendment.

Madam President, I made the point earlier that there should be a provision in this amendment that is before us that would allow the magistrate, that should mandate the magistrate to explain the reason for joinder to the defendant and the magistrate should ask the defendant if he wishes to make an objection and then the magistrate can rule on the objection. There is no such provision in this legislation, Madam President, and we would like the hon. Attorney General to look at that provision that I am advancing here because the principles of fairness and prejudice apply to all matters.

Madam President, the Attorney General talked about the experiences in Jamaica, Barbados, he talked about Grenada—St. Vincent rather, and the Grenadines and we also have, Madam President, a situation in the Bahamas and in the Bahamas there is something called the Criminal Procedure Code and under section 75 of that code it states, Madam President—and I wish to share with you what this code says because again, we are seeking to ensure that whatever

decisions we take there is fairness and there is justice in all that we do. So, in the Bahamas, the Criminal Procedure Code, section 75 states:

"(1) The following persons may be joined in one charge or information and may be tried together—

(a) persons accused of the same offence committed in the course of the same transaction;

(b) persons accused of an offence and persons accused of an abetment or of an attempt to commit such offence;

(c) persons accused of different offences committed in the course of the same transaction;"—and—

"(d) persons accused of different offences all of which are founded on the same facts or form, or are part of a series of offences of the same or a similar character:"

It goes on, Madam President, section 75 and I quote:

"Provided that where before trial, or at any stage of a trial, the court is of"—the—"opinion that a person accused may be embarrassed in his defence by reason of his being tried together with another person or other persons or...for any other reason..."

—any other reason, Madam President—

"…it is desirable to direct that the accused person be tried separately,

the court may order a separate trial of such accused person."

So, Madam President, you would observe that in the Bahamas there is a particular provision that gives the court any other reason to direct that the accused person be tried separately. In our amendment, Madam President, there is no such provision, it is left open and we are arguing that there is need for this section to be

tightened so that people would not be taken advantage of when they appear before the courts of our country.

So, Madam President, we would like to put forward the following amendments for the consideration of this honourable Senate and this is all in keeping with justice and fairness. Madam President, I do not believe anyone can argue against efficiency in the delivery of justice in our country. I do not think any accused, Madam President, before a court who is charged on three separate counts for an offence would want to have those charges and those offences that he has been charged for held separately in terms of separate trials. They would want all to be held jointly but at the same time, we also have a duty to look after the innocent, the defenceless, the voiceless, those who might have been in the wrong place at the wrong time and they got caught up in an arrest of a mass arrest of 50 or 60 persons.

Madam President, let me give you a practical example of this piece of legislation that is before us. You had an instance, Madam President, and I am just saying hypothetically here but it is a real situation but I am not going into details. Over 30 persons were arrested for resisting or for engaging in an activity that the Government—that the police rather, deemed illegal around the Queen's Park Savannah some time ago. Madam President, there were people there who were anti-vaxxers, there were people there who were anti-government, there were people there who just came to join the crowd, busy bodies; they were just there and they got arrested and all of them are charged similarly. But a law student was there, a law student was there and you know what happened, that law student is charged. What this amendment is doing, Madam President—

Madam President: Sen. Mark, are you speaking hypothetically?

Sen. W. Mark: Hypothetically.

Madam President: Or are you speaking—

Sen. W. Mark: [*Inaudible*]

Madam President: —are you speaking.

Sen. W. Mark:—I am saying if the—

Madam President: Just one, yeah, just one second, I am just asking you to remember the Standing Order—

Sen. W. Mark:—I remember.

Madam President:—and that if there are matters before the court—

Sen. W. Mark: Yes.

Madam President:—whether you want to now give hypothetical examples please, I am cautioning you. Okay?

Sen. W. Mark: I am saying, Madam President, if a student of law or a law student is charged in a hypothetical situation and that person is charged similarly to the rest of the persons who were charged, that person, Madam President, may wish to have a separate trial, he may not want to be bunched up with the rest of persons who have been charged because his future could be at risk. But the measure that we have before us is not doing that. They are putting everything in one pot and therefore, the innocent can end up paying for the guilty and that cannot be fair, we cannot be making laws in that kind of way in our Parliament and that is why, Madam President, I am saying that we need to consider some amendments to this current legislation that is before us.

So for example, I am proposing with your leave the following amendments for consideration, for example:

> "(3) Where the Court proposes to hear and determine two or more complaints together, the Court shall explain the reason for doing so to the defendant and give the defendant an opportunity to put forward any reason why separate proceedings are required."

Because, Madam President, we need to ensure—

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

Sen. W. Mark: Thank you, Madam President. We need to ensure that the innocent are not caught up in this particular amendment which seems like a dragnet—"it taking in everybody" and therefore, that is an amendment that we are proposing, one of the three amendments for consideration. Another one, if:

> "(4) At any point before the hearing of a matter is commenced, a defendant shall be entitled to make an application to sever complaints which were previously joined by Order of the Court and shall submit the reasons for such application to the Court who shall consider same and make a determination."

And, Madam President, these amendments that we are proposing, we are proposing them in the interest of fairness, in the interest of justice and to protect the innocent, in the event of any kind of measure that can have them suffered or experience some kind of disadvantage because of circumstances. And hence the reason we have decided to put forward these amendments for the hon. Attorney General's consideration.

So, Madam President, as I said, I did not want to go through everything that I have written here and that is why I was just making reference to a number of important and critical points. But in closing, I want to refer you to a matter involving Mohan Singh v the State, July the 2nd 2015. That involved the former court of appeal judge, now her Excellency the President Paula-Mae Weekes in a matter in which a decision was taken to squash a decision taken by the magistrate to have matters held jointly and it was appealed and that appeal was heard. And it was instructive to hear the language that was used in this particular judgment and I quote:

> We cannot discount the possibility of a miscarriage of justice being occasioned thereby and in the circumstances, we find the conjoined grounds one and two, to be meritorious. In the premises, we allow the appeals and squash the convictions and sentences of each appellant.

This is what came out of the Court of Appeal, headed by then Justice Paula-Mae Weekes, in a similar situation of these joint charges or joint hearing and joint trials, where peoples' rights were inflicted and undermined. So, Madam President, in closing, I ask the Attorney General to consider these amendments at the committee stage and let us see how we can strengthen this legislation because in principle, we support the legislation but the information is critical in the context of ensuring that there is fairness, there is justice and there is a certain degree of sensitivity in what we are doing here today. Madam President, with those few words, I wish to thank you for giving me the opportunity to raise these matters dealing with the Summary Courts (Amdt.) Bill. Thank you very much.

Hon. Members: [*Desk thumping*]

Madam President: Sen. Vieira. May I remind Members that if at the Committee stage amendments are being put forward, those amendments should be reduced in writing and circulated at the commencement of the committee proceedings.

3.30 p.m.

Sen. Anthony Vieira: Thank you, Madam President. This Bill, with essentially one substantial paragraph, appears deceptively short and simple but it is by no means cut and dried. In fact, it harbours some thorny and complex issues. To understand the significant difference between section 64(2) of the Summary Courts Act and the section we are now proposing to replace it with, one needs to look at the two sections side by side and, preferably, as Sen. Mark has done, read them aloud. Both sections deal with the situation where complaints have been made

against one or more parties and those complaints refer to the same matter or are founded on the same facts.

There is provision in both sections that is under the current law and under the proposed amendment for the court to hear and determine the cases against the defendants either separately or take them together. However, because of the similarities it is easy to gloss over the differences and because the proposed change appears to be of a procedural nature, it is easy to assume that a simple majority is all that is required. But we should not underestimate the nuances and differences in the two sections as these can be quite significant.

The first obvious difference is this. Under the current law, where two or more complaints are made against two or more defendants in the same matter, each defendant must be informed of his right to have the matter against him dealt with separately or together with the other defendant or defendants. Under the current law, it is the defendant who elects whether he wishes to be dealt with separately or together with the other co-defendants. Under the proposed amendment, we are now taking away the defendant's right to elect. Under the proposed amendment, it is the magistrate who will determine whether the defendants should be tried separately or together.

There is a second less obvious difference and this has to do with the difference between, on the one hand, the situation where several offenders are joined in one complaint or information, for example, where two or more persons are accused of robbing a store at the same time and, on the other hand, the trial of persons charged not jointly but separately with offences arising out of similar facts, for example, where two motorists are involved in a collision and both are charged with careless driving. In the first situation, that is to say where all the accused participated in the same act, it is quite proper for them to be joined in one complaint or information.

Here, as they are charged jointly, there is no need for consent to their joint trial. Here, as they are all joined in one—one information, it is expected that they will be tried together. Here, where on an application by one of the defendants' for severance, I have no problem. I have no difficulty letting the magistrate determine whether they should be tried singly or jointly. Here, a case can clearly be made out that it is in the public interest for persons who participated in the same crime and are jointly charged to be tried together.

But in the second situation, that is to say, where persons are charged separately with offences arising out of similar facts—and Sen. Mark's hypothetical situation about people who may have gathered around the savannah for one purpose and some innocent bystander or walker is caught up in the melee—trying them together can be unfair. In this case, it should be for the defendants to elect whether they wish to be tried separately or for the proceedings to be taken together here, and I think this is the rationale behind section 64(2) as a safeguard. The courts should ask the defendant if they consent to the two matters being heard together and if they do not so consent, the charges must be heard separately.

I accept that where persons participate in the same act and are charged jointly, there is or there should be no need for consent to their joint trial. And because of the possibility for abuse of process, duplicity and delay, I have no difficulty leaving the decision on whether to try them separately or jointly within the discretion of the magistrate in the interest of justice, that is to say, after ascertaining what is the fairest thing to do in all the circumstances, in the interest of everyone concerned. I do, however, have a difficulty taking away the right of defendants to elect on whether they wish to be tried separately or jointly, where they are not charged jointly but separately with offences arising out of similar facts and it is to this contingency that I will be directing the rest of my contribution.

Now, whether or not a magistrate can or will make such determinations in the interest of justice is beside the point. In any event, there is no prescribed criteria in the Bill to be satisfied or to guide the magistrate in making that determination. All things considered, it seems to me that we are abrogating, we are taking away, we are diminishing vested constitutional rights, specifically a person's right not to be deprived of a fair hearing in accordance with the principles of fundamental or natural justice for the determination of his rights and obligations under the Constitution at section 5(2)(f) and:

> "…the right not to be deprived of such procedural provisions as are necessary for the purpose of giving effect and protection to the…rights and freedoms…"—guaranteed under the Constitution, and that is section 5(2)(h).

Now, this last point is relevant because it rebuts the contention that procedural amendments do not require a special majority. Under section 5(2)(h), where there are procedures designed to give effect and protection of fundamental rights, it seems to me that removing—removal of such procedures require a two-thirds majority under section 54(2).

I believe the removal of a defendant's right to elect, whether to be tried separately or together with other defendants, can take away from the criminality of the offence and it may be prejudicial and unfair in a number of ways. Because if one defendant is found guilty, it will affect the other defendants. Where there is strong evidence against one defendant, that strong evidence may serve to bolster what may be a weak case against the other defendants, and the result being unfairness against someone where the evidence against him may not be that strong.

So even though there are two routes, that is to say trial separately or trial together, and both routes are available under the proposed amendment, we may still be abrogating a person's right to be dealt with fairly and we may be abrogating

the right to a fair hearing in accordance with the principles of natural justice. Even if section 64(2), as currently cast, runs the risk of slowing down the system, I ask you: Is that good and sufficient cause to abrogate the right to a fair trial? Section 64(2) did not happen by accident. It is there because it is recognized that being tried together can be unfair for a defendant.

Now, I accept that this is a procedural amendment. Trial is a consequence. Having the matter dealt with separately or together is the procedure but fairness, fairness is a constant. Fairness requires the entire procedure to be fair from charge to finish and viewed from this lens, the proposed amendment may inherently be unfair. Viewed from this lens, the proposed amendment abrogates the right to fair treatment, one of the sinews of the right to a fair hearing and equality under the law. Viewed from this lens, the proposed amendment may be facilitating a breach, a fundamental breach of human rights. I fear that if this Bill passes, we may be opening the door for a spate of judicial review applications against magistrates on the question of fairness and procedural impropriety. Indeed, judicial review may be looming large in the wake of this amendment.

So, in conclusion, my problems with this Bill are twofold. Firstly, it fails to distinguish between a situation where several defendants accused of a crime jointly are charged together in the same information or complaint from the situation where two or more defendants are charged separately with offences arising out of similar facts.

Now, there are times—and it could happen to any of us—when an innocent person finds himself in the wrong place at the wrong time and if he is tried together with those who may be more likely to be found guilty, he can be at a disadvantage. It seems to me that 64(2) was designed as a bulwark against the birds of a feather flock together heuristic, which presumes that people of the same sort or with the

same interest will be found together. And it is also a bulwark against the doctrine of guilt by association, that is to say, the attribution of guilt to an individual because of the people with whom he is associated rather than because of any crime he may have committed. The fact is that not every alleged offence where two or more persons are involved equates to it being a joint enterprise. There is a danger. There is a danger of treating similarly situated persons who acted independently as though they were acting together. There is a danger that accused persons may fall prey to this proposed amendment.

In our quest to avoid a multiplicity of proceedings, and as the hon. Attorney General put it, aggressive case management in the Magistrates' Court, I am concerned about the chants—I am concerned about the dangers of principle being sacrificed on the altar of expediency and pragmatic justifications. I am concerned that when considering the interest of justice, our overworked, our overwhelmed magistrates who have huge dockets will more likely than not opt for joint trial, even though according to the statistics just quoted by the hon. Attorney General, the number of complaints have actually been going down.

Secondly, I think there is an erroneous assumption that because this amendment is procedural in nature, inevitably, a simple majority is all that is required. Madam President, I thank you.

Madam President: Minister in the Office of the Attorney General and Legal Affairs.

Hon. Senators: [*Desk thumping*]

The Minister in the Office of the Attorney General and Legal Affairs (Sen. The Hon. Renuka Sagramsingh-Sooklal): Madam President, I thank you most sincerely for the opportunity to join this debate. Madam President, in my contribution, my intention is to firstly begin by addressing a pertinent concern

raised by Sen. Mark as it relates to the self-represented accused. I know it was also a concern echoed by Sen. Vieira and similarly, I am sure that there are many persons looking at this amendment, especially, you know, the layman, looking and hearing what was debated prior to my jumping into this debate, may have this sincere concern. And, as a consequence of that, I will begin by looking at how does this law and this amendment, how will it affect the self-represented accused. I will also, Madam President, make an attempt to look at the other safeguards that are presented and provided in other pieces of law that will continue to protect the rights of the accused persons, notwithstanding the amendments that we have brought to this Parliament today.

Now, Madam President, this is a very serious matter. As I indicated. It is a serious concern. And I want for the record, Madam President, for those like Sen. Mark and the hon. Sen. Vieira who are of the belief or who may be concerned that this in some way would adversely affect the self-represented accused, I want to reassure these Senators, together with the public and the citizens of Trinidad and Tobago, that our self-represented accused in no way, Madam President, I respectfully submit, will be affected by said amendments. And I make this point relying on existing case law, Madam President, that speaks to the right and the responsibility of a magistrate to a self-represented accused. And that position, Madam President, I want to make it clear that notwithstanding this amendment that has come to the Parliament, that has hit the Parliament floor, this particular amendment is in no way going to disrupt settled case law as it relates to a self-represented person who appears before a magistrate and the responsibility in case law of that magistrate to that self-represented person.

Now, Madam President, when I heard Sen. Mark, immediately, of course, the lawyer in me was triggered and I immediately started pulling some cases that I

had the benefit of looking at when I was in practise as a defence counsel. And I think, you know, also for the record, Madam President, while this issue of the self-accused person resonates with me is because of my previous incarnation and the persons, you know—Sen. Mark spoke about us not understanding the man on the ground but that is quite contrary from the truth. I certainly, in a previous incarnation, understood what, you know—some legal ramifications, especially as a defence counsel, can bring to that man and especially that man or woman who is unrepresented.

So if I may respectfully assist my colleagues by taking us to the case—and this was one of the cases that I had relied upon. I remember in some submissions I had done on this very said point was the case of *Tomasevic v Travaglini* and this particular case, Madam President, is a 2007 case. It is a Victoria Supreme Court case, an Australian case. And this particular case, more or less, Madam President, it spoke to the responsibility that a magistrate has at all times—irrespective of what matter appears before that magistrate—the responsibility that that magistrate has to this self-represented accused.

Now, in that particular judgment, Madam President, it was actually stated in the dicta by the learned Justice Bell of the Australian Supreme Court, that as a part of their overriding obligation to ensure a fair trial, trial judges have a positive duty to give proper assistance to self-represented litigants both in the criminal and the civil trials. Now, this case also further went on to say, the same duty applies to masters, magistrates, commissions and tribunals.

So what we have is, yes, the amendment that is presented before us has indeed removed the consent issue. But we have to remember this consent being removed from 64(2) does not, in any way, remove other existing settled case law that speaks to the responsibility and the duty of that judicial officer who is the

magistrate, especially to that man on the ground or that regular Jew, as Sen. Mark puts it, who appears before him for justice.

Madam President, if I may also take this honourable Senate to another case that I would have also had the benefit of reading and understanding when I practised at the Family Court. Now, this particular case, Madam President, is the case of *Johnson v Johnson*. And for the record it is (1997) FLC 92-764. Now, in this particular, notwithstanding it is a family law case, Madam President:

The court…—and if I may read:

> The court considers a judge's duty to a litigant in person appearing in child proceedings, which resulted in a helpful, though not exhaustive list of duties being enunciated. The court pronounced that a judicial officer is duty bound—Madam President—to a self-represented accused.

And how is he duty bound, Madam President, to a self-represented accused? I would read from the dicta of that case. It says to:

> "…inform the litigant in person of the manner in which the trial is to proceed, the order of calling witnesses and the right which he or she has…"

Now, in that particular *Johnson v Johnson* case, Madam President, again, even though it is a family law case, remember the point is it is a family law case that speaks to the responsibility of that judicial officer to a person who appears before him or her unrepresented. And it is not an exhaustive list but these are some of the responsibilities coming out, Madam President, of the dicta of that case, to:

> "…explain to the litigant in person any procedures relevant to the litigation"

To:

> "…generally assist…"—him or her—"by taking basic information from witnesses called, such as name, address and occupation.

> If a change in the normal procedure is requested by the other parties such as the calling of witnesses out of turn…"—to—"explain to the unrepresented party the effect and perhaps the undesirability of the interposition of witnesses and his or her right to object to…"—the court.

This particular case, Madam President, went on in speaking to the responsibility—sorry, speaking to that point of the responsibility of that judicial officer to an unrepresented person—went on to say if:

> "…evidence is sought to be tendered…which…"—is or may be inadmissible to advise him—that is the unrepresented person—of his or her rights to object to inadmissible or material evidence, and the list goes on.

And I am sure my colleagues can make reference based on the citation that I would have presented, of that list of the responsibilities of this judicial officer to a self-represented person.

Now, usually at this stage "ah would ah throw picong at Sen. Mark and tell him his whole argument kilkitay" based on, you know, the Tomasevic and the *Johnson v Johnson* case, but I would refrain from doing that because I do understand the concern that the regular person listening to this particular amendment would have as it relates to: "I am an unrepresented man and am waiting for a legal aid appointment. I am appearing in this matter and now my right to consent has been taken from me." I am saying that notwithstanding the amendment that has been brought in this case, there is other settled law, especially as we turn to the case law, that speaks to the responsibility, Madam President, of that judicial officer of that magistrate to this self-represented person.

So even though consent is taken away from the accused, in this instance, to agree whether he wants these matters to be tried jointly or separately, even though that has been withdrawn, we have to remember, I respectfully submit again, that

this does not take away from the duty and the responsibility in settled law of that judicial officer, especially to those, Madam President, persons who are unrepresented.

So I do hope that to some extent this submission as it relates to the self-represented person, Madam President, may assist, you know, my colleagues in being able to see what it is exactly that this Government—what exactly the Attorney General has brought here today and, of course, at the end, give us the support that we require.

Now, another point, Madam President—but I will now turn to the hon. Senator, Sen. Vieira. And Sen. Vieira, Madam President, referred to the consent provision in the present 64(2) as a safeguard and the Senator in his, you know, very well—and I could sense the emotion of the Senator and his serious concern that by removing this particular consent, what it does is that it removes a safeguard mechanism for the accused persons. Right? Madam President, at this stage, what I want to look at is in answering the hon. Senator's concerns—and I am sure the Attorney General will address the issues that I do not—but in answering to some of those concerns relative to safeguard, Madam President, I would turn to a practical application of this particular amendment once it hits the ground of the court.

Now, Madam President—and within that practical example, Madam President, what we would be able to see, what I am hoping to be able to achieve is to show my learned colleagues of this Senate that practically, even though consent has been removed, there are still going to be other safeguard mechanisms that will protect, at all times, the right of the accused person.

Now, Madam President, because, again, I have walked the floor of the criminal courts, I understand what would happen practically when this law—if this law is approved, if this law is assented to. Right? What we would have, Madam

President, is a case where a magistrate now, the judicial officer now decides, based on the matter that appears before him or her—at the Magistrates' Court, there is a disclosure of what we call a summary of evidence and the magistrate now would have an opportunity to review this summary of evidence and the summary of evidence, more or less, provides a prima facie case of what the accused persons are there to answer to. Based on the summary of evidence, Madam President, the magistrate, in their experience—and not—and for the record—not in an effort to simply push matters along or to reduce the backlog of cases that appears before us. The magistrate, in their discretion, of course, in operating in the magistrate's mind, the issue of fair trial and all of that, looking at the summary of evidence will then decide whether or not—they would make the decision whether or not this matter should be heard jointly or separately.

Now, Madam President, if a decision at that point—in the Magistrates' Courts, in particular, if a decision is taken by the magistrate that we are going to join this matter, at that stage, in a practical proceeding and setting, counsel for the accused can then raise an objection and ask that they submit submissions to the magistrate that may possibly assist the magistrate in coming to another decision. So the magistrate's right, at this stage, Madam President, is not unfettered.

So, in a practical sense, even though, yes, we are saying it is now to the discretion or at the discretion of the magistrate who can then decide, based on the summary of evidence that appears before him or her, whether this matter ought to be heard jointly or separately, at that stage, we still have a safeguard built in in the practice of criminal law at the Summary Courts, whereby counsel can say, no, well, Madam President—not Madam President: "Your Worship, at this stage, we are not in agreement of the decision made", and ask for the opportunity, Madam President, to provide other learning and assistance to the court that may be able to

assist the court in changing its mind. Now, the question comes into being: What if even after making submissions the court is not minded to make a decision in the favour of the accused which is hearing the matters separately as opposed to jointly?

I know Sen. Vieira, and very much like myself, he is concerned about the spate of judicial review we may have and the amount of judicial review that may come into existence by making the magistrate now responsible for making said decision. So, yes, like the Senator, I am concerned about judicial review. However, that does not take away from the fact that judicial reviewing or judicially reviewing the decision of the magistrate is yet another safeguard that is provided in the law to that accused person, who after the magistrate has made a decision and is not happy with that decision and wishes to contest that decision, we have that opportunity by virtue of judicial review that he can make.

Now, judicial review applications, I could tell you that especially in my practise, I know sometimes especially for clients who are impecunious, it is a relatively expensive process. Another option that is available, if at that stage you decide not to judicially review the application, then you can afford to let the matter run its course and once a decision is made in the matter, Madam President, and that decision, let us say, again, is not in the favour and we have the accused person now convicted, another safeguard is built into the law and that is through appealing said decision. So what you have is that—so I am just practically explaining for the benefit of the listening public and hopefully in some small way to benefit my colleagues opposite to understand that even though consent has been removed, there are other aspects of the law that would provide this protection.

So I would have dealt with the protection that is provided in case law to the unrepresented person, Madam President, as found in—and the cases that would have alluded to the responsibility that that judicial officer now has to discharge to

this person. And now what I am focusing on is the other safeguards; other safeguards from a practical sense where you could have an oral application being made in the court; two, where we could look at, yes, you can judicially review the decision because that would be a tribunal and a tribunal decision that you can challenge; three, if you choose not to follow that option, there is also the appeal process. And, you know—and, of course, well, section 128(1) of the Summary Courts Act would speak to the right of the appeal. When we look at the Judicial Review Act, we could look at section 5 of the Judicial Review Act, Madam President, which speaks to this.

On the point of judicial review, Madam President, there is also a very interesting case, a good read, especially for my colleagues who are lawyers, *Regina v Herefords Magistrates' Court*. It is an ex parte Rowlands. It is also a case that speaks to that safeguard that is provided by virtue—but this is a judicial review case, in particular, but it speaks nonetheless to the safeguard that it presents and provides that accused person with.

Now—so, Madam President, in a nutshell—because, of course, to get into the law in all of these areas, time simply will not permit. But, in a nutshell, Madam President, what I have attempted to respectfully place on the record and submit, you know, for the consideration of my honourable colleagues on the other side is that notwithstanding consent being removed, again, we have the duty and responsibility in settled case law of the magistrate, the judicial officer, Madam President, to that unrepresented person and then to other areas of settled law that provides safeguards to an accused person who may not be in agreement with the decision taken by a magistrate to join the matters. Now, Madam President, that being said, I would now jump— Madam President, can you tell me how much time is full time? How much more minutes I have?

Madam President: Yes. If you take your full time, you will finish at 10 minutes past four.

Sen. The Hon. R. Sagramsingh-Sooklal: Okay. Thank you, Madam President. So what I would now do, Madam President, having tried my very best to answer to those legal concerns, I would now get into the crux of my contribution. Now, the Attorney General did an excellent job, as always, in the piloting of the Bill by going through the length and breadth and focusing a lot on the policy, Madam President, behind the creation of this piece of legislation.

4.00 p.m.

Now I, Madam President, to avoid tedious repetition I would start with a case and this is a very old case, Madam President, just for persons who are trying to understand or catch what is happening here today. I will start with the case of *St. Johnson v Washington*. It is a 1955 case but that case simply speaks to what occurred when the old law was in existence. And in this particular case, Madam President, what it started is that once the record reflected that the magistrate did not—because there is written law—in 1955 there was the ordinance, once the record is reflected that the magistrate did not inform the accused of his or her right to consent and on the record you saw that there was no consent at all, from that point onwards what happened is that the accused person can then challenge the entire proceedings deeming that the proceedings ought to have been invalidated by the failure of that consent.

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

And that is pretty much where the whole interpretation of this particular ordinance which eventually became statute, a law—an Act—sorry—it began and *St. Johnson v Washington* spoke about the effect. And of course, there are numerous case law from 1955 onwards but this was kind of like a landmark case

back then that would have spoken to that, an entire proceeding can be invalidated as a consequence, Mr. Vice-President, of that particular provision. Now, from a practical sense, Mr. Vice-President—so since then to now we have had the accused persons of course exercising their right to consent—to not to consent or to consent whether they want these matters to be heard jointly or separately.

Now, the question is—and as a defence counsel I am sure the hon. Sen. Heath would be familiar with this as well. One of the major reasons why you would find that an accused person would have relied heavily on the statute speaking to consent is because of that whole cutthroat fear. The fear of the other accused person running a cutthroat defence and it was very convenient that the law in its current incarnation simply required you to say, yea or nay, and no reason was necessary because certainly you are not, as defence counsel or an accused person is not going to say to the court, "I am exercising my—I am not consenting and I am consenting because I am fearful of a cutthroat defence that may be run by the other accused", because in the first place you are removing yourself completely from the equation of that offence.

So it was actually—the section 64(2) is very convenient because it is placed in such a way that you are not required to give an explanation, Mr. Vice-President, as to why—what is your reason for wanting this matter to be joined or not joined. Now, sometimes the accused person, Mr. Vice-President, would have exercised this particular right because of fear of personal delay of their matter. So, for example, if it is there is this matter where there are several persons charged and you foresee counsel may advise the accused person that, "Hey, listen, in the other matters that appear on this complaint there are several legal issues for the other accused persons that would arise and it may be prudent for you to treat with your matter separately because your matter is a simple matter that could be treated with

and does not require much legal submissions and a further derailing of your matter." So for that reason as well—for their own personal reasons of not wanting to delay their matter, that is another reason why, Mr. Vice-President, you may have had the accused relying upon this particular provision.

Now, the Attorney General—so this is what would have been the practice and then the Attorney General would have taken us to the decision that came in 2017, and that of course is the Fazal Dindial case. And in this Fazal Dindial case of course—again not to avoid tedious repetition—what we have here was where a different bar was set relative to the judicial officer choosing and what should operate, Mr. Vice-President, in the judicial officer's mind when determining whether this matter should be heard jointly or separately. Mr. Vice-President, what I want to deal with though is—so we moved from 1955 and then I took you to the case of Johnson, and then we looked at why persons—why the accused would have relied upon this, and now the Attorney General of course would have gone into detail with the Fazal case which I am not going to go through. What we are looking at—so after 2017 I now want to look at what we have before us which is this amendment, and this amendment—yes, as correctly stated by all Members opposite and all those who have jumped into this debate thus far, it removes the consent element.

My contribution from this point now is—the question I want to ask and answer is, does a magistrate have the ability—and based on the duty that is now being placed and the responsibility based on this amendment that is now being placed on the magistrate, based on the amendment, can a magistrate and does a magistrate in law have the ability to make that decision? And my answer to that question of course is, yes, because to suggest otherwise simply—firstly, simply is to suggest that—

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

Sen. The Hon. R. Sagramsingh-Sooklal: Thank you, Mr. Vice-President—is to suggest that within our Magistracy we do not have persons who are competent enough to look at summary of evidence and based on their experience and knowledge and understanding of the law can make a decision as to whether or not these matters are to be heard jointly or separately. And I want to place on the record—and I am sure as the Attorney General would have done, and I am sure other persons who are in support of this Bill would do, that the magistrate certainly is best positioned being the first—being in a position to review the summary of evidence is best positioned to be able to make that determination. And why so because previously I would have spoken to what really—what is the reason most of the time for the accused in choosing, in preferring the consent position.

Now, Mr. Vice-President, so to answer the question, a magistrate can exercise his discretion to determine whether matters should be heard jointly or separately, and I said, yes. To answer this, Mr. Vice-President, several provisions—and if I turn to the law, several provisions under the Summary Courts Act and the Criminal Procedure Rules, 2006, allow magistrates to exercise their discretion in the interest of justice and more important in keeping with the overriding objective of actively dealing with cases and justly dealing with cases. So, yes, placing this responsibility squarely on the shoulders of a magistrate, my answer is, yes, they are quite capable; one, their years of experience; two, because at the end of the day they sit on the bench. Further to that, the Summary Courts Act—and that is the very simple contribution there, but even if we turn to the law and we turn to the Summary Courts Act, we see that inherent in the law is their ability to be able to make this decision. So that is relative to whether a magistrate can do this.

Now, finally, as I come to a close in my contribution, Mr. Vice-President, because of course time would not permit me, like the Attorney General I want to just briefly look at—and for the benefit of those opposite understand, please, respectfully, that the amendment that we have brought today is good law. It is accepted law. It is law that is brought to this Parliament after considerable consultation. And the Attorney General—the learned Attorney General would have gone through the list of stakeholders and their comments in this.

From a practical point of view—why do I support this law from a practical point of view? It saves time on matters, on money—it saves time, Mr. Vice-President, on matters. It assists in backlog reduction of matters. We look at it providing litigants with a fair trial. Of course, further to that, it saves the court financial resources. The Attorney General would have looked at the case of *Clayton v The Chief Constable of Norfolk*, this particular amendment I support it because it is also in alignment with that case and other cases. This particular amendment, Mr. Vice-President, is also aligned with the Criminal Procedure Act, Chap. 12:02. What we are doing is simply adopting a similar position that already exists in the High Court.

Why do I support this amendment, Mr. Vice-President? If we turn to regional comparators for example, section 95, Mr. Vice-President, of the Magistrate's Court Act, Chap. 116A of Barbados speaks to this similar provision. Another international comparator, a regional comparator, the AG would have looked at Guyana. He would have looked at the United Kingdom, so the international comparators is yet another reason while I support it. And finally, we must take into consideration the interoperability of law. The criminal practice rules have hit the grounds of the court. We know what is the overriding objective of the criminal practice rules and what this amendment will do is breathe more life and

new life into the criminal practice rules which no doubt will have the benefit of reducing backlog that faces our criminal justice system, more so the summary courts. So, with these few words, Mr. Vice-President, I thank you for the opportunity to make a small contribution to this debate.

Hon. Senators: [*Desk thumping*]

Mr. Vice-President: Sen. Roberts.

Hon. Senators: [*Desk thumping*]

Sen. Anil Roberts: Thank you, Mr. Vice-President. It was indeed a pleasure to listen to the hon. Sen. Sagramsingh-Sooklal who presented cogent arguments in an intellectual yet palatable manner for the populace as a whole to understand so that people from Carenage to Blanchisseuse could understand intellectual arguments about the law. The people can understand what the PNM is attempting to do but as usual, however, the PNM puts the cart before the horse. Sen. Sagramsingh-Sooklal said that the unrepresented could be advised by the judicial officer, and while this is true, this could never live up to the standard of protection afforded to a defendant represented by a learned brilliant attorney of the ilk of Sen. Sagramsingh-Sooklal. So, the argument loses water because while a judicial officer may be experienced and brilliant themselves, only a defendant and their representative could determine what is best for them individually in any matter before any court. Therefore, unfortunately, *Johnson v Johnson* that she alerted us to offers little comfort to the unrepresented or the under-represented other than for easing their dry skin. So we would not—we cannot apply *Johnson v Johnson* to this case.

Sen. The Hon. Sagramsingh-Sooklal said the Bill—

Mr. Vice-President: Senator, could you just use her ministerial portfolio?

Sen. A. Roberts: Which is?

Mr. Vice-President: When an individual has a ministerial portfolio, that is what we refer to them by, so it is Minister in the Office of the Attorney General. Thank you.

Sen. A. Roberts: Thank you, Mr. Vice-President. I humbly apologize to the hon. Minister in the Office of the Attorney General. She said that there were built-in safeguards that the lawyers or the defendants could access in the process that exists in the Magistrates' Court, but the problem with that is then the safeguards defeat the purpose of expedition as espoused by the Attorney General and the hon. Minister in the Office of the Attorney General.

You add another layer of legal arguments and therefore it will bog down the case law and not produce the results that the Government would like that would come from this legislation. My learned colleague is well aware, also, that courts are very, very reluctant to review decisions of the magistrate by way of judicial review. So that safeguard, while it may exist, it is not practicable. And the best person I have to disagree with, the hon. Minister in the Ministry of the Attorney General, the best person to make the decision is the specific defendant and their counsel, their attorney to defend themselves. Not a judicial officer, not a magistrate, the best person to determine how to proceed is the defendant and their representative. This Bill, an Act to amend the Summary Courts Act, Chap. 4:20 to remove the requirement of consent for joinder of complaints in summary judicial matters, it states—and in the essence of the Bill it is only one clause and in the clause there are many questions that need to be answered, and I quote clause 2:

> "'(2) Where two or more complaints are made by one or more parties against another party or other parties in the same matter, and the complaints in that matter are founded on the same facts, the complaints may, if the Court thinks fit, be heard and determined together unless the Court determines that

separate proceedings are required in the interest of justice.'."

Firstly, in this clause, what is the understanding of a "matter"? A matter may be as individual as fingerprints or DNA, so while we have processes in the Magistrates' Court about summary facts and summary evidence, what is determined a matter is individual per defendant. So what may be a matter to the hon. Minister in the Ministry of the Attorney General and what may be a matter to me, even though the summary facts may seem to be the same, may be interpreted in different forms or fashions dependent on the defence that I would like to put forward with my learned counsel. So, any attempt to generalize will meet a weakness of individual justice which is what we must put at the forefront of our minds.

Secondly, the same facts—I proffer that facts are never the same for disparate individuals, even if the charges may be the same or occurred at the same time in the same place. Each person arrives there with a different mentality, a different mens rea, a different understanding, a different decision-making process, different thoughts, so to try to lump defendants all in one would intrinsically mean that they are at a disadvantage when attempting to receive justice. Thirdly:

"…if the Court thinks fit…"

—while we may have a lot of respect and understanding for our institutions, the court in itself is made up the human beings and we are all frail, so to give this great power onto human beings because they sit in a position may not present the best option for individuals who are facing a charge and an opportunity to defend themselves against wrongdoing.

Fourth—and this is the most important part of the clause. It says:

"…in the interest of justice…"

—yet the hon. Minister in the Ministry of the Attorney General listed at the end of

her contribution all of the reasons and the rational for this Bill. And all of them put a higher level of import on expediency, removing backlog, getting through the process, yet in the clause itself it states:

"...in the interest of justice…"

And I put it here in the Senate today that this Bill and this clause, this law, this attempt to put expediency above justice does not fit in with the constitutional remit, with our democratic principles and how we believe that justice must be fair and all must get a fair shake before the courts.

I will just make a few points. I would not be long and I hope that the Government would listen carefully and at committee stage some amendments could be made. The Bill removes the statutory right of a defendant in criminal proceedings to:

(a) be informed of his right to have his proceedings heard separately from other proceedings which are predicated upon the same facts; and

(b) consent to having his matter heard together with another matter.

It now puts the responsibility in the hands of the court to determine if matters should be heard together by applying an interest of justice test. Should that be the test? Is that what we want? Individuals may be charged at the same time, same place, same event, but each individual will have a disparate—a different defence to put forward and it could be prejudiced if they are lumped together with others. So, I think while the objective is good, we would all like to see a removal of the backlog. I think there are other things that could be done before this Bill is passed in this way.

Secondly, the underlying philosophy seems to be that the summary criminal cases before the courts will be expedited if similar matters are heard and determined together. That is what we feel. That is what we think will happen.

Respectfully, that is a serious fallacy which ought not to be encouraged. Justice must not be sacrificed on the altar of expediency. If we carry the principle that is being espoused here to the fullest extent, we could believe that we could turn the police into judge, jury and executioner. Would that not be fastest? That would get rid of the judicial process all together and let the police or the army or the coast guard handle matters in how they see fit. They see somebody doing something illegal then let us fast-track it. Let them handle it.

That is carrying it to an extent that may seem ludicrous but it is said to give you an idea of what the Government is trying to do. Someone's rights and freedoms are very important so if you chip away at them and you chip away at them in order to free up your system, to present an idea that you are doing more but you are impacting on the individual rights of citizens, it is very dangerous and carries you down a path that could end up in the ludicrous with judge, jury and executioner being the police, the army or the coast guard. We must appreciate also that the hearing of a criminal matter together is not as easy and straightforward as it sounds. Court resources and facilities are in a deplorable state. We have seen the courts in San Fernando, we have seen the courts in Arima, we have seen courts in Port of Spain, they are under pressure. They have been constructed so long ago, they find great difficulty in even providing comfort for the attorneys who are present. They put pressure on the security forces to get in people, to make sure that people respect the court.

We do not have the facilities to even, at this time, go through cases with one defendant. What about if you had 10 defendants—10 defendants in one little courtroom with 10 attorneys and the prosecution? Where would they fit? How would we manage? It is just totally impractical in the real world in the condition that our judicial system and our Judiciary is in at this point in time. If you were to

say that, "We should build more courts"—okay, well, Government, build more courts, please, or rent some more courts. I mean, the hon. Attorney General may have a building to rent so we can rent it. Tower D is empty, why not utilize that space, create courts, create space because this cannot work in the system and the infrastructure that we have now?

What about the vacancies that exist in the DPP's Office, in the prosecutors, in the court, in the magistrates, in the Judiciary? These vacancies must be filled before you can proclaim and implement this. We will pass a law that will just create more problems than provide us with benefits because we simply cannot manage. Managing a case with multiple defendants is very, very difficult. As an example for—we can move on—a matter may, for example if it involves 10 defendants that would mean the court would require accommodation and so on. Secondly, there can be untold prejudice in having matters heard together. This is a very critical point simply because there are some underlying facts, for instance, several people may be held and charged because drugs are found in the same house.

These persons may include actual occupiers of the house, visitors, or people who simply came to work at the premises, someone who came to fix and clean the fish tank and happened to be there when police came. Each person may have their own reason for being at that house and therefore, different defences. However, trying cases together may increase the prejudice against the innocent parties because the evidence against the guilty may be so overwhelming and obvious. So suppose a young boy is liming with some fellas who were reputed gang members and they have a list of charges but they are out on bail and he is going to now be charged with all of these career criminals, do you not believe that being charged together would not provide him as an individual or her with that opportunity to

receive justice? His case could be prejudiced by that and to remove that option from him and his learned counsel, I think we are overstepping our bounds here as legislative Members.

It is not enough to simply say that everyone has a fair trial; that is not enough. Trials are conducted by magistrates and judges who are human beings and can make errors that is why we have different levels, that is why we have appeals, that is why we have counsels on both sides, that is why we can go through document; we can make arguments. That is the basis of the judicial system. Why?—because presenting arguments brings forth evidence and you search for the truth. Trying to get quickly to a decision may not provide you with the truth. It may expedite but if you are someone who ends up being found guilty because the Government wanted to move quickly and your case was not heard properly because you were lumped together with others, you would not be so happy with this law.

Appeals take a long time before they are heard and therefore it is important that legislators get the process and procedure right when approaching the summary court procedure. And going back to the hon. Minister in the Office of the Attorney General, if, for example, their arguments are put forth by an attorney and they are denied the right for individual trial, that gives another layer of possible appeal and that would extend the backlog and bog down the courts even more. There is the question of natural justice and this is very critical, and protection of the law. The legislation as it stands specifically engages the defendant in the process. It requires him to be specifically informed of a right to have his matter heard separately. While the legislation is removing the right to have matters heard separately, the way this legislation is drafted there, there is a risk that the court may take the decision to hear the matters together without seeking the view of the defendant and

that risk is too much to bear.

While we may have a lot of faith in our magistrates, they are human beings; some might be late, some might not have their coffee. They might want to get through their backlog of cases. They may have a football game to go to with their grandchild playing and they may make an error and that is dangerous. While the legislation removes the right of the defendant to be informed of his or her rights it should have replaced that right with a legislative provision that ensures a defendant is specifically informed of the decision to hear matters together and provide him with an opportunity to be heard. In relation to the decision legislation should be specifically drafted to state that no decision to hear matters together should be taken—and this is very critical—no decision should be taken without specifically informing the defendant of that decision, seeking his views on the decision by affording him a right to be heard. This right to be heard is very critical and then providing reasons to the defendant if the judicial officer makes a decision against the defendant's views.

Now, the hon. Prime Minister should know very well about the importance of this rule of natural justice because he was a victim of this as he was not informed of a case file that had been sent to the DPP on a matter involving serious allegations of corruption, involving land at a certain date in the past, but 25 years later the police have not completed or restarted that investigation but the hon. Prime Minister, the file and the case was thrown out because of lack of process, lack of ability to answer, not asking a question, not being able to put forward a defence. So, we must be very careful how we move forward with this Bill.

Finally, different human beings have different personalities, different mental strength, different character, different self-esteem; as a coach I can tell you some athletes you can shout at, "bouff" them and they take that and they move faster,

harder and it does not bother them. Other athletes, if you look at them wrong and you are not happy, they will cry. They will go into a shell and they will not perform because every human being is different. So, therefore, when you group defendants there is a risk of capitulation midstream. So if you group some defendants and then under pressure there is one defendant who just is not happy being in the court, is not happy putting on shirt and tie and eventually they crumble and they falter. They change their story. They crumble under cross-examination or they even just say, "Well, I am guilty, I want this thing to be over."

And in midstream, when that person with that different personality does that, whether innocent or guilty, but they succumb to the pressure of the circumstances—and those in the courts would understand that not everybody likes to go up and down a court step—then that will prejudice the case for the others midstream, and that is very dangerous.

4.30 p.m.

So, I would like the hon. Attorney General and the Government to look at this. The United National Congress, we understand what the Government is trying to do. We need to get swift justice in order to assist in the crime fight, so that criminals would not be so brazen. While this may be a Summary Offences Act, it will also prevent the problem of young people staying in remand and becoming hardened criminals, waiting for their cases to come up for summary offences, a little portion of drugs, or however they are charged, and they end up in remand because they cannot make bail. We understand that. However, there are many steps that the Government could take to improve the speed and efficiency of the Judiciary—building more courts, accessing more buildings, providing more equipment, filling out jobs on the establishment, providing more resources to the Judiciary—before they start to trample on the rights of defendants, because

everybody is innocent until proven guilty.

So, we are here today, and we will sit in committee and see if some of these clauses, some of these recommendations that would be put forward from the Opposition could be taken on board, because the right of our citizens to a free and fair trial is the most important. We want a lawful society. We want a society based on discipline, respect, love and togetherness, but we cannot do so by putting some people at a disadvantage to be called guilty, while others get away scot-free.

Thank you very much, Mr. Vice-President. God bless.

Mr. Vice-President: Sen. Deyalsingh.

Sen. Dr. Varma Deyalsingh: Thank you, Mr. Vice-President, for allowing me to participate in this Bill today, and our purpose here today is really to amend the Summary Courts Act, Chap. 4.20, and repeal that section 64(2) and replacing it with a new section 64(2). So clause 2 does attempt to do that.

The new section 64(2) provides that when there are at least two complaints made, at least one or more parties against another party or parties, and the complaints are based on the facts, then these complaints can be decided together if the court finds it appropriate to do so. The section also provides that the court can decide on the complaints in separate proceedings, if separate proceedings would be required in the interest of justice.

Those words, Mr. Vice-President, "interest of justice" is something I would want to go into a little further. So the effect is really looking at the old piece of legislation, and removing the right of informing the accused about his right to have the complaints taken separately. It also removes the requirement that the defendants have consent.

I am always cautious if we are taking rights away from persons because, you see, those accused persons they are innocent until proven guilty. So I am a bit

cautious to say, are we now interfering with the rights of these individuals, the right of an innocent individual, he is not proven guilty as yet? So I ask myself, why is there need for this change? What happens if we have a change? Would the change give a benefit to the average citizen or the State? Would it be giving a benefit to the Judiciary? Would it be giving a benefit to the individual, I am saying? Would the individual be also more disadvantaged, as we are taking away some rights? So I really was trying to grapple with who would benefit more from this. Definitely, any piece of legislation that would benefit the average citizen is important, which would increase the pace of justice.

So then I did some research and said, what are some of the advantages for this? What are some of the reasons to support this Bill today? I have heard the case that the workload of the magistrate would decrease, giving them more time to handle other cases. I have heard that the amount of cases, you know, they would be able to handle more cases, other cases. We would be getting a faster system of justice, and all these things are commendable, because you have to remember the magistrate being the first port of call, he has a lot of cases to hear. We have heard about 14,693 cases per year. So that is a lot to have cases, and I think we have about 43 magistrates to handle these cases, and about 20 per cent of those cases have multiple offences, and 6 to 10 per cent multiple persons are involved.

So I want to look at—we did have some improvements in the fact that the magistrates had a lessening of their workload when the road traffic amendments came about, when the marijuana legislation came about. So definitely they got a lessened workload already or, put it this way, "dey get a bligh", in terms of what they are supposed to do and perform. So we already had a court system where we were getting some improvements.

So the idea is, this piece of legislation, do we really need it? Because we

already are getting something as an improvement. We are already on the path of getting things in place that you find that were improving, or the caseload, improving the court processes, quickening the judicial pace. Because we have heard before from the Attorney General, the plant, machinery, processes. We have more courts, we have more magistrates. So then if we have that and we could also expedite cases, what is the big deal? Why do we have to go into this?

So really speaking I try to say now, I understand any means to lessen that workload to fasten the pace of justice, it is a noble venture. So, therefore I, through you Mr. Vice-President, have to compliment the AG for his endeavour so far. But in this particular matter, I know we are trying to speed up the wheels of justice that I have heard, and it will only benefit the average citizen, because, Sir, if you realize, crime has an effect on persons if they see a slow pace of justice. There is something called "social learning theory", where the young criminal, seeing that you have court matters taking years, people just sitting there, nothing being done quickly, criminals coming out on bail, they will now, the young criminal, will now be enabled by a slow pace of justice. So all these are reasons I would say, yes, benefit to quicken that face of justice.

What other benefit did I see? Economic benefits. Because, you see, if you have a joint trial it means you do not have police having to come out for different individuals on different days. So wastage of police time is something, I am thinking, it is a good venture to have this, because sometimes the police officers do not even make it to certain court matters. So if you are having joint hearings, you find there is less police wasting to come in to give evidence. You also have less staff having to come about, because you have, in a certain instance, you are hearing—instead of hearing, if it is a trial with three different persons, you are having one trial instead of three different trials, and three times police having to

come out, three times staff having to come out and, therefore, there is an advantage. There is also an advantage to the taxpayer, because if you are going to have video conferencing, you have to pay these members of staff to come out to take the footage, to transmit this footage. So there is also an economic advantage. Good.

So then I look—is it really a benefit for the poor man? Because these are some of the arguments that were saying that the poor man would benefit, because now his case would be there with the others, and you could hear certain cases together. For instance, if a man is charged with using obscene language and resisting arrest, instead of having it held twice, two times, two sets of attorneys. To pay attorneys twice to come out to hear two separate matters. You know, people were saying that may be an advantage to him, but really speaking, Mr. Vice-President, most of these persons, the average citizens, they would not—in the old piece of legislation they would not, I think, have tried to say, let me hear these matters separately, let us split up these matters, because they would know they would not be able to afford attorneys. So I do not think this would be a benefit, because I see the poor man being somebody who would think it as an advantage to not—to say, well I would hear it together. I do not need that right. So I am not seeing it as an advantage that the average citizen would have used.

But a man of means may do so, because a man of means may have the power to hire certain attorneys, to try to delay matters, to scatter matters, to have court matters delayed in such a way that you would now be able to let the essence of time run, where witnesses may lose their memory, witnesses may die. You may have that the police officers involved may leave. You have a lot of factors in play. So really speaking, this benefit to the average person, I am not seeing a benefit there. I am seeing it is really more a benefit for the individual who can afford to—

that economic standing individual who could afford attorneys, to split it up.

What other sort of reason I could say, "lemme support this"? Well, I looked at the fact that other jurisdictions do, in fact, have a similar means. For instance, the St. Vincent & the Grenadines, from the Criminal Procedure Code, Section 70, chap. 172, the Criminal Justice Administration Act of Jamaica, section 22, Guyana having the Summary Jurisdiction (Procedure) Act, Ch. 10:02. All these support what we are trying to do today. I do not think—I mean, it is there, it is already in their law books also.

We looked at the case law that was mentioned, *Norfolk v Clayton* UK, where Lord Roskill did say that the discretion to try charges separately—and what we are trying to achieve here in this Bill was already case law in the UK. So we had cases like that occurring before.

Mr. Vice-President, I also looked at local cases, local matters, local trends, what happened locally, what did our local courts say? So, therefore, when I looked at the fact that we already have similar stance in the Family and Children's Division, we already see certain—we already know we would be moving to the removal of preliminary enquiry as a timesaver—already dubbed as a timesaver. So we know we are heading in a direction, and we already see the High Court adopting similar principles.

So the High Court—if you look at the indictable offences—we look and see the Criminal Procedure Act, Chap. 12:02, section 13, also speaks of the fact that it gives the same sort of objective that we are trying to achieve here, that you can join charges and you do not have the issue of consent. So it is already there in our High Court.

But then we have to look at the fact that the local courts, what did we see? What was the rationale that kept coming up? We looked at a case that was

mentioned by various speakers before, where the need they said—we looked at a shift that occurred from old cases. So there were some old cases, *Quash v Morris*, which said you needed to have the consent and the rights of the accused, and we moved away from that and, as persons mentioned, the cases—where you have *Fazaal v Dindial* case, where Justice Moosai was quoted a few times. We saw there, Justice Moosai actually giving the idea that you do not really need the—

Mr. Vice-President: So, Senator, you have mentioned in your contribution that these cases have been spoken to in relation to speakers that have gone before you. There is no need to go over them again, or even to mention them again because then you would run afoul of tedious repetition. So if you want to move on to another point at this point in time.

Sen. Dr. V. Deyalsingh: Thank you, Mr. Vice-President, but the point I wanted to make is a slightly different point. While others may have praised the *Fazaal v Dindial* judgment, if we really look at that judgment it actually, in my opinion—yes, it gives a shift from the old thinking, but what I think Justice Moosai had to do is literally bend backwards to try to correct an error that occurred in the Magistrates' Court. So it seemed to me that his judgment where—and he said that, you know, if consent is not obtained, it is not an automatic bar to open the magistrate to any sort of problem.

So what he actually did there is look at the literal reading of the law, but he used his—he looked at the literal ruling, but he actually looked at the idea that in the interest of justice he would be willing to do away with the literal meaning. So I see this here as something where Justice Moosai, in his excellent judgment, served really to correct the judicial omission, and in that way we have to say I respect this judgment, and I realize that it is really gives us—it opens up the field a bit. I think what happened—I understand the AG now may be trying to correct any further

omissions that might occur from the magistrates. But I must say, Sir, the magistrates who have made those omissions before, the better way to serve justice is to give them guidelines to follow. Guidelines that when they are having their court cases, they would be—if they undergo some judicial training, they would know in cases they have to read in certain rights to people, they have to get the consent. This is why, if a magistrate gets trained properly, this would not have occurred.

So it brings in to say that, yes, Justice Moosai judgment served to correct this, but I am saying we really did not need this. If we actually had the magistrates who are taking their courses, you find you may not have needed to try to balance the interest of justice versus the need for consent. So my take on it is, training for the magistrates may have corrected this and not have us to reach today to try to correct this. So I see here the AG probably attempting to make the law more definite for the magistrates who can still be challenged sometimes in the court.

So, my main concern is the words "interest of justice", because you see, Sir, the interest of justice of a magistrate to know if I am going to allow a joint trial or not, it may depend on where he was trained, what is his past. Remember there is something called "unconscious bias" that the Judiciary had training before. They had issues with training before. There was a Tobago retreat where they spoke about that. So if an attorney who served as a defence attorney, criminal attorney, is a magistrate or one who served as prosecutor in the DPP's Office, they may have a different take on what is in the interest of justice, how they are trained, how they may take and interpret things. So I think Sen. Wade Mark did mention he had some concerns about that, and I do also have concerns about that.

So what again is another advantage, another reason for me maybe leaning to support this? I think with this time, with COVID and the COVID awareness, we

really would not want persons to have to come to court for four or five different trials every time. You now have to be aware that having separate trials would be a sort of strain on these individuals who have to come out in COVID time to run the whole thing properly. So even when you have to take the pandemic, what is happening there into account now, you have to be cognizant of the fact that it may be beneficial to have matters held jointly, rather than separate matters, concerning our health concerns.

Now, some questions I have though. When we were looking at this, my problem what I—a problem that came about is how many persons in the past chose to have their case tried separately. Those figures would really be interesting me, the need to change this, because how many persons used that? Was it used by attorneys before? Because I mentioned before, I did not see the average citizen objecting to hear matters together. You know a delay, as I said, could be used as a technique by persons of means to drag matters for years.

But I am wondering—you see, if we have hardly anybody utilizing this past law, this law we are trying to change, then why are we here? So the facts and the figures is something I would have loved to hear, to see if it was really something that persons would have used.

So when I looked at the features, I looked at what are the factors in favour of a joint trial, because this basically is asking joint trial, the rights of a joint trial. Some of the facts in favour, as each defendant is charged based on the same or similar evidence—so that is why they could have factored in favour—each defendant allegedly participated in the same acts or transactions; the alleged crime involved a common scheme, conspiracy or enterprise, and proved that one charge requires proof of another. One defendant is charged with theft, while another is charged with the sale of goods. So all these are cases where you may want a joint

trial.

Now, my problem is their difficulty may be sometimes—and sometimes it may be appropriate to try several defendants related to a drug distribution ring together. For example, if some of them are being charged with drug manufacturing and others are being charged with drug trafficking, that may be an example. Another situation may be if the prosecution would need to prove one charge to prove the other. You may want a joint trial. Again, you have conspiracy involving sophisticated organized control criminal enterprises, and it might be appropriate in white collar crime cases, when multiple executives are being charged with fraud. Now I know the Attorney General is with the FIU and the legislation, this may be something why this is worth having it pushed that you have to have a joint trial, unless the magistrate says so.

But then what again, what reasons may go against it? So, you see, this is where I some concerns too. You may go against it if there is evidence one defendant may prejudice another. If the evidence is only admissible against one defendant and not the other. If one defendant's defence relies on disputing another story in the case. So you find that this may cause some sort of a problem later on, when you have these defendants in their case in the court and, you know—I do not want to put it this way, but you may have the attorneys of one defendant actually ganging up with the state attorneys against another defendant. In that way, you form a plea bargaining. But in that way I think there is a disadvantage that can occur, when one defendant's defence is thrown under the bus by another defendant. So I think that is a disadvantage.

There is another case I would look at. Sen. Wade Mark mentioned a hypothetical case about a law attorney, an attorney involved in a protest, what would happen.

[MADAM PRESIDENT *in the Chair*]

But I want to say an actual personal experience that happened to me. I once jumped in a car—it was my contractor and he had his helper with him. We drove to go to the hardware, and when we reached to the hardware his helper pulled out some weed and started to smoke this marijuana. Now I was horrified, because if police had stopped us I would have been caught in a situation with individuals, and both the worker and the contractor had previous criminal charges. I knew that before, I do not discriminate people coming to work with me. I think people could turn over a new leaf.

But what would have happened if now the magistrate said I had to be heard with them, and persons would have heard their past history. As Sen. Vieira did quite rightly say, we may be judged like birds of a feather. You know, the osmotic effect of these past criminal deeds of those workers who I had would have somehow tarnished me. I would have probably gone down with them. So, therefore, when Sen. Vieira mentioned the guilt by association, I also realized I now may not have been the master of that case, if the magistrate had decided I had to be tried jointly.

Again, I have to say that this brought some concern to me in the sense that—it brought some concern to me in the sense that if you are going to take away the rights of an individual—and if in that personal case I mentioned I may have gone down—you have to be very, very careful when you are handling any pieces of legislation which would disrupt the rights of individuals.

Now, Criminal Procedure Rules 2016, they tried to improve and quicken our judicial system. We need other pieces of legislation, because we are not there yet, for the benefits of the citizen. There would be a need for the citizens to have that benefit to remove those delays of justice. All those are commendable. The

argument that we really need this piece of legislation, which takes away the right of an individual to achieve those ends, I do not think that, because we already have things in place that the Attorney General had put on board, that I think we could get a quicker pace of justice. So there are things there. There is the fact that we have more judges, more magistrates, efficient video conferencing cases, plant machinery processes in place. We could achieve all we want to achieve here, the quicker justice, et cetera, by all these things that are promised and are coming on board.

So as I listened to the debate earlier on, I realized the Chief Justice gave his blessings, Law Association, different persons had given their blessings to this. But I am very tempted to say, Madam President, that as I listened to Sen. Wade Mark's, some of his concerns, and especially Sen. Vieira's concerns, because he being a practitioner in the courts and the rights of the individuals, I too have some similar concerns.

I must say, I think yes we want faster justice, but I think we could get it by other means instead of affecting and interfering with the rights of accused. Thank you.

Madam President: Sen. De Souza.

5.00 p.m.

Sen. Taylor Jowelle De Souza: Madam President, I want to first thank you for giving me the opportunity to address this Chamber. I want to also thank the hon. Leader of the Opposition Mrs. Kamla Persad-Bissessar for the opportunity and the confidence that she has placed in me, and her diverse and inclusive leadership. My colleagues today, I have listened as, you know, today is the first day that I have ever been in the Senate before and I have listened, I have stayed for the entire sitting because I wanted to hear everyone's thoughts on this entire Bill. But I think

that Sen. Roberts gave the best explanation. Much of this entire Bill if you are listening to it from another part of the world or the average layman is listening to this Bill, it is very difficult to understand all of the different cases that have been spoken about and it is very difficult to understand that.

And I also truly believe that real justice should be given to the actual person to decide whether they want to have a trial jointly or individually. And so, I think, in layman's terms Sen. Roberts said it best so that we can all understand that it is really up to the person to decide whether they want to have a trial joint or a trial by themselves. And so I would like to thank you and that is my contribution.

Hon. Senators: [*Desk thumping*]

Madam President: Hon. Senators, permit me on your behalf, on all—on everyone's behalf here to congratulate Sen. De Souza on her maiden contribution.

Hon. Senators: [*Desk thumping*]

Madam President: Minister of Agriculture, Land and Fisheries.

Hon. Senators: [*Desk thumping*]

The Minister of Agriculture, Land and Fisheries (Sen. The Hon. Clarence Rambharat): Madam President, thank you for the opportunity to join in this debate on this Bill to amend the Summary Courts Act. Madam President, let me personally congratulate my colleague from south Taylor De Souza on making her debut and making her contribution and unfortunately I would not be as brief as she was but I hope I am as effective as she was. Madam President, I have listened to the contributions and it is important that we sift the facts of the Bill from some of the concerns that may be administrative concerns or other concerns unconnected with the true purpose of the Bill.

I want to make this point in opening. Much is being said about the effect of the court exercising a judicial discretion in relation to the matter of joinder and/or

severance. Much is being—much weather is being made of that and I invite my colleagues to look above 64(2) in the Summary Courts Act and you will see 64(1). And 64(1) addresses a similar matter in relation to cross-complaints. The difference between 64(1) and 64(2) is that 64(1) deals with, this is in the Act, deals with cross-complaints. And in 64(1) in relation to matters where there is a cross-complaint, it is the court that makes the decision on separation or joinder as the court deems fit. So I do not see why we could have it in the existing legislation in relation to cross-complaints and we cannot have it in this amendment in relation to other matters. I do not see that an injustice will arise with this amendment in a way that no injustice arises with the current 64(1). That is the first point I want to make.

The second point I want to make is this. This is the evolution of the changes in the criminal justice system and it is a significant change and it is not something that is new. And in saying that I want to say among the changes that have been made, two stand out for me when I listened to some of the contributions today. One is in the change made in 2017 by virtue of Act No. 12 of 2017 in relation to plea bargaining. And when you look at the changes which were made, the three things that stood out were the existence of safeguards, the treatment of the represented and the unrepresented, and the role of the prosecutor in relation to plea bargaining. Those are the safeguards.

When you look at—the other one I want to point to is trial by jury; there were safeguards. It is an election by the accused and there were safeguards for unrepresented. And there is nothing in the Bill before us today that says explicitly or suggests that the Bill represents a removal of safeguards. The Bill represents an interference with the relationship between an accused and an accused legal representative. That the Bill represents an interference with the rights of an accused who is unrepresented or the Bill creates a discretion and gives a judicial discretion

that is over and above the type of judicial discretion already exercised in criminal trials.

I want to say, Madam President, that this is an old debate and it is not a debate regarding the interference with the character of the criminal matter that is before the court. And it is not a debate that involves the facts of the matter whether those facts are disputed or undisputed. The debate has always been the balancing of judicial efficiency with the interest of justice. And in every jurisdiction, in every jurisdiction where the matter of joinder and severance has been addressed, it has been addressed in the context of judicial efficiency and the balancing act with interest of justice. And the way in which various jurisdictions have dealt with it, is the way we have been asked to deal with it today. That having established that a trial in respect of an accused on the same subject matter involving the nexus of the same facts, may be more efficiently conducted by having the trial with the accused joined together. So it is a case, it is a case that has been driven by judicial efficiency. But it is not mandatory in the sense that it is for the court to strike the balance in the interest of justice as the court deems fit.

The joinder and severance issues do not interfere with the innocence of the accused until proven guilty. That has been raised. The joinder—the decision to join or to separate does not interfere with the presumption of innocence until proven guilty. The decision to join or to sever does not interfere with constitutional rights and the decision does not interfere with due process. Judicial discretion is to be exercised in the interest of justice.

And I listened to my colleagues; particularly Sen. Roberts raised the concern about, and in some cases Sen. Deyalsingh, Sen. Dr. Deyalsingh raised the concern of the ability of the magistrate, the judicial officer to make a decision like this. But magistrates make more serious decisions in the conduct of criminal trials.

Magistrates make more serious decisions. And a magistrate is not somebody who walks up the street and sits in trial of an accused person. To be a magistrate you must be specifically trained. You must have a certain number of years of exercise and having been placed in the position of a magistrate, it is expected that a magistrate would behave in a particular way. And if, if an accused finds fault with the conduct of a criminal matter, the accused has a recourse. And magistrates, yes, they are human as Sen. Roberts pointed out and they make mistakes and it is over those mistakes that an accused may seek recourse. But to say that a judicial officer is human and therefore should not be given the judicial discretion to make a decision on something like joinder or severance, is to really make an argument that is not sustainable. Are we expected to bring robots to do trials because we do not trust human beings? It cannot be. Magistrates are trained and prepared and are experienced in dealing with matters of this nature.

And Sen. Deyalsingh also and Sen. Roberts in some way raised this expression of "in the interest of justice". But there is sufficient—as I say, joinder and severance are not unique to us. It has been around the world in criminal trials and there is adequate case law to help us to understand what the expression "in the interest of justice" means. And I would say that it means—it deals with three areas and unfortunately one of the most important considerations in what is in the interest of justice, is a cost-benefit analysis because joinder and severance is rooted, as I said, in the efficiency of the judicial system. And it is for the court to determine whether it is in the best interest of the system of justice that joinder or severance be used to promote the efficiency of the conduct of a trial.

The accused's views are relevant in the consideration of what is in the interest of justice. But ultimately it is the court that makes the final decision. And in most cases and I suggest to my colleagues that they take a look at the case of

Sciascia v the Queen, Supreme Court of Canada decision in 2017 where that court explored this issue of joinder and severance. And the court said in determining whether matters should be joined or whether matters should be severed, there are four factors to consider. One is if there is any legislative prohibition. And what we are doing today is changing the legislation to ensure that, it is not a question of a prohibition but it is a question of a power being granted to the court to make the decision.

The second factor is, whether it enhances efficiency. The third is, whether, and as the Bill sets out, whether the matters before the court involve the same events and a factual nexus among the events. And the fourth factor is the issue of prejudice or the lack prejudice in respect of the accused. So, Madam President, I would submit that the Bill, 64(2) in its amendment would look very much like 64(1) for which there has been no cause for concern.

Secondly, this Bill takes us along a consistent path of making our judicial system more efficient and I have highlighted trial by jury alone and plea bargaining as two of the elements that have brought us along this way. Three, I see absolutely no reason for us to fear our judicial officers. The judicial process provides for mistakes to be dealt with. And fourth, I do not see this Bill interfering with the presumption of innocence, the substantive rights of an accused including constitutional rights. Thank you very much.

Hon. Senators: [*Desk thumping*]

Madam President: Sen. Heath.

Hon. Senators: [*Desk thumping*]

Sen. John Heath: Madam President, thank you for the opportunity to contribute to this Bill:

"An Act to amend the Summary Courts Act, Chap. 4:20 to remove the

requirement of consent for joinder of complaints in summary judicial matters."

This Bill is a short one and I intend to be short, Madam President. Madam President, first—my first suggestion is with respect to the very name of the Bill which only refers to the consent. But when one looks at the present legislation, consent is but one of two things that is required. In the current section 64(2) in the body of that section:

"…each defendant is informed of his right to have such complaints taken separately and consents to their being taken together."

So the conjunctive "and" puts the two things together. So there are two things that have to be done. And a simple suggestion is that the Bill could refer to the requirement to inform the defendant.

Now, having regard to the substantive clause in the Bill which is clause 2, if I may just comment as I go along and as I read that particular part:

"Where two or more complaints are made by one or more parties against another party or other parties in the same matter, and the complaints in that matter are founded on the same facts,…"

I pause there. It is a condition precedent with respect to this Bill that for the complaints being heard together to even arise, it must be a situation where there is the same factual matrix. And on the face of it that would make good and practical sense for a lot of reasons, not only for the judicial process and saving time but also for an accused person that they do not have to have multiple proceedings for a matter which can be taken in one proceeding. It is likewise for the prosecution. So they do not have to call their witnesses over and over to repeat the same factual matrix. So that will make good sense. So that is a condition precedent that has to exist before it could even be taken into consideration whether complaints are to be

heard together. I then read on:

> "…the complaints may, if the Court thinks fit, be heard and determined together unless the Court determines that separate proceedings are required…"

The use of the word "may", Madam President, here suggests that it is a discretion that has to be exercised and that is perhaps a good safeguard in that it is not that the matters will not be heard separately, it is that they may be heard together. And so from that use of the word "may", I cannot see a court exercising that discretion, judicially of course, not inviting or when asked if submissions can be made on the point, not entertaining submissions on the issue. I think it was Senator, in the Ministry of the Attorney General and Legal Affairs who would have alluded that, you know, representations can be made to that effect. And I am saying, having practised in the courts, I certainly agree that certainly the now district court judges are often open to submissions and particularly where statute gives them a discretion and does not mandate that they do something. Submissions certainly can be made while in a particular case where the same facts are involved that notwithstanding the matters should be heard separately.

From my own experience, Madam President, I have never, I have never personally in all my practice engaged in not—in advising my client not to give consent where all the complaints arise from the same factual matrix. But on the current legislation it could be that, I will give an example. A client called a while ago, a couple—past—maybe a year or two ago. He is a known client to me and he said, "Mr. Heath, the police give me a three-wing special". And after trying to find out what that was, he got obscene language, resisting arrest and assault.

Now, under the current legislation he can, if he wanted to or if he was advised to, ask for those complaints to be heard separately notwithstanding it was

the situation where they were all part of the same transaction. I say, in my practice I have not seen the problem of persons not giving consent to those types of matters being heard together. What I do see a problem with though is that having regard to the case law that has been cited, there seems to be a long-standing problem with the Magistracy for whatever reason bypassing certain pieces of the legislation or their requirements.

For instance, the case of *Quash v Morris* that is a case of 1960, that followed a case of *St. John v Washington* of 1955. Yet 20 years on the case the hon. Attorney General referred to of Dindial, it is the same issue that is being appealed with respect to the issue of consent and the magistrates not, as they are required to, informing defendants of the rights to have their matters heard separately and giving their consent for it to be heard together.

So that in those situations it seems that there might be a problem, a long-lasting problem of appeals coming up, and when one reads the decision and the judgment of Justice Moosai, there had to be some judicial gymnastics to reach the justice of the case but which nevertheless could have been easily avoided by these magistrates who are creatures of statutes strictly, by them strictly sticking to the script.

So in those circumstances, one, simply because it has not been my experience with respect to persons requesting to have matters heard separately, that does not say that circumstances cannot arise where there is good reason for doing so and because the proposed Bill does not give the magistrate a mandate, once she appreciates it is the same facts, to have them heard together, that there is a safeguard. There is a safeguard in that regard because it is a discretion that has to be exercised.

We come then into the requirement which ultimately the now district judge

has to look upon with respect to determining whether or not the matters should be taken together and it falls back on the interest of justice which Sen. Rambharat would have just referred to, citing the case law of what are the considerations. And it is just—that is just to say, because it is more practical and more convenient to hear matters together, it simply does not necessarily follow that it is in the interest of justice to do so. And one would hope where there is a situation where there are good grounds for asking the now district judge to hear the complaints separately, representation to that effect will simply be entertained, so ultimately the interest of justice.

Now, I know there may be not so good reasons why a defendant may want to have their matters separated. But the point is, there can be a weeding-out exercise because certainly you cannot ask under the proposed Bill for my complaints, notwithstanding they arose out of the same facts, to be heard, and not prepared to give what you think is a good reason. So there might be—that is a weeding-out process of what is a good and cogent reason that might be—a magistrate or a district judge now may allow and what may not be considered. And if you do not have a good reason, you are less likely to proffer it. Or certainly if you are a layperson and you do not, you cannot appreciate in law what is a good or not reason, if you are represented, you then—that might not be proffered on your behalf simply because a rejection is almost bound to follow.

Sen. Mark then indicated that perhaps, and it is something that could be considered, that perhaps a provision whereby the defendant or his representative can make an objection with respect to having the matters heard together. It will all come back to, of course, the decision of the magistrate. But the provision for an objection in the Bill will give a sort of right to be heard expressly. I am saying impliedly because there is a discretion in the district judge. I cannot see a situation

where the court would not entertain submissions so that they could exercise that discretion judicially. But I do not see any harm as well as suggested by Sen. Mark, if perhaps there can be a provision to allow for an objection that will ultimately be determined in the interest of justice by the very same now district judge. Madam President, thank you.

Hon. Senators: [*Desk thumping*]

Madam President: Attorney General.

The Attorney General and Minister of Legal Affairs (Hon. Faris Al-Rawi): Thank you, Madam President. May I ask how much time I have to wrap up?

Madam President: You have thirty minutes.

Hon. F. Al-Rawi: Thank you so much. Madam President, I wish to express my profound gratitude to all hon. Senators for excellent contributions today. I pause to congratulate my colleague, my fellow San Fernando West citizen and friend, Taylor Jowelle De Souza on her maiden contribution. It is very good to have her in the Chamber with us today. Congratulations, hon. Senator.

Hon. Senators: [*Desk thumping*]

Hon. F. Al-Rawi: Madam President, I have to confess that I thoroughly enjoy debates of the type that we are engaging in today because we have had a serious opportunity to consider in a very deep way issues of law and justice. After all that is what we are here thinking about. I am always interested in what my colleagues have to say. And I have to say that I never take offence to positions of law which are not necessarily in line with the one that I am an advocate of. I always stop to listen to contrary points of view and therefore I must note in particular measure the contributions coming from Sen. Mark and from Sen. Vieira.

5.30 p.m.

First of all let me start by saying that some hon. Senators had asked for

certain statistics and I can say from the disaggregation of statistics that approximately 403 persons find themselves as multiple accused in roughly 7,163 matters per year. So it is not an insignificant sum. Secondly, there was a submission made that this is expedience over justice. And I would like to say that perhaps enveloped in that submission is the fear—Sen. Vieira put it quite plainly—that justice can be thrown away in the movement towards ensuring efficiency. And Sen. Vieira caught very plainly what I had said which is aggressive case management.

I would like to remind that the structure that we are currently sitting in is aggressive case management in a very different setting. We are now case managing with Criminal Procedure Rules. We are case managing with maximum sentence indicators. We are case managing in a docket system. Practitioners would be aware that the hon. Chief Justice has issued directions up to today indicating that we are moving away from cause lists, i.e., where your matter appears on a list and you go in and you talk once in a while, into docket management where the cases are now being, if you start even at the Court of Appeal level, panels of judges sit in docket management so that be it a magistrate or district judge, a High Court judge, a master or a Court of Appeal judge, they now sit in judge wedded to matter.

In other words then, your matters are now put into the docket of a judge and it does not go into the vagaries of judge to judge. As exciting as the chamber court used to be in the civil arena where you really learnt so much in practice, docket management has taken us to a very different system of administration. So, I want to caution that the expedience is not an irritated judicial officer dealing with a list that the judicial officer is not deeply aware of because the manner of administering justice is now under a docket management system with Criminal

Procedure Rules.

Now, Sen. Vieira raised the point of constitutionality and I think the hon. Senator was right to raise the issue of constitutionality. But permit me the opportunity to address it and to perhaps give a reflection which may satisfy hon. Senators. We always look at constitutionality. The first thing that hit me when I was looking to these amendments was that this is saved law. It is 1918, it is 1936, it was certainly done before our Republican Constitution. And even though on the face of it, it appears to be simple majority law as passed, it is certainly saved law and we did not have the reflections and constitutional positions that we do now. So therefore, the simple argument that this is a simple Act of Parliament passed as such and therefore does not require a simple amendment is not one that you can immediately throw out. We must therefore go to the Constitution, we look at the preamble, we look at section 4 of the Constitution, the guarantee of a fair process, the guarantee of equality of treatment. We must go to section 5, as Sen. Vieira took us, section 5(2)(f) and (h) and we must understand what the overriding constitutional objective is, and that is to then be looked at in the context of what the highest court of jurisdiction has said in relation to what is a fair trial.

And that is to be found very importantly in the case coming out of Antigua and Barbuda, and that is the case of Hilroy Humphreys. The Hilroy Humphreys case dealt with the abolition of preliminary enquiries and the argument mounted in the Hilroy Humphreys case was that a preliminary enquiry is an aspect of a trial which, because it allowed in the Antigua context for a cross-examination and other interventions into the law at preliminary enquiry stage, the argument came that preliminary enquiries touch and concern fair trial and therefore cannot be abolished. And if you transpose this argument, the question before us as a Parliament today is: Is the removal of consent for joinder something which affects

a fair trial? Because the only aspect of constitutionality that we need to look at, that touches and concerns section 5(2)(h) and 5(2)(f), is the issue of fair trial. And because Sen. Heath was so clinical in his diving, he has saved me from some of the extrapolation of the argument put by him, which I adopt. I adopt Sen. Heath's argument because, number one, we are dealing joinder of two or more complaints or two or more parties but it is materially based upon the fact that the matters are founded on the same facts, and that is very different from the language which we used in the original 64(2). The original 64(2) says:

"…and such complaints refer to the same matter..."

It does not say, as we put now, that they are founded on the same facts. So there is a satisfaction of Sen. Vieira's concern because Sen. Vieira's concern was not on the basis that they are on the same facts. It was on the basis that there were similar facts, 64(2) as it is originally cast, the one which we seek to amend says:

"…and such complaints refer to the same matter…"

Now, a same matter does not mean same facts. The reason why we went with the language, "same facts" is because in Barbados and Guyana that is the language that received judicial interpretation. We have had the benefit of the law being dealt with on same facts. And secondly, we have had the benefit of the law being considered in the context of constitutionality. Guyana and Barbados both have the CCJ as their final Court of Appeal but they were at the Privy Council and the Hilroy Humphreys case certainly does have grounding on the argument that the fair trial provisions are preserved.

Sen. Heath held on to the word "may" and the word "may" is intended to preserve the constitutionality of the separation of powers. Because in section 99 of the Constitution, the supreme law, the Judiciary cannot have its discretion curtailed by the legislature. And therefore, we do not say "shall", we say "may"

and we preserve that it is for the court to be satisfied. If the court thinks fit is what we say in the new section 64(2) as proposed:

> That the matters—"…be heard and determined together unless the Court determines that separate proceedings are required in the interest of justice."

Now, what came about in the Clayton and Norfolk case is very materially important to us and if we look to the jurisprudence very ably set out, in God rest her soul, the book by Dana Seetahal, that is *Criminal Practice and Procedure*, the Fourth Edition—but if we look to *Chief Constable of Norfolk v Clayton*, it is very instructive to note at page 989 of that judgement, first of all, the court, at letter J, looked to the historical antecedents of where the requirement for consent had been determined in the common law to be a condition precedent because there was no statutory provision in the United Kingdom but the law had grown up and had been interpreted such that consent was a condition precedent like our statutory section 64(2) requires. And they say here at letter J—and I am quoting from the judgment:

> Second, unless restricted by statute, Magistrates' Courts guided where necessary by higher courts are entitled to develop their own practice and procedure and adopted it to the contemporary needs.

The court went on to say:

> Practice and procedure must never be allowed to become inflexible. They are the servants not the masters of the judicial process. I doubt whether any consistent practice in the last century can be deduced from these cases for some undoubtedly demonstrate a clear refusal on the part of some courts to interfere where two or more informations or indeed offenders have plainly be tried together.

What the court went on to say in the Clayton case was also extremely

useful. And if we look at page 992 the statement from the court is—and if you would permit me to quote at letter A:

> Today I see no compelling reason why Your Lordship should not say that the practice in Magistrates' Courts in these matters should henceforth be analogous to the practice prescribed in the Assim case in relation to trials on indictment.

Stick a pin, trials on indictment.

> Where a defendant is charged on several informations and the facts are connected, for example, motoring offences or several charges of shoplifting, I can see no reason why those information should not, if the Justices think fit, be heard together. Similarly, if two or more defendants are charged on separate informations but the facts are connected, I can see no reason why they should not, if the Justices think fit, be heard together.

I have paused on the word "indictment" to make my third submission. For us to mandate the requirement of consent in relation to summary joinder is for us to ignore the fact that the indictable processes under which we operate does not require consent. In fact, it is axiomatic that it is prosecution that decides on the joinder because the prosecution presents the information. And therefore, for us to take Sen. Mark's recommendation that we condescend to granular particulars and offer choice and then give reasons why the joinder is not being facilitated, et cetera, is to take us away from the manner in which we have treated with indictable matters and which stands on the law books today. What the Clayton judgment also says, coming from the English jurisprudence, is that the inconsistencies of asking for consent grew up in the practice in the 18th and 19th Century English courts and it was then that the courts went on to say that the law of practice and procedure must not be maintained in a status quo formula or in a

static position.

But, Madam President, permit me to say, that there is nothing—and Sen. Heath touched upon it as well—there is nothing to stop the submissions being made as to why a joinder ought not to happen and it is there that the formula, the interest of justice comes alive. Now, Sen. Mark has asked for indicators into the legislation as to what the interest of justice means and I would just like to say, as Sen. Sagramsingh-Sooklal said so capably and so comprehensively, the concept and the phrase "interest of justice" is part of the body of laws of the Republic of Trinidad and Tobago in umpteen laws, be it the Supreme Court of Judicature Act, be it in the plea bargaining and plea discussion legislation, it is a feature of law that is left to judicial discretion. Found in the Supreme Court of Judicature Act, every time we settle pleadings, we say, "Such other relief as the court may in the interest of justice deliver." And that is a plead case.

Fortunately, for us, there are umpteen precedents, there is stare decisis. We have formula as to what interest of justice means in relation to joinder. Fortunately, as Sen. Sagramsingh-Sooklal again so capably put out, we have the benefit of all of the factors being considered in the round as it relates to abuse of process, as to judicial review, as to appellate function. There is, again, due process. And that takes me back to Hilroy Humphreys and right to fair trial. Because what we are mandated to consider in the new 64(2) joinder, we are mandated to preserve a fair trial. Number one, we have a judge. In this case, the district judge. Number two, we have the judge bound by statute to act in the interest of justice, coincidental with our indictable procedures and with our common law precedent. Number three, in the interest of justice is subject to appeal because, of course, there is an appellate function based upon magisterial decision. And, of course, there is the right of judicial review in relation to

judgements coming out of the magistracy. In fact, there is a case now under appeal. I would not talk about it in a way such as to prejudice the case. But recently we are all aware that the DPP was the subject of a successful judicial review matter which is now on appeal. So the law is broadening. If you wanted to add to that, take section 14 of the Constitution as well.

So, Madam President, it is material to note that the discretion to try charges separately is circumscribed by known markers to us, that is judicial discretion, that the judge may, that is open to submissions at the bar as to whether there should in fact be joinder or not, the judge is not bound in the consequences to say yes or no, it is in the interest of justice.

I also want to lay on record for consideration—what time is full time, Madam President?

Madam President: You finish at 5.57.

Hon. F. Al-Rawi: Thank you so much. I would also like to lay on the record, I want to go back to the Dindial case and that is the judgment of Mr. Justice of Appeal Prakash Moosai, and I would like to go to paragraph 20 of that case at page 7. And permit me, Madam President, to read this into the record. The judge says:

> "Pursuant to section 64(2), where 'such complaints refer to the same matter', the magistrate may, in the exercise of his discretion, hear and determine them at one and the same time. Thus, statute confers a discretion on the magistrate as to joinder."

I would remind that that is exactly being preserved.

> "The discretion is not unfettered and must be exercised judicially."

That applies to the amendment that we are proposing to section 64(2):

> "There is no reason why, as a matter of principle, the test postulated by the

> House of Lords in the leading case of Clayton…"—and that is the one I referred to earlier—"a decision based on the joinder of informations in the magistrates' court, should not be apposite for the exercise of the discretion under our statute."

We are in those four corners in the amendments that we are proposing here.

> "Accordingly"—this is important—"the court should ask itself 'whether it would be fair and just to the defendant or defendants to allow a joint trial.'"

And again, that is being preserved in the amendments that we propose to section 64(2).

Permit me, Madam President, to also read from paragraph 22 of that judgment, and I quote:

> "As indicated earlier, section 64(2) was first enacted in 1936. At the time of enactment, as Clayton recognises, it was difficult to deduce any consistent practice in the magistrates' courts from the nineteenth century and early twentieth century authorities with respect to the trial or more than one information at the same time, or the trial of more than one offender charged on separate informations at the same time, however closely related the facts might have been. However, by 1947, Lord Roskill remarked that 'a rule of practice and procedure had evolved…which made it irregular for any magistrates' court to try more than one information at the same time in the absence of consent.'"

Stick a pin. That is the common law equivalent of our statutory provision in section 64(2) as it currently stands. I return to the quotation:

> "Nonetheless, the House of Lords in Clayton clarified the law, holding that where a defendant is charged on two or more informations, or where two or more defendants are charged on separate occasions, and in either case the

> facts are sufficiently connected to justify a joint trial, justices may try the informations together if it is fair…to do so, even if the consent of the defendant or defendants to that course being taken is not forthcoming."

Now, if I take Sen. Vieira's submission that the consent is the bulwark to fear, process and to preservation of rights, clearly judicial determination has a different point of view. I take the submission for the very real point that—and I have said it before myself in relation to bail considerations—that we are sometimes trying to protect against bad judicial decisions. If we are frank on the record and we look to the comparators in the law of bail—and I have said it before and I have quoted from the House of Lords in England on bad bail decisions. Perhaps it is that Sen. Vieira is saying what we all know that we are trying to protect against bad magisterial decisions but I would respectfully say that we have to allow the law to grow up and to not be cast into static position. Because if we accept Dindial the way Mr. Justice of Appeal Moosai has pleaded the ratio of that case then one could argue that we do not even need to amend the law because consent is not necessarily a full condition but Mr. Justice of Appeal Moosai did recognize that formalities and statutory formalities are formalities. And therefore, you can have a miscarriage of justice if you do not carry it out. But that is where Sen. Rambharat's submission is so poignant. Because if we look to section 64(1) of the Summary Courts Act, then we have an inconsistency to treat with where we are trying to understand cross-complaints being done without consent.

Because if you take the similar fact matter, if you take a cross-complaint, it is two different parties, it is one against the other but the other in reverse to the other, it is an approbation and reprobation, it is people just not agreeing, the cross-complaint without consent therefore flies in the face of consent in 64(2).

And therefore, my submission is that 64(2) an anomaly that needs to be corrected and yes, Sen. Deyalsingh spotted it for what it is. It was mental and jurisprudential gymnastics on the part of Mr. Justice of Appeal Moosai in having to bend over backwards to make sure that the law applied. But if you look to the case of Quash, you may not be that lucky as you were in Dindial. In Dindial, the court was able to infer that the formalities of information and consent were dealt with because they were legally represented. And therefore, having asked the lawyer the question, the argument was met, even though Mr. Jagdeosingh who argued for the appellant in that case said, "Well look, yes, the lawyer said yes but you did not ask the person directly." That is the facts of Dindial.

So I respectfully submit that our interest of justice argument, our preservation of the fact that the judge has the discretion; the fact that the concept of in the interest of justice is well known to the jurisprudence of Trinidad and Tobago; the fact that we are now treating with Criminal Procedure Rules; the fact that we are treating with docket management and not just case management on an ad hoc basis—five minutes?

Madam President: Attorney General, you have five minutes.

Hon. F. Al-Rawi: Thank you—the fact that we are treating with our administration of justice in a very different way, particularly now where the rapidity of transcription is now here—folks, hon. Senators, in 2015, we had 10,000 transcriptions in arrears. Today we have none. How did that happen? We entered into a system of voice transcription. The Chief Justice said if Siri could do it, so can the Judiciary and they started mask transcription. In other words then, they were dictating speech.

So we are now in a position where we have three magisterial districts, not 14, where we have Registrars of Court, not Clerks of the Peace; where we have

judicial docket management; where we have a public defenders' division. I will warn Sen. De Souza, the last Senator to sit temporarily on the Opposition Bench was Ms. Hasine Shaikh, a very bright young lady who then became the Chief Public Defender, because I am the AG of the Republic of Trinidad and Tobago and it mattered not to this Government that she sat, Ms. Shaikh sat opposite me. She was the best person for the job and has done an outstanding job for the Public Defenders' Department. So I would say to Sen. De Souza, watch out, you may soon be on the other side.

The point that I am making is that the judicial system is very much in a different place. It is not perfect. We are working on the prosecutorial reform at the AG's Office. We are in discussions with the Commissioner of Police and the DPP's Office because they conduct at the TTPS end 95 per cent of the prosecutions and the DPP supervises 5 per cent. How well is a system going to function? Because now we have public defenders, Madam President, of the 1,200 and odd-5 people in remand for murder, the public defenders' division has already interviewed over 788 of them, with hundreds of requests for plea bargaining, with hundreds of requests for different versions of charges to come in. That is no small feat, Madam President.

So the system and administration of justice is there. And I would say to my learned colleague whom I have the utmost respect and regard for, Sen. Vieira, if we are treating with this to treat with bad magisterial decisions, which I agree with can happen because we are infallible—we are not infallible as human beings and magistrates are certainly human, I would just say that the system is significantly different. And that the mere fact that we have transcriptions in no backlog, we have the right of appeal because these are summary trials. Remember, we are not dealing preliminary enquiries or going to the Assizes. We

are dealing with magisterial appeals and therefore, the process is much shorter.

So, Madam President, I thank hon. Senators for very fulsome and intellectual and rewarding contributions today. My humble submission is that the law is constitutional. It does not infringe upon constitutionally entrenched rights. I believe that there is ample precedent in our own body of laws where the indictable process is without consent. I believe that the jurisdictions of Barbados and Guyana, in particular in the commonwealth perspective, helps us in the Caricom context because we are in pari materia with them. I believe that the common law set out in *Chief Constable of Norfolk v Clayton* is excellent precedent for us and I accept that we are at a system where 500 people's matters—500 people in 7,000 matters is an important statistical output for us. Because, Madam President, as I end, people are crying out for justice and the one part that we can deliver as Senators is to ensure we do our end of the equation to enable them with legislative techniques that can help them to feel and smell justice in reality. Because contrary to Sen. Mark's submission that it is only certain people, everybody who is in the court needs to know that justice is not only done but is seen to be done. I thank you, Madam President, and I beg to move.

Hon. Senators: [*Desk thumping*]

Question put and agreed to.

Bill accordingly read a second time.

Bill committed to a committee of the whole Senate.

Senate in committee.

6.00 p.m.

Madam Chairman: Attorney General, ready?

Mr. Al-Rawi: Yes, Ma'am.

Clause 1 ordered to stand part of the Bill.

Clause 2.

Question proposed: That clause 2 stand part of the Bill.

Madam Chairman: Sen. Mark, you have a proposed amendment?

Sen. Mark: Yes, Ma'am. Madam Chairman, we are proposing that—

Madam Chairman: No, Sen. Mark, can you just speak up a little bit.

Sen. Mark: Yes, thank you. Are you hearing me better?

Madam Chairman: Yes.

Sen. Mark: Yeah, Madam Chair, we are proposing that we insert after the subsection in 64(2), the following and it is clearly outlined:

> "(3) Where the Court proposes to hear and determine two or more complaints together, the Court shall explain the reason…"

And we believe that that is very important in the context of this new amendment that is before us:

> "…for doing so to the defendant and give the defendant an opportunity to put forward any reason why separate proceedings are required."

And another area, subsection:

> "(4) At any point before the hearing of a matter is commenced, a defendant shall be entitled to make an application to sever complaints which were previously joined by Order of the Court and shall submit the reasons for such application to the Court…"

Madam Chair, we are of the view that even though we are making the changes that are proposed we are suggesting that to just ensure that there are sufficient safeguards in the context of what we are addressing that these subsections are very important to give the magistrate some direction. Because as the Attorney General would have indicated to us earlier, these magistrates are

creation of statute. And, therefore, it is important that we put into the law provisions to give the defendant or the accused the opportunity to take certain action on the direction of the magistrate, but based on the law. If it is left up to the discretion of the magistrate we believe, Madam Chair, that there could be some imbalance and some miscarriage of justice at the material point in time. Hence the reason we are proposing the amendment to strengthen the actual provision or the clause that hon. Attorney General is proposing in section 64(2) of this Bill.

Madam Chairman: Thank you very much, yes—

Sen. Mark: That is the reason—

Madam Chairman:—Sen. Mark. Before I ask the Attorney General to respond, any other question or comment on the proposed amendment by Sen. Mark? Attorney General.

Mr. Al-Rawi: Thank you, Madam Chairman. Madam Chairman, Sen. Mark said that that his submission was based on part upon the fact that magistrates are creatures of statute. Yes, magistrates are creatures of statute pursuant to section 3 of Chap. 4:20, the Summary Courts Act, but that is not to say that they are therefore required to have the guidance of the type that Sen. Mark puts now. Judges are creatures of the Constitution, section 99, but it does not mean that the Supreme Court of Judicature Act goes into an explanation as to what the interest of justice is.

Madam Chairman, the fact that—if you look to these recommendations in the new proposed subclauses 3 and 4, these traverse upon an area of law that the criminal law has not gone to. They are border on preliminary rulings and preliminary decisions which I can find no precedent for in any of the laws that we looked at. They would also fly in the face of precedent in the Commonwealth Caribbean, in particular: Jamaica, Barbados and Guyana, the latter two of which

are almost in exact terms the law which we proposed today. They would fly in the face of the Commonwealth experience as set out in the case of *Clayton v Norfolk*. In all of the circumstances, Madam Chairman, I am not in a position to agree to the amendments as circulated.

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

Question put and agreed to.

Clause 2 ordered to stand part of the Bill.

Question put and agreed to: That the Bill be reported to the Senate.

Senate resumed.

Bill reported, without amendment, read the third time and passed.

ADJOURNMENT

The Minister of Agriculture, Land and Fisheries (Sen. The Hon. Clarence Rambharat): Madam President, I beg to move that this House be now adjourn to Tuesday 22 February, 2022, at 1.30p.m. Madam President, that is the Private Members' Day and I believe my friends on the other two Benches have discussed the next—there is a Motion that is in debate already, Motion No. 1 by Sen. Vieira. I believe the plan is to proceed with that Motion on that day.

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

Hon. Senators: [*Desk thumping*]

Trinidad and Tobago Revenue Authority

(Government to Provide Update)

Sen. Amrita Deonarine: Thank you, Madam President, for the opportunity to raise this matter on the adjournment: The need for the Government to provide an update on the implementation of the Trinidad and Tobago Revenue Authority given the 93 per cent increase in reported episodes of tax evasion as detailed in the

2021 FIUTT report, that is, the Financial Intelligence Unit of Trinidad and Tobago report.

Madam President, the findings of the FIUTT report, its annual report in 2021 has been in the public domain since January 2022. The findings of that report found that suspected tax evasion ranked the highest among the five most common reasons for suspected financial crimes in Trinidad and Tobago; one-third of all reported suspected activity reports and suspected transaction reports.

The passage of the Trinidad and Tobago Revenue Authority legislation as a tool to fight tax evasion has also been a matter of public discourse. Tax evasion was one of the driving factors causing the Government to modernize the legislative and institutional framework that governed the Inland Revenue Department. Back then when we debated the legislation, we were concerned with suspected tax evasion of $529 million based on the 2020 FIUTT report, and a noncompliance gap of $5 billion.

Now, according to this latest annual report by the FIU reports of suspected tax evasion for 2021 has sharply increased to $1.017 billion. Assuming the compliance gap is the same we are talking about $6 billion in revenue leakages from the tax system. That is more than 3 per cent of GDP. Almost 3.8per cent of GDP to be precise. Madam President, this is a cause for grave economic concern especially during these economic times that has caused us to record persistent budget deficits. Madam President, allow me to give some facts coming out of this report to ensure that this honourable House and the listening public understand the extent to which suspected tax evasion has increased.

According to the FIU report of 2021 tax evasion was highlighted as the leading course for entities to submit suspected activity reports and suspected

transaction reports for a second consecutive year. Suspected tax evasion accounted for 71 per cent of the total monetary value of reports submitted to the FIU. When we look at these reports of tax evasion, when they are disaggregated into attempted and completed transactions the FIU reported that 50 per cent were completed transactions. That is, $1.013 billion and 44 per cent, $475 million were attempted transactions of suspected tax evasion. What is striking however, Madam President, is that despite the number of reports of suspected tax evasion, 539 reports in 2020 and 534 reports 2021, so the number of reports remained relatively consistent. The total monetary value of suspected tax evasion amounted to over $1 billion. That is a 93 per cent increase in suspected tax evasion in one year.

Madam President, it is commendable that the suspicious activity reports and suspicious transaction reports were identified by the financial institutions and reported to the FIU. This rising prevalence of suspected tax evasion is a cause for concern and more so reason to escalate efforts for the full operationalization of the Trinidad and Tobago Revenue Authority.

The Revenue Authority Bill was assented to on December 23, 2021, and is currently pending proclamation. So I ask the question, when should we expect full proclamation? Would the Minister be so kind, through you, Madam President, to outline the next steps that must be taken upon full proclamation? Where are we with the preparation for the transition of staff into the new institutional structure? How about the development of the initial budget, the IT strategy?

Madam President, the reality is that we have set an optimistic target upon the establishment of the Revenue Authority to have revenues increase, revenue collection increase by 1 per cent of GDP in 2023 through the implementation of the Trinidad and Tobago Revenue Authority. But the reality is that the budget

proposal, the operational and strategic plans, the IT strategy, the appointment of the board, all of these are contingent upon the appointment of the board, the director general and the deputy director generals.

Where are we with the preparation for the appointment of these members, both the board members, the director general and the deputy director general? What are some of the preparatory measures being put in place? Have we started to develop systems and procedures for making sure that noncompliant tax payers pay their fair share? Madam President, the agenda to escalate the improvement in the efficiency of tax administration must be prioritized, especially for the sake of ensuring the distribution of tax burden is equitable among citizens. If we look at the FIU report, we would see that some of the common reasons identified for suspected tax evasion were concentrated amongst businesses who sought to falsify documents to initiate transfers between different businesses with the same owner, the same beneficial owner; comingling of business proceeds with personal funds; employees and family members of principal parties of cash incentive businesses; using personal accounts to deposit large volumes of cash, and large companies identified as depositing unreported income.

Madam President, we cannot continue with the situation where some individuals and businesses contribute to the tax system while others do not. Given the findings of the FIUTT report and what we already know I urge the Government to provide us with an update on the proclamation and implementation of the Trinidad and Tobago Revenue Authority. I thank you. **Hon. Senators:** [*Desk thumping*]

The Minister of Finance (Hon. Colm Imbert): Thank you, Madam President. How much time do you I have?

Madam President: You have 10 minutes, so you will finish at 6.26 p.m.

Hon. C. Imbert: Thank you. Madam President, in dealing with these matters on the Motion for the Adjournment it is often quite difficult to determine the thrust of the matter. This particular matter spoke to the need for the Government to provide an update on the implementation of the TTRA. So I will deal with that. But I think it is necessary to give a brief history of this Authority.

The first piece of legislation to enable the creation of a Revenue Authority in Trinidad and Tobago was introduced in this era, in May of 2018. That Bill, the Trinidad and Tobago Revenue Authority Bill, 2018 was referred to a Joint Select Committee of Parliament, comprising members of the Government, members of the Opposition in both Houses and members of the Independent Bench. That Committee held several meetings, 13 actually, and received submissions from numerous stakeholders. As is usually the case with one of these special majority Bills, because that Bill required a three-fifths majority, the Opposition dragged us for a year and then after we did all of the consultations with all of these various stakeholders, the FIU, the Customs, the chartered accountants, the trade unions, the Chambers of Commerce, et cetera, et cetera, for one year, the Opposition refused to support the report and submitted a minority report.

So, we went again and we reintroduced another Bill in 2019, November, that was passed in the Senate with amendments. However, we could not receive the support of the Opposition in the House. So eventually after it became obvious that notwithstanding the issues that Sen. Deonarine has so aptly illustrated the need for modern revenue administration, the Government created a hybrid system, introduced legislation that did not require the support of the Opposition and that was passed in the Senate on September 17th with seven votes against, 21 votes for. It went to the House, 21 Members voted for, 15 against. All the Opposition

Members present voted against it and said they will take us to court if we try to implement the Revenue Authority. So I needed to put that on the record. The Opposition has resisted this Revenue Authority since 2010, 12 years.

So let us come now to what is happening in terms of an update. The Bill was in fact, the Act was in fact assented to on December 23rd, just about six weeks, seven weeks ago, and a note has been drafted and submitted to Cabinet by my good self for proclamation of the sections of the Act that will allow the Authority itself to be established, allow it to start the process of creating all of its work rules; its programmes; its operational systems; acquiring accommodation; acquiring equipment and starting the recruiting of persons from outside of the public service. The proclamation will be done in phases in order to avoid disruption to current operations.

Over the last several years a lot of work has been done. The following activities have been completed: Business process review and analysis, which is mapping of current processes in Customs and Inland Revenue; business process redesigned to make the processes more efficient, effective, transparent and in keeping with a modern revenue administration; the required human capital has been determined; job descriptions, detailed job descriptions have been prepared; job classification and evaluation and compensation framework has been submitted; an organizational design has been prepared and submitted and a national stakeholder plan has been developed and we expect to, as soon as the relevant sections of the legislation are proclaimed and we establish a board we expect the board to hit the ground running because this is a lot of work that has been done over the last three years to give them all of the documentation and the action plans and implementation plans that the new board will require. I expect that within the

month, within one month the board will be appointed and the Revenue Authority will hit the ground running. I thank you, Madam President.

Hon. Senators: [*Desk thumping*]

Madam President: Sen. Mark.

Hon. Senators: [*Desk thumping*]

Chairman of National Insurance Board

(Withdrawal of Appointment)

Sen. Wade Mark: Thank you, Madam President. Madam President, the Government recently appointed an individual by the name of Patrick Ferreira as the Chairman of the NIB Board. Now, Madam President, several questions have arisen both on the basis of law and policy. It was in June of 2011 an article in the Trinidad *Guardian* entitled:

"Central Bank questions CIC"

Where an alarm bell was raised about the Chief Executive of CIC Insurance Brokers, one Patrick Ferreira. The issue at the centre of this was a breach of the Insurance Act by this particular individual which eventually saw him leaving the actual place of employment.

The Ministry of Finance has brought this individual who was a government representative between '17, I believe, and '21 on the Board of the NIB and made him chairman sometime in January of this year. This gentleman was debarred literally by the Central Bank, right, as managing director of the Consolidated Insurance Company Limited.

Madam President, it is against the law for anyone who is in the insurance business to give a rebate on commissions. The Central Bank or the Brokers, I should say, Association of Trinidad and Tobago reported that this gentleman

rebated a commission on a big home ownership policy plan. He was accused of engaging in this unlawful action by the Brokers Association and that matter was reported to the supervisor of insurance which is the Central Bank of Trinidad and Tobago.

On the basis of this particular report and subsequent enquiries conducted by the Central Bank, the chairman appointed by the Government was removed from his position as managing director of CIC and as such cannot practice any insurance activities in our country. He was literally disqualified by the Central Bank and the Brokers Association from holding any position in the insurance industry.

So, Madam President, one could well imagine the concern that has arisen when this gentleman who was appointed, a representative of the Government floated up to the chairmanship of this $31 billion company called the NIB or board. Madam President, this is totally unacceptable. This gentleman is unfit and he is improperly, illegally and unlawfully appointed by the Government. This gentleman, Madam President, is a member or director of NIPDEC whose tenure I understand still exists. That is a Cabinet-appointed board. He is also a member of the Trinidad and Tobago NGC Limited, which is another Cabinet-appointed body. Under the National Insurance Act, section 3(2) the composition of the Board is clearly outlined:

"(a) three members nominated by the Government;

(b) three members nominated by the associations most representative of Business;

(c) three members nominated by the associations most representative of Labour;

(d) a person, who in the opinion of the Minister, is independent of the

Government, Business and Labour, who shall be the Chairman;"

Madam President, this individual if he remains as chairman will become the chairman of the investment committee of this very important institution. It is inconceivable, reckless, bordering on unlawful conduct, misbehaviour in public office for any government and Cabinet to agree to an individual with such a checkered past and record and therefore I have brought this Motion, this matter on the Motion to call on the Government to allow good sense to prevail.

This gentleman is not only involved in the private sector, and I have no problem with the private sector and its board of appointment. I have a problem, Madam President, with an individual who is a government nominee, who is a government representative being put into the chairmanship of the NIB which is a $31 billion company. And the Minister of Finance must explain to this Parliament, what is the relationship between this Patrick Ferreira and the Minister of Finance? He has a duty to tell this country if he has incestuous friendship or relationship or intimate contacts with this individual and if he can clear the air on behalf of the people of this country.

Madam President, I call on the Government to remove this gentleman immediately from chairmanship of the NIB. I put the Government on notice as the Leader of the Opposition put the Government on notice yesterday, if the Government fails to remove that gentleman who has been illegally appointed as chairman of the NIB, we will take the Government to court for a breach of the NIB Act. So, we put the Government on notice, take action, take action now, remove this serial toucher of women.

Hon. Senators: [*Shouting, crosstalk*]

Sen. W. Mark: I have received many, many—

Madam President: Sen. Mark!

Sen. W. Mark: Sorry, Madam President, let me withdraw that.

Madam President: No, please. Before you are going to withdraw it—

Sen. W. Mark: I withdraw it.

Madam President:—I have repeatedly said do not speak about third parties in that way.

6.30 p.m.

Sen. W. Mark: All right, I withdraw that. Madam President, this is a very serious matter, very serious matter, and the individual that is involved in this matter is unfit and cannot serve in that capacity as chairman of the NIB. I call on the Government, I call on the Minister of Finance, I call on the Rowley administration to immediately withdraw this appointment which is reckless, irresponsible, insensitive, illegal, Madam President. Remove that individual now from that very important board call the NIB Board. Thank you very much, Madam President.

Madam President: Minister of Finance.

The Minister of Finance (Hon. Colm Imbert): Thank you, Madam President. First, let me express my disgust at Sen. Mark's—

Hon. Senators: [*Desk thumping*]

Hon. C. Imbert:—breach of privilege using the Parliament as a cover to make scandalous allegations against someone who cannot defend himself. Typical Sen. Mark. I noticed that last night in the Opposition meeting—it has another name; "For alcohol" I think they call it—the Leader of the Opposition said that she would be sending me a pre-action letter over the appointment of this gentleman as Chairman of the National Insurance Board and, therefore, since that has already occurred I will confine my remarks to policy.

Now, the National Insurance Act is a package of legislation aimed at providing a safety net for workers in Trinidad and Tobago. It was developed in the 1970's. It provides for a partnership and collaboration between the State, labour and business to work together to collect insurance premiums from workers, and employers to invest these premiums and produce income for national insurance pensioners at the end of their working careers when they attain the age 60. When one looks at the persons who have been appointed as chairman of the National Insurance Board over the last 25 years, if ones goes as far back as 1996, the chairman of the National Insurance Board at the time, appointed by the UNC Government of which Sen. Mark was a part, was Mr. Edward Bailey who at the time was chairman of Maritime Life, the same Maritime Life that entered into endless contracts with the Government, and the same Maritime Life that is now before the courts with several of Sen. Mark's colleague from the 1995—2001 period.

So it was the policy of the UNC Government then to look at the pool of persons available in the country and pick a senior businessman who was doing business with the Government. As we all know, Maritime financed the infamous Piarco Airport project. When one comes forward now, one sees in the next incarnation of the UNC, they appointed a gentleman called Adrian Bharath to be chairman of the National Insurance Board, and Mr. Bharath at the time was a director of an insurance company, TRINRE. He was also the managing director of a financial advisory services company. So one sees that the UNC in both its incarnations appointed leading businessmen to be chairman of the National Insurance Board, and persons who sat on other boards, both in the private sector and in the public sector.

So therefore, it has been the policy of successive Governments over the

years since inception—in fact, the first chairman of NIB was Mervyn De Souza, an actuary. And in fact, the first CEO of that same insurance company that Sen. Mark just referred to, Consolidated Insurance Consultants Limited, I find it very curious that Sen. Mark has access to Central Bank documents and it is very interesting. But I was googling while Sen. Mark was talking and I saw in 2011 the following article in the *Guardian*, and the complaint was about a brokerage contract for insurance of a townhouse development. How much more time do I have, Madam President?

Madam President: You finish at 6.41—

Hon. C. Imbert: So how much time is that?

Madam President:—and it is now 6.35.

Hon. C. Imbert: Thank you very much. I have six minutes. So if I read from this article in the *Guardian*, June the 9th, 2011, "Central Bank questions…"—Consolidated Insurance Brokers and there is a particular extract. This was an argument about an insurance premium for a townhouse development or a housing development called Point Villas Limited.

> "…CIC was invited by Point Villas Ltd, along with many other insurance brokers…to submit a quote for homeowners requirements."
>
> It—"…is 100-unit gated compound in…Chaguanas."

According to this article:

> Mr…"Ferreira said the finalisation of the material policy and its placement was done when he was out of the country and, as such, he played no part in the finalisation of the insurance coverage that has been called into question.
>
> 'When the insurance was placed, a…fee to be charged…"—to—"…the client was submitted and accepted. These events all took place on October 21, 2010' ... He said he returned to…"—Trinidad and Tobago—"…the

following week and met a concluded arrangement which he never negotiated."

Now, if what is in this 2011 article is true, then everything that Sen. Mark has said is a tissue of untruths. And, Madam President, if Sen. Mark had all of this information, this individual has been a Director of the National Insurance Board for the last three years, I am surprised that the astute Sen. Mark did not ferret out all of this scandalous information from some cubbyhole in the Central Bank over the last three years. I just do not believe it. So I will investigate the matter, Madam President. But the fact of the matter is that successive Governments have appointed persons who were eminent citizens of Trinidad and Tobago to serve as directors and chairman of the Board of NIB. These persons are drawn from business, labour and Government sectors.

When one looks at the policy and the practice, the chairman is someone who is supposed to act independently of Government, labour and business. I dare say that the under the UNC, the executive director of Maritime Life who was also the chairman of the NIB for six years or five years acted independently of those three groups. I dare say that under the UNC, the two chairman that they had, one was a senior manager at BP in charge of joint ventures, commercial joint ventures, and the second one, as I said, was the managing director of a financial advisory services company and on the board of an insurance company. I dare say that those two gentlemen that the UNC appointed, those leading businessmen, acted in an independent manner when they took on the chairmanship of the National Insurance Board under the UNC. I cast no aspersions on them.

And I want to refer to the whole concept of independence, Madam President. We have in this country several instances of persons becoming judges of the High

Court, judges of the Appeal Court who have held political office, who have been Members of Parliament for various political parties. I can think of three. I can think of Justice Lucky, I can think of Justice Tewarie, and I can think of Justice John. All three, one of them was an NAR Senator, one was a UNC MP, and one was an Alderman in the Port of Spain Corporation for either the ONR or the NAR. All three of them became judges and there was never any question of their independence, because when they were appointed judges they were required to act impartially without fear or favour or bias, and therefore, when Governments over the last 30 years, I dare say 50 years, have appointed persons to be chairman of the National Insurance Board they have looked within the pool of persons in the country and selected persons who in their opinion can act independently of the three groups in the best interest of the people of Trinidad and Tobago.

I close by saying that I have never heard those scandalous allegations put on the record by Sen. Mark. I do not believe them. On balance, Sen. Mark is a habitual teller of untruths. I thank you, Madam President.

Hon. Senators: [*Desk thumping*]

Question put and agreed to.

House adjourned accordingly.

Adjourned at 6.40 p.m.